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Tradition and Innovation in Knowledge Production: Gregorio López' Commentary on the *Siete Partidas* (1555)

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Abstract

Gregorio López' name is inextricably linked to his edition and commentary on the *Siete Partidas*, and both his contemporaries and later jurists praised him for having added »the eternal explanation« to this centrepiece of medieval Castilian legislation. The technique of commenting on authoritative texts was the basis of the scholastic method as practiced at the Spanish and Portuguese universities in the 16th century. Writing glosses or commenting was a method of making authoritative texts applicable to contemporary problems, circumstances and questions. In the Spanish context, this can be observed particularly whenever problems posed by the developments in the Americas needed to be resolved. Although the medieval tradition obviously had not discussed these issues, commenting on and interpreting authoritative texts by medieval thinkers was used as an intellectual tool to develop answers to contemporary problems. A closer reading of López' commentary on the *Siete Partidas* confirms the use of this technique, especially with regard to the presence of the Americas as a topic in the glosses. The following analysis traces López' work both as an editor and as a commentator of the *Partidas* to examine several examples of how he incorporated new questions into the framework of a medieval authoritative text.

Keywords: School of Salamanca, production of knowledge, Gregorio López, *Siete Partidas*, glosses



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Tradition and Innovation in Knowledge Production: Gregorio López' Commentary on the *Siete Partidas* (1555)

Gregorio López' name is inextricably linked to his edition and commentary on the *Siete Partidas*,¹ and both his contemporaries and later jurists praised him for having added »the eternal explanation«² to this centrepiece of medieval Castilian legislation. The technique of commenting authoritative texts was the basis of the scholastic method, as practiced at the Spanish and Portuguese universities in the 16th century. It would be a profound misunderstanding to consider it as nothing more than an exercise in historical analysis. Rather, writing glosses or commenting was a method of making authoritative texts applicable to contemporary problems, circumstances and questions. In the Spanish context, this can be observed whenever problems posed by the developments in the Americas needed to be resolved. As missionaries and political administrators were confronted with new questions created by the American realities, juridical and moral solutions had to be found for which no blueprint existed in the medieval tradition. Commenting and interpreting authoritative texts authored by medieval thinkers was used as an intellectual tool to resolve contemporary problems. A closer reading of López' commentary on the *Siete Partidas* confirms this approach, especially with regard to the presence of the Americas as a

topic in the glosses. López himself was actively involved in the American politics of the Castilian crown, initially as an authorised representative of the Council of the Indies and later as a council member. The following analysis traces his work both as an editor and as a commentator of the *Partidas* to examine several examples of how López incorporated new questions into the framework of a medieval authoritative text.³

1 Becoming the »Spanish Accursius«: Gregorio López' Education and Career

Gregorio López was born 1490⁴ in the village of Puebla de Guadalupe (Cáceres) as the son of a goldsmith.⁵ He received his first schooling at the Colegio de Gramática de Guadalupe (1496–1505), which was attached to the Monastery of Guadalupe.⁶ Since the school took on no more than thirty pupils, getting one of the spots was quite difficult and required having the right connections.⁷ In this case, Gregorio's uncle, Juan de Siruela, was not only a monk there but also embarked on what a later biographer called a brilliant career in Guadalupe with excellent connections to the Castile court.⁸

1 LÓPEZ (1555), 3 vols.

2 RUMEU DE ARMAS (1993/94) 437.

3 This paper is based on a conference presentation given at the 19th Symposium of the German Medievalists' Society (19. Symposium des Mediävistenverbandes e.V.) under the general topic of »Norms and Ideals« in Würzburg, 7 March 2023. I would like to thank in particular Isabelle Mandrella, Manuela Bragnolo and Harald Siems for the discussion of the ideas presented in this paper.

4 His birth year is often given as 1496. For a discussion of how it was determined, see RUMEU DE ARMAS (1993/94) 356 fn. 36, whose dates I follow in this sketch.

5 RUMEU DE ARMAS (1993/94) gives a detailed biographical sketch of López. For older biographical literature, see MARTÍNEZ CARDOS (1960).

6 RUMEU DE ARMAS (1993/94) 361 claims that the Colegio was a famous school at the time operated by the monks. The curriculum comprised mainly grammar, history, logic, metaphysics and, to a lesser extent, mathematics. All subjects were taught in Latin, as one of the aims was to enable the students to read and write in Latin fluently.

7 MARTÍNEZ CARDOS (1960) 70.

8 Fray Juan de Siruela, a brother of Gregorio López' mother: RUMEU DE ARMAS (1993/94) 353; PÉREZ MARTÍN

(2016) 486 sq.; LÓPEZ NEVOT (2020) no. 35. RUMEU DE ARMAS (1993/94) 354 offers a short biographical overview of Juan de Siruela's life (ca. 1458–1530) and his »brillantísima« career at the Monastery of Guadalupe. Siruela also had a close relation to the Court of the Catholic Kings: In the summer of 1492, after the war of Granada, Ferdinand and Isabela decided to leave their children to be educated at the monastery, choosing Juan de Siruela as their companion and tutor.

Gregorio and the other schoolboys⁹ lived at the monastery. They had classes there, assisted in the celebrations of mass, and helped the monks in the administration of the sacraments.¹⁰ In such a close-knit community, Gregorio would have certainly heard stories about the momentous meetings that had taken place there in the 1480s between Christopher Columbus and the Catholic Kings. During their stay at the monastery in April 1492, Isabela and Fernando composed and signed the order to furnish Columbus with the caravels for his proposed journey to the West.¹¹ After his first voyage, Columbus returned to Guadalupe to fulfil his promise of giving thanks for his safe journey in the monastery's church. And three years later, in 1496, the indigenous persons Columbus had brought to Spain were baptised there.¹² It is very probable that a six-year-old Gregorio took in the spectacle, and the tales of those exotic persons would certainly have echoed through the halls of the monastery's Colegio for many years thereafter. Like Bartolomé de Las Casas, Gregorio López belonged to the generation who learned about the existence of the Indies and their peoples when they were children and continued to harbour this fascination into their adult and professional lives.

At the age of 16, Gregorio left Guadalupe to inscribe himself at the renowned University of Salamanca's law faculty (1506). There is no information about his time at the university other than that he received his first degree in law six years later and finished his university studies with the licentiate (1515).¹³

López' links to the monastery, where his uncle had in the meantime become prior, remained strong. The freshly minted *licentiatu*s* iuris* returned to Guadalupe where he set himself up as *advocatus*, his most important client being the monastery itself.¹⁴ From 1535 onward, he was *oidor* at the *Audiencia y Chancillería de Valladolid*.¹⁵ Both affiliations put him into contact with the Castile court,¹⁶ and so in 1541, he was chosen as one of the members of the famous *Junta de Valladolid*, in front of which Bartolomé de Las Casas presented his *Memorial* against the *encomienda* practice. As a member of the *Junta*, López was one of the authors of the *Leyes Nuevas* of 1542. He was subsequently made a member of the Council of the Indies, not only overseeing the reshaping of the *Casa de Contratación*'s rules and regulations for the transport system between Sevilla and the Americas, but also the establishment of the *Real Audiencia* in Lima, the supreme court in the viceroyalty of Peru. After the promulgation of the *Leyes Nuevas*, the Crown ordered López to draw up a list of all indigenous Americans brought as slaves from the Spanish-American territories to Sevilla. If López found them to have been free persons before being brought to Spain against their will, they were to be set free; Indians who had been brought to Spain without a royal license were to be sent back to America.¹⁷ López complied¹⁸ by devising a regime that turned the American slaves into *criados*. This new status meant that while they were now free persons – no longer to be bought or sold – their labour was still bound to their former owners.¹⁹

- 9 MARTÍNEZ CARDOS (1960) 70 names some of the more famous pupils who attended the Guadalupe school in the late 15th and 16th centuries: Pedro de la Vega († 1541), general of the Hieronymites; the Dominican García de Loaysa (1478–1546), archbishop of Seville, president of the Council of the Indies and Grand Inquisitor; and Pablo de Laguna († 1606), president of the Council of the Indies.
- 10 MARTÍNEZ CARDOS (1960) 70.
- 11 The text of the Royal Provision requiring two of the caravels from the *vecinos de Palos* can be found transcribed online: <https://web.archive.org/web/20091027022740/http://es.geocities.com/julioil/pragmat.html>
- 12 RUMEU DE ARMAS (1993/94) 362.
- 13 PÉREZ MARTÍN (2016) 487; LÓPEZ NEVOT (2020) no. 35.
- 14 PÉREZ MARTÍN (2016) 487; LÓPEZ NEVOT (2020) no. 35; MARTÍNEZ CARDOS (1960) 73 sqq.
- 15 LÓPEZ NEVOT (2020) no. 35; MARTÍNEZ CARDOS (1960) 77. López himself refers to this position in his glosses for SP 2.1.12, 2.1.13 and 2.13.13.
- 16 See MARTÍNEZ CARDOS (1960) 79 for examples of López' professional connections to the Castile court.
- 17 MARTÍNEZ CARDOS (1960) 87; MIRA CABALLOS (2009) 99; MARTÍNEZ CARDOS (1960) 79 sqq. The text of the instructions for López is provided by MARTÍNEZ CARDOS (1960) 129 sq.: »Que haga un libro de los indios que haya en Sevilla y ponga en él los que sean libres y por éste aviso y los que vinieren de las indias estando allí sin licencia los haga volver luego a su costa«.
- 18 More in detail: MARTÍNEZ CARDOS (1960) 88 sqq.
- 19 They still owed their patrons labour and obedience but could no longer be sold: MIRA CABALLOS (2009) 105.

From the 1540s onward, Gregorio López was deeply involved in Spain's colonial undertakings and its reverberations on both sides of the Atlantic.

Today, however, López' name is almost invariably connected with the *Siete Partidas*, the Castilian law code compiled in the 13th century. He is the man behind the magnificent 1555 print edition of the *Partidas*, and it was this edition that received legitimacy by royal decree and was used both on the Iberian Peninsula and in Hispanic America until the 19th century.

2 Editing the *Siete Partidas* in the 16th Century

The *Siete Partidas* were put together in the mid-13th century by order of Alfonso X, king of Castile and León, and the work finished in 1265.²⁰ The issue of authorship remains an open question.²¹ To this day, more than 100 manuscript witnesses have survived, redacted in various languages such as Castilian and Catalan.²²

At the end of the 15th century, the Catholic Kings considered the *Siete Partidas* an instrument for achieving political unity and ordered them to be used in court practice.²³ The *Leyes de Toro* (1505)

reaffirmed the practical importance of the *Partidas*: they should be consulted whenever local or special laws like *ordenamientos*, *fueros* or *pragmáticas* were lacking or insufficient to decide any civil or criminal case.²⁴ That opened the question as to which version of the text from the rich manuscript tradition of these so-called *Pandectas Castellanas*²⁵ should be invoked. The aim of establishing an official, authorised text during the 14th century was unsuccessful,²⁶ and jurists complained about corrupt readings of the text.²⁷ Moreover, the 13th-century »paper originals written in Gothic characters and language« had been transcribed and even translated into the more permanent medium of parchment. This was done using »modern« letters and a modernised language, which was – in the eyes of the renaissance-conscious, humanist jurists – the real reason for the large-scale corruption of the *Partidas*.²⁸

Accordingly, Alonso Díaz de Montalvo, one of the crown jurists of the Catholic Kings, worked on various compilations of Castilian legislation. As part of these endeavours, he published the first printed version of the *Partidas* in 1491.²⁹ He explains his intention in the prologue:³⁰ 1) to offer an expunged text, free from the *viçios* that had been introduced over the 200 years of copying and

20 HERRIOT (1951/52) 169.

21 ANGELINI (2021) 204 sq.

22 ANGELINI (2021) 205.

23 See BERMÚDEZ DE PEDRAZA (1612) 71: »Pero no se gouerno España por ellas [i. e. the *Partidas*], ni tuuieron fuerça de ley hasta los Reyes Catholicos Don Fernando, y Doña Isabel, que las promulgaron, y mandaron que los pleytos se determinassen por ellas.«

24 LÓPEZ NEVOT (2020) no. 1.

25 PUCH Y PORTOLÉS (1829) 7.

26 GARCÍA-GALLO (1976) 649: »En cualquier caso, la fijación de un texto oficial no fue obstáculo para que los copistas reprodujeran sin criterio selectivo alguno el código que tenían a su alcance, coincidiera o no con aquél; por ello, en los manuscritos posteriores a 1348 se continúan reproduciendo las distintas redacciones.«

27 HERRIOT (1951/52) 166.

28 In the words of Francisco de Espinosa († c. 1551), *oídor* at the *Audiencia* y *Chancillería de Valladolid*, quoted by

MALDONADO Y FERNÁNDEZ DEL TORCO (1942/43) 497: »porque los libros antiguos de pergamino que se trasladaron antiguamente y estan casi en el lenguaje que agora se vsa y de la letra que agora se escriue, avnque los que no han visto otros los tienen por buenos e en la verdad estan viçiososimos, porque faltan en ellos muchas leyes e otras estan duplicadas [...] y los originales verdaderos estan en papel de aquel tiempo y en la lengua y letra gotica e aquellos son los que se auian de seguir«. For examples of textual changes between various manuscripts of the *Partidas*, see HERRIOT (1951/52) 169 sqq.

29 LÓPEZ NEVOT (2020) no. 1; MARTÍNEZ CARDOS (1960) 113.

30 DÍAZ DE MONTALVO (1491) prólogo [s.p.]: »y agora porque las dichas leyes delas partidas por viçios delos escriptores no estauan corregidas: y en muchos libros dellas algunas leyes se fallauan viçiosas desando el seruiçio de sus Altezas acorde de conçertar

poner y copilar las dichas partidas en vn volumen: segund que ellas estan sabiamente ordenadas declarando por relacion en suma las leyes y concordanças emiendas y coreciones de algunas por las dichas leyes nueuas que despues de las dichas siete partidas fueron fechas y ordenadas por los dichos señores Reyes sus progenitores: y por sus Altezas poniendo las dichas adiciones sobre los titulos y materias conuenientes: y poniendo las remisiones que fazen al caso y a cada vna ley«. Cf. also LÓPEZ NEVOT (2020) no. 5.

translating,³¹ and 2) to add information about newer legislation that had superseded individual laws of the *Partidas*.³² This describes a twofold task of restoring Alfonso's original *Partidas* – as faithfully as possible³³ – and supplementing it with more recent information, which would be marked *additiones* to make the temporal layers of the text transparent to the reader (fig. 1).

Though Díaz de Montalvo's work was endorsed by the Catholic Kings,³⁴ it was never promulgated. This meant that the edition was released with no other endorsement other than Montalvo's own scholarly authority³⁵ and thus enjoyed only a handful of editions in Sevilla, Venice, Alcalá de Henares, and Lyon. His Latin commentary on the *Partidas* was included only after his death (fig. 2).³⁶ The Spanish jurists were not impressed with Montalvo's work. From the perspective of juridical practice, Marcos Salón de Paz († ca. 1565), an advocate at the *Chancillería* de Valladolid, reports: »We have often seen that the manuscript books were consulted, and sentences and judgements were based on them, while the printed edition was ignored because it was considered to be full of errors and corruptions.«³⁷ So the topic of a re-edition of the *Partidas* remained on the agenda.

Lorenzo Galíndez de Carvajal (1472–ca. 1528) was the next scholar to take on this task.³⁸ He had studied law in Salamanca and later occupied the chair for the *Cátedra de Prima de Leyes* there in 1497, which meant that a young Gregorio López might have followed his lectures.³⁹ As judge at the *Real Audiencia y Chancillería de Valladolid* and member of the Castilian Crown Council, he was

involved in the redaction of the *Leyes de Toro* (1505). Galíndez enjoyed a particularly close relationship with King Ferdinand, who relied on his legal expertise.⁴⁰ This privileged position of trust continued with the young Charles I. During the 1520s, he helped Hernán Cortés in his political ambitions to become governor of the newly conquered territories in what was to become New Spain, and following this involvement in American affairs, Galíndez was made a member of the Council of the Indies in 1527.⁴¹ He worked on a recompilation of the Castilian legislation as well as on a re-edition of the *Siete Partidas*, but his work remained unpublished and was almost completely forgotten by 1550.⁴²

Francisco de Espinosa († c. 1551), like Galíndez *oídor* at the *Audiencia* de Valladolid,⁴³ proposed consulting the »paper originals written in Gothic letters and language, and to translate« the *Partidas* contained in them into contemporary Castilian as a means to weed out later corruptions and errors.⁴⁴ If he ever actually embarked on this task, the results of his work have been lost.⁴⁵

So by the time Gregorio López began his work on the *Partidas* in the 1530s or 40s (the exact date cannot be precisely determined), the time was simply ripe for them to be re-edited.⁴⁶ He took the Montalvo print edition as a starting point, additionally consulting a number of older *Partidas* manuscripts⁴⁷ as well as the juridical commentaries of them.⁴⁸ López' aim was to refine, summarise and gloss the text,⁴⁹ and he opted for a free and more doctrinal wording of the *Partidas*.⁵⁰ In the summer of 1553, his work was finished and ready

31 MARTÍNEZ CARDO (1960) 113. Due to the loss of the Castilian crown's archive, a reconstruction of which manuscripts Díaz de Montalvo used in editing the *Partidas* cannot be carried out; see GARCÍA-GALLO (1976) 649, who gives a more detailed overview in his articles on parts of the medieval manuscript tradition of the *Partidas*.

32 LÓPEZ NEVOT (2020) no. 6.

33 HERRIOTT (1951/52) 166.

34 LÓPEZ NEVOT (2020) no. 3.

35 LÓPEZ NEVOT (2020) no. 4.

36 First in the 1501 edition printed in Venice: LÓPEZ NEVOT (2020) no. 9.

37 The citation is taken from LÓPEZ NEVOT (2020) no. 10: »hemos visto

muchas veces acudir á los códices manuscritos y sentenciarse y judgarse por ellos los litigios, abandonadas las leyes impresas porque se creían erradas y corrompidas«. Other jurists also harshly criticised Díaz de Montalvo's work, e.g. Francisco de Espinosa († c. 1551); for details cf. LÓPEZ NEVOT (2020) no. 30 sqq.

38 For his biography, see FLORANES (1852).

39 MARTÍNEZ CARDOS (1960) 72.

40 LÓPEZ NEVOT (2020) no. 13 sq.

41 LÓPEZ NEVOT (2020) no. 15.

42 LÓPEZ NEVOT (2020) no. 15–29.

43 LÓPEZ NEVOT (2020) no. 30.

44 MALDONADO Y FERNÁNDEZ DEL TORCO (1942/43) 498: »conçertar cada libro

[de las Partidas] por los oreginales de papel que estan en letra y lengua gotica y que se traslade cada vno dellos en la mesma lengua«; cf. also LÓPEZ NEVOT (2020) no. 33.

45 LÓPEZ NEVOT (2020) no. 34.

46 LÓPEZ NEVOT (2020) no. 36;

PÉREZ MARTÍN (2016) 489; MARTÍNEZ CARDO (1960) 114 sq.

47 Especially the Codex Silense, which dates from the 14th century: LÓPEZ NEVOT [2020] no. 36; GARCÍA-GALLO (1976) 617 sq.

48 PÉREZ MARTÍN (2016) 489.

49 LÓPEZ NEVOT (2020) no. 36.

50 Ibidem.

Titulo.

primero.

Quando obliuata

estas otras en el titulo q̄ fablare en aq̄lla razón so bre q̄ es fecha la ley: r̄ estoḡe valga como las o tras leyes: r̄ el q̄ tal ley fiziere deue catarlo de a te r̄ despues: r̄ de q̄ estas dos cosas biē catare et̄dera luego q̄ es lo de medio.

Ley. xiiii. porque razon los ombres no se pueden excusar del iuzpicio de las leyes por dezir que las no sabē

*ignorancia
De excusat.*

Excusar no se puede ninguo delas penas d̄las leyes por d̄zir q̄ las no sabe. ca puel q̄ por ellas se ha de mātener recibiedo derecho r̄ faziēdo lo razón es q̄ las sepā r̄ q̄ las leā: o por tomar el en tēdimiēto dellas: o por saberlas el mismo biē r̄ a zonar en otra manera sin leer. **Adiçion.** Cōcuera cō esta la ley. iiii. ti. vij. li. i. del fue ro delas leyes.

Ley. xv. quales pueden ser excusa dos por no saber las leyes.

*person q̄ excusant
la pena leḡis p̄ igno rancia.*

Señaladas s̄ las psonas q̄ se pueden excusar de recibir la pena q̄ las leyes mādā maguer no las entiēda ni las sepā al tiempo q̄ errā faziēdo cōtra ellas así como aq̄llos q̄ fuēse locos o del // memoria dos. ca estos atales no deue recibir pe na ni ninguā por lo q̄ ouiesē fecho euel tiempo dela locura porq̄ erā fuera de seso r̄ de memoria. E e so mismo dezimos del moço q̄ fueise menor: d̄ ca toze años r̄ la moça menor de. xij. a. vnq̄ puasē o porisē llegar a fecho de luxuria estos q̄ tal co sa fiziesen excusados serā dela pena delas leyes por no auer et̄dimiēto. E si por auētura fuēsē menores de. x. años r̄ medio r̄ fiziesē otro erro así como furto o omexillo o fallēdo o otro ma leficio q̄ lēra serā otrosi excusados delas penas q̄ las leyes mādā por esa misma razón. **Drosy** dezimos q̄ los caualleros q̄ hā auefēder la tier ra r̄ cōquerirla delos enemigos dela fe por ar // mas deue ser excusados por no entēder las leyes. E esto seria si porisē o menoscabasē algo delo suyo aōado en iuzpicio por razón de posturas o de pleito q̄ ouiesē fecho aōado deli porq̄ ouie sē poido algo delo suyo por tiempo: po esto fe ē tiēdo leyēdo ellos ē guerra. E so mismo dezimos delos aldeanos que labran la tierra r̄ delos pa stores que guardan los ganados.

*furosi. vt in. cle. si
furosi de hom.*

*Minores seu infantes
excus. vt in. c. p. de
char. p̄mero.*

Adiçion. Cōcuera cō esta ley la ley. iij. ti. xi. li. ij. del fuero de leyes. **Ley. xvi. quales son las virtudes delas leyes.** C Las virtudes delas leyes s̄ en çinco maneras. La p̄mera es mādā. la. ij. es vedar. la. iij. cōfen tir. la. iiij. dar pena al q̄ la mereçe. la. v. cōfesar o mostrar fazer biē r̄ guardar se del cōtrario. E como q̄r q̄ cada vna delas leyes deste n̄ro li // bro no apa todas estas virtudes ayūtadas ēsi po quiē biē las q̄stiere leer r̄ et̄der fallara q̄ algūa dellas el ay puesta segūdo cōuiene ala razón sobre q̄ es fecha la ley. **Adiçion.** C En el fuero delas leyes ti. vi. ley. v. se cōtiene q̄ todos los obres deue saber las leyes por ler

*Uitres. imm̄ sunt in
qued̄ione.*

Rustici.

*vt cum h̄uit ex. l. un
de leḡis. ff. e. ti.*

*que totio regan las l.
y quales deuen ayudar.*

mas et̄didos. r̄ q̄ ninguo alege otras leyes en iuzpicio saluo aq̄llas q̄ acordare cōlas leyes del di cho fuero so pena de quinientos sueldos.

*Quere de
que h. de. i. ra
na al quere.*

Adiçion. Cō la q̄l dicha ley cōcuera la ley q̄ fizo el rey dō Alfonso ē alcala q̄ esta en el libro p̄mero delas leyes nueuas.

Adiçion.

Ley. iiii. en q̄ mādā q̄ las leyes d̄los fueros as̄i d̄las leyes r̄ reales como municipales q̄ cada vna çibdad villa o lugar aq̄igua mēte tiene seā guar dadas elas cosas q̄ se d̄laro r̄ guardar o saluo ē aq̄llas q̄ se deue emēdar r̄ mejorar r̄ elo q̄ s̄ cō tra d̄ios r̄ cōtra r̄ cōtra las leyes delas di // chas ordenaçnas reales por las q̄les p̄mero se de ue librar los pleitos: r̄ si por ellas no se puede // rē librar q̄ se libzē por los dichos fueros. r̄ si por los dichos fueros no se pudieren libzar q̄ se li brē por los libros delas siete p̄tadas. r̄ q̄ si acac siere q̄ elas leyes delas dichas ordenaçnas de los fueros o delas dichas p̄tadas ouere algūa cōtrariēdo q̄ rēq̄erā al rey pa q̄ haga interpe // traçio declaraçio o emiēda o ley nueua si fuere neçesario. r̄ si tal d̄ubdo no pareçiere que toda via seā guardadas las leyes ordenamietos rea les arnq̄ no seā traydas en vso ni costūbre r̄ q̄ seā guardados alos fijos dalgo r̄ a suenafallo el fuero del aluerzio po que toda via se leā los libros delos sabios aq̄iguos que fizierō r̄ copi larō que se leā en los estudios generales porque ap̄ ellos mucha sabiduria puechosas r̄ porque los ombres seā mas sabidores r̄ alcāçe por ello onrras r̄ vniuades.

*Ley. i. l. i.
y fueros se
han de gua
dar lo p̄ci
to.*

*La r̄omi don
p̄ma cōtra
moro est̄ ley.*

*Et se pue
de alegar
ej. de uno
d̄ las r̄.*

*Quere seon
lo lib. de
lo Sario.*

Adiçion:

El dicho rey dō alfonso en las dichas cortes mādā que las leyes r̄ las dichas ordenaçnas fue sen guardadas elas tierras dela p̄lesia r̄ señori os r̄ que las guardē r̄ fagā guardar los señores en los señorios d̄do tiene iurisdicçio r̄ que los se ñores en sus lugares lleuen los omexillos r̄ los caloniās segūdo el rey los lleua en los lugares de la corona r̄ eal segūdo se cōtiene en el libro nuevo delas ordenaçnas ti. iiii. ley. v.

*Estenon
d̄lan de
n̄ra de
teoras de
la. r̄ y de
n̄ra.*

Adiçion.

El rey dō iuā segūdo en las cortes que fizo en tozo r̄ en madrid: ordeno q̄ las pres litigantes o sus letrados por escripto o por palabra o i // putādo o en otra manera no p̄uedā alegar opi niō determinaçio dicho ni auctoridad ni glosa de doctor canonista ni legisla de aquellos que fuerō despues de bartolo o de iuā aones ni los doctores que de alli adelate fueren. r̄ los iuejes no lo cōsintē r̄ el abogado o pcurador que lo cōtrario fiziere sea puado perpetua mente desu oficio. r̄ así mismo el iuez que lo cōsintiere r̄ la parte que lo allegare pierda la causa.

*Pena con
trato q̄
depende de
trudader*

Titulo. ij. Del vso r̄ dela costun bre r̄ del fuero.

Os razzes s̄o aquellas de que na çe el derecho comun por que se quia r̄ se mātienē las gentes en iur sticia r̄ en cōcordia r̄ en paz. La p̄mera es ley escripta. la. ij. es cost ūbre aq̄igua que vale tāto como



Os razzes s̄o aquellas de que na çe el derecho comun por que se quia r̄ se mātienē las gentes en iur sticia r̄ en cōcordia r̄ en paz. La p̄mera es ley escripta. la. ij. es cost ūbre aq̄igua que vale tāto como

*Quere seon
lo lib. de
lo Sario.*

Fig. 1: Díaz de Montalvo (1491), SP 1.1.16 with four Adiciones.

to be printed by Andreas de Portonariis, the renowned printer and bookseller in Salamanca.⁵¹ But the path to publication was not without its challenges: on the one hand, the print was extremely costly, three volumes in oversized folio with a complex layout of the main text (*Partidas*) and glosses (figs. 3, 4). A contemporary observer notes that the *Cortes de Madrid* asked the Crown to cover the printing costs due to the significant public interest in seeing López' work finally in print to be used in all Castilian courts. But just when financial support was about to be granted, Galíndez de Carvajal's son protested, claiming that the edition prepared by his father should be published instead of López' work. This put a stop to the proceedings, especially as the printer may have feared that with manuscripts and the Montalvo edition around, the market for a costly new edition of the *Siete Partidas* might be too small.⁵²

While it is not clear how this dispute was resolved, López' version was eventually printed by Andreas de Portonariis in the summer of 1555⁵³ (with a starting edition of 1000 copies),⁵⁴ whereas Galíndez de Carvajal's work fell into oblivion. Moreover, a royal decree (7 Sept. 1555) authorised López' edition and declared it authoritative, ordering that one copy was to be printed on parchment and kept in the royal archives of Simancas. Should doubt arise in the future about the

wording of the *Partidas*, this copy could be consulted to learn *la verdadera letra*, the authentic wording.⁵⁵

Both the López edition and commentary were widely esteemed, and López was referred to as the »Spanish Accursius« who brought the *Siete Partidas* into the Spanish modern age.⁵⁶

3 Gregorio López the Editor

Commenting on the rule in the *Siete Partidas* that all new laws should be recorded in a book (SP 1.1.19), López explains his role as editor: such a book documenting the legislation of a kingdom helps to verify the original wording of a law when the text has deteriorated over the course of many copying and reproduction cycles. For the Digest, this meant consulting the Codex Pisanus, as Bartolus claimed to have done. In his commentary on the Digest, the Italian jurist wrote that he went through the Digests to restore the original text. Following this example, López continues, »my humble person«, *ego homunculus*, did the same for the *Siete Partidas*: their texts were scrambled, he writes, with many sentences or lines missing completely in many of the *leyes*, while in other parts so many words were garbled or misspelled that it was impossible to make sense of the law. So, López explains, in obedience to God and out of love for

51 LÓPEZ NEVOT (2020) no. 40.

52 Ibidem; MARTÍNEZ CARDO (1960) 116.

53 LÓPEZ NEVOT (2020) no. 42; PÉREZ MARTÍN (2016) 489. The third and last volumes were finished on 29 August 1555: LÓPEZ (1555), vol. 3, fol. 112r [sic, 102r]. López had moved to Salamanca to be near Portonariis' workshop and offices as well as to oversee the printing of his work: MARTÍNEZ CARDO (1960) 116.

54 Thus it was agreed in the contract from 1553 between Andrea de Portonariis and Gregorio López: GUILARTE (1945) 671.

55 Cédula real, Sept. 7, 1555, printed in LÓPEZ (1555), vol. 3, s. n. [at the end of SP 7]: »Y por ser esta cosa muy necesaria, e importante a nuestro seruicio, y a la buena determinacion delas causas y negocios de nuestros reynos, por la presente queremos y

mandamos que cada y quando en algun tiempo ocurriere alguna duda sobre la letra de las dichas siete partidas, que para saber la verdadera letra, se ocurra al dicho libro que assi mandamos poner impresso en pergamino, en el dicho nuestro Archiuo, como dicho es. Y mandamos a les de nuestro consejo, Presidentes, e Oydores de las nuestras audiencias, Alcaldes de la nuestra casa, corte y chancilleria: asistente, gouernadores, corregidores, alcaldes y otros juezes y justicias qualesquier destos nuestros reynos y señorios, que assi lo guarden y cumplan, y fagan guardar y cumplir, como de suso se contiene, y que contra el tenor dello no vayan, ni passen por manera alguna.« See also LÓPEZ NEVOT (2020) no. 42; MARTÍNEZ CARDO (1960) 116 sq.

56 LÓPEZ NEVOT (2020) no. 44.

Primera Partida.

benigniori intellectu, nec potest procedere de similibus ad similia: quia non reperitur ita simile, unde iudex est dubius, tunc recurrit ad principem. vide ibi per eum, ubi & quid sit dubium est positum in opinionibus doctorum, & non est communis opinio, vel illa sit euidenter falsa, vel possit conuinci probabilibus rationibus: videas ibi, & adde ad istam legem Regis Alfonso in curijs de Alcala, quae est inserta in ordinationibus Taurinis.

Ley. XV. Como dauen obedeser las leyes, y juzgar se por ellas.



Lodos aqillos que son del señorio del fazedor de las leyes, sobre que las el pone, son tenudos de las obedeser e guardar, e juzgar se por ellas, e no por otro escrito de otra ley fecha en ninguna manera: e el que la ley faze, es tenudo de la fazer complir. E esso mismo dezimos de los otros que fueren de otro señorio, que fiziesen el pleyto, o postura, o yerro en la tierra dote juzgasse por las leyes: ca maguer sean de otro lugar non pueden fer excusados de estar a mandamiento dellas: pues que el yerro fiziesen, onde ellas an poder: e ayunque sean de otro señorio, non puede ser excusados de se juzgar por las leyes de aquel señorio, en cuya tierra o-

Lex. XV.

a Subditi conditoris legum ligantur eius legibus. Item & non subditi ratione contractus, vel de liciti in eius territorio facti, ipse tamen conditor eis non ligatur, sed bene facit, si secundum eas vivat, hoc dicitur.

b De señorio. Adde. l. cunctos populos. & ibi glos. & doctores. C. de summa Trinita. & fide catholica. & l. leges sacratissimas. C. de legibus. & eo. titu. l. 2.

c De otra ley. vides hic quod per alias leges non potest iudicari in istis regnis: & sic non per leges Imperatorum, seu alias leges iuris communis. vide quae dixi in l. sexta. tit. 4. part. 3.

d Es tenudo de la fazer complir. Quia parum esset iura condere nisi sint nimis tri qui ea exequantur. l. 3. post originem. ff. de origine iuris. c. ubi periculum. §. praeterea. de elec. libro. 6. cap. vnico. §. quoniam. de statu reg. eo. lib.

e Postura o yerro. Contrahentes aut delinquentes ligantur legibus & statutis illius regni, vel loci, ubi contrahunt vel delinquant, ut hic & in l. si fundus. ff. de euic. & in aut. qua in provincia. C. ubi de cri. agi. por. l. facularij. §. ff. de extra. cri. & tradit. g. in c. a nobis. de sent. exco. c. fi. de foro copet. Et q. mate. ista est diffusa: & habet plurimas quaestiones, recurrendum est ad plenè tradita per Bart. Bal. Albe. Salice. l. fo. in dict. l. cunctos populos. C. de summa Trinita. & fide catho. ubi latissimè tractatur, tam circa delicta, quam circa contractus, & vltimas voluntates. & vide quae dixi in l. 2. titu. ii. part. 3. Quid autem, si ciuis Salmanticensis habeat possessiones in territorio ciuitatis Segobiae, & Segobiae fiat statutum, quod frumentum extra districtum, non possit exportari, an ligabitur statuto talis forensis, qui ibi habeat possessiones: Albe. in dicta. l. prima. colum. 6. refert Oldrad. tenuisse quod non. per. l. munerum. §. praeterea. ff. de mune. & hono. iuncta. l. prima. ff. ad municipa. nec obstat. l. si pendentes. §. si quid cloacarij. ff. de usufruct. ibi. Nam solent possessores certam partem fructuum municipi viliori pretio adicere: quia ibi non dicitur quod possessor esset forensis: refert tamen Albe. ubi supra Inno. tenere oppositum in cap. postulasti. de foro competenti. Quod sub verbo forte dicit Albe. esse verius, & quod ad. §. praeterea potest responderi, quod ibi non dicitur, quod ciuitas non possit imponere leges rebus quae sunt in suo territorio, sed dicitur quod certae ciuitates habent ex priuilegio, ut pro possessionibus quas alij possident in earum territorio possessores praesent certam quantitatem frumenti. videas de ista quaestione per Cinum in l. prima. C. que sit longa consuetud. & cum de iure regni interdictum sit populis prohibere istam extractionem frumeti a suis territorijs & permittatur per regnum liberè exportari. vt in l. 1. & 3. titulo. 9. libro. 6. ordinamenti regij. Procedet quaestio in casu, quo frumentum est necessarium pro ciuibus, quo casu licet prohiberi posset asportatio. vt in l. si quis per diuinam. & ibi Ioan. de Platea. C. de aqua-

ductu. libro. ii. Et si ista extractio fieret, quia dominus possessionum vel in regno vendere, non posset & subiceretur statuto: quia potius teneretur vendere ciuibus iusto pretio quam alij, per id quod notat Bart. argu. illius. l. in l. prima. C. de metalla. lib. ii. l. venditor. §. si constat. ff. commu. praedio. Si tamen dominus velit pro suo victu asportare tunc forte potest. argu. l. praes. C. de seruit. & quod habetur in dicto. §. constat. & quia cum fructus sint iam a solo separati, non iudicatur pars rei, vt peccat quod statutum teneat ratione rei sitae in territorio. argu. l. defuncta. ff. de usufructu. & in l. fructus pendentes. ff. de rei vendi. & sic cessant dicta Innocentij in dicto. c. postulasti. & quod etiam dicit Paulus. de Castro in l. i. libemus nullam nauem. colu. prima. C. de

uiesse fecho alguna destas cosas. E si poraentura ellos fueffen rebeldes que no lo quisiesse fazer desu voluntad los juezes e las justicias los deuen constrenir por premia que lo fagan asy como las leyes deste nuestro libro mandan. Otro si dezimos que esta bie al fazedor de las leyes en querer beuir segund las leyes como quier que por premia no sea tenudo de lo fazer.

Ley. XVI. Como son todos tenudos de guardar las leyes.



Guardar deue el rey e las leyes como a su honrra e a su fechura, porque recibe poder e razon para fazer justicia. Ca si el no las guardasse vernia cõtra su fecho

fascro sanct. eccle. & ex quo possessione illa contribuit in territorio Segobienfi cum ceteris ciuibus, iuxta leges regni frui debet fructibus suis sicut ceteri ciues. l. secundum naturam. ff. de regul. iuris. & cum in ista. l. dicitur, de delinquente, quod subijcitur statuto loci, ubi delinquit. Limita per glos. in dicto cap. a nobis. el. i. de sententia excommuni. quando statutum prohibet factum illicitum a iure communi & damnatum: fecus, si illud de iure communi non esset illicitum. vide Baldum in l. ius ciuile. in fine. ff. de iustitia, & iure. quod quando statuta inueniunt nouam materiam & formam in delictis, vt de conuiuijs non faciendis, & de non eundo de nocte & familia. Nouitij aduenz non tenebuntur, quia non sunt de genere delictorum. adde eundem Bald. in l. prima. ff. de legibus. verificulo. & per hoc soluitur quaestio de aduena. ubi similiter distinguitur, an factum aliud esset illicitum, vel damnatum, vel inculpatum, & inter poenas spirituales, & alias: ita respondens ad ea q. hntur in c. vt animarum. §. statuta. de constituto. libro sexto. Dixit etiam Bald. in l. data opera. colum. 6. C. qui accusat. non poss. Quod quando statuta de nihilo faciunt aliquid, vt cum per statutum inuenitur nouum genus delicti, quod ad materiam facti, vt quia dicitur statutum quod non possent vendi quaedam res, vel quod tricolae non possint stare prope tabernam & familia, quae de iure communi, neque materia, neque forma, neque nomen sit alicuius delicti, tale statutum non ligat aduenas, neque nonos ciues qui possunt dici Thrones, & excusantur propter iustam ignorantiam.

Lex. XVI.

a Debet rex seruare legem tanquam facturam suam, & eius honorem custodire, & populus velut suam vitam & tutelam, & omnes de populo ad legem obseruantiam tenentur. hoc d.

c Guardar deue el rey. Concordat cum l. digna vox. C. eo. & Insti. quibus modis testa. in fine. C. de testa. l. ex imperfecto. l. cum multa. C. de bonis quae lib. & quod Princeps teneatur ad obseruantiam legis, tradit plenè Albe. in l. Princeps legibus. ff. eod. probans hoc secundum Theologos & Philosophos diuersimodè, tamen in hoc tenetur legislator & subditi nam subditi tenentur necessitate coactionis, legislator sola voluntate promotionis boni communis: nullus enim imperat sibi, vel cogit se ipsum. l. penul. ff. de arbit. sic Princeps non proprie dicit sub. sed in l. positus. tantae emilitudini non potest

Fig. 3: López (1555) (fol. 8v), SP 1.1.16 Beginning of Ley and glosses

Titulo. I.

potest lex imponi, cui Deus & ipsas leges subiecit Bal. in cap. i. de alie na. feudi. co. fi. Quid autem in consuetudine an liget Principem. vide And. de Yfer in Rubrica. de consuetud. rect. feudi. in q. notabi. de qua ibi per eum, qui vult quod obligetur princeps consuetudine rationabili: maxime si consuetudo talis sit inducta, sciēte principe dominante. & dicit Bal. in c. i. §. fi. de his qui feudo. da. pos. q. bonæ & naturales consuetudines ligēt Principē. vid. Bald. in cap. i. de natu. feud. in princip. & de noua forma. fide. in yfici. inueltitura.

a ¶ Defatlaras ya Tunc enim iura sua ab omnibus custodienda xstimet quando & ipse illis recurentiam præbet: iniuncta enim Principum auctoritas, si quod populus phibēt, sibi licere patiuntur. ca. iustū est. g. dist.

b ¶ Menosprecia dos. Tenetur legislator vitare, illud ppter quod lex sua reddatur suspecta subditis quibus legem imponit & statuēs legem communem quam non seruat, reddidit eam suspectam, quod non fit vtilis vel honesta, probatur in dicta. ex imperfecto. C. de testa.

c ¶ El pueblo. adde. l. 3. C. eo. & c. i. de consti. & si subditi seruare nolūt rationabilem constitutionem compelli possunt per superiorem ad eā seruandam, vt hic. & 2. q. 5. ca. de Liguriis. & tenet Archidia. in §. le ges. 4. distin. Cardi. in proemio Clementi. in versu. vniuersitati. Imō & dixit Archi. in dict. §. leges. Quod si populus non vult obedire legibus rationabilibus Principis sui, possunt ad hoc cogi per Papam, qui habet plenitudinem potestatis. Si tamen populus ab initio nollet legem recipere, & contra eam sciente conditore, & valente contra dicere, & non contra dicente faceret plures actus contrarios, tunc videtur superior acquiescere illi cōtrauentioni & inobseruatiōi, & lex non ligaret. ita dicit glo. & ibi Abb. in c. i. de treuga & pace. per tex. in dict. §. leges. & approbant hoc communiter doct. vt attestatur Fel. in d. c. in prin. qui plures hoc tenētēs refert: in lege em tacite videt actum, vt post promulgationem recipitur, & si non recipitur superiore sciente & patiente, habetur pro non facta: ex quo superior tolerat quod non recipiatur: si autem non cōsistat de scientia superioris, tunc ad inducendum diffinitudinem legis non receptæ, vt ipsi præ iudicetur, sufficienter decem anni, per quos populus stetit, q. legem noluit recipere, secundum Ioan. de Imol. & Cardi. in di. ca. i. de treuga & pace. & Præpo. Alexand. in dict. §. leges. versu. præpositus. prædicta declarando, dicit quod vltra scientiam & patientiam superioris quod lex non recipitur debet interuenire aliquis actus, ex quo præsumeretur aperte de cōsensu, & beneplacito superioris: sola enim sciētia & patientia non arguit consensum superioris, cum multa per patientiam tolerantur, quæ si deducta essent in iudicio, non tollerarentur. ca. iam dudum. de præb. ex quo verbo inducitur magna limitatio & declaratio ad omnia supra dicta. Si enim Princeps esset in regno, & sciret desuetudinem suæ legis, & à subditis non recipi, seu à maiori parte populi, & ipse cum valeat contradicere & iubere legem seruari, & inobedientes puniri, & hoc non facit, satis videtur constare de suo consensu & beneplacito, quod lex non seruetur. Et ista videtur intentio communis doctorum loquentium in ista materia, & isto modo intelligitur etiam Franciscus de Aretio. consi. in procedendū est breuiter. col. 3. Anto. de But. in cap. quia circa de consanguinitate & affini. Si vero aliqua alia concurrant, ex quibus non ita constaret de eius beneplacito, imō forte vigeat in oppositum, quod licet Princeps sciat & tolerat, non tamen sibi placet quod fit, imō tolerat for-

tè propter vitandum scandalum, vel aliās, tunc re se videtur distum à præposito Alexandrino. quod tunc sola scientia & patientia non sufficiat, sine transcurso decennij, & hoc idem videtur voluisse Ioan. de Imola. in cap. cum iam dudum. de præb. vbi postquam retulit dicta Antonij in dict. ca. quia circa. dicit Imola, se hoc intelligere quando saltem per cōcursum decennij Princeps, qui sciret non obseruantiam, hoc tolerauit, vt sic ex cursu arbitri temporis arguatur eip beneplacitum, quando aliās per actū alios præter toleratiā nō apparet de hoc, & in dubio: ex q. Rex habet notitiā quod lex sua nō seruetur, & non improbat, ap probare videtur glo. notabilis in l. quoniam enim si re ratam hab. vbi dicit gl. quod non improbare ratificationi par est. Aduerte etiam q. quando lex per omnia disponeret idem quod ius diuinum, tunc nihil leuaret non receptio legis, neq. desuetudine toleretur, neq. posset tolli. ca. fi. de consue. Inno. in Rub. de consuetu. Abb. & doct. communiter in dict. c. i. de treuga & pace. vide Fel. in 3. declaratione, per quem poteris videre multa alia quæ per. 8. col. elegāter cumulauit in ista materia. vide etiā per Iaso. in l. rem non nouā. C. de iudi. per præpo. Alex. in d. §. leges. vbi ponit. 4. conclu. in ista mat. vid. ibi per eos.

d ¶ Enla carrera de muerte. Quia in libris Regum legitur. Qui non obdierit Principi, morte moriatur. c. 2. de maio. & obe. & tradit Abbas post beatum Thomam & alios. in c. nam concupiscentiam. de constitutio. quando est certū de mente legis q. intendit præcipere, tū certum est quod obligat contrauentientem ad peccatum mortale, & sic intelligit dictum superius relatum. qui non obdierit Principi. & c. quod præcipit. 14. q. 1. aut non constat de mente legis: tū si loquitur per verba præceptiua, tunc obligat contrauentientem ad mortale. Nam resistendo superiori, resistitur Deo. ad Roma. 13. cap. qui resistit. & ca. si dominus. & c. Iulianus. 11. q. 3. nisi materia legis non esset necessitatu: quia tunc verba improprietur: nam verba deseruiunt intentioni non e contra. Si verò lex loquatur per verba consultiua, seu exhortatiua, tunc non obligat contrauentientem ad peccatum. 3. distin. §. hæc & si legibus. & dict. c. quod præcipitur. nisi esset circa cōsiliū reuerentiæ. vt notat idem Abb. in c. i. de consti. co. 2. aut loquitur per verba communia, vt statuo, decerno, vel quid simile, tunc non obligat contrauentientem, saltem ad mortale: nam sicut non omnis contrauentio legis inducit mortem temporalem, ita non debet inducere mortem æternam: item non omnis transgressio mādari Principis est digna morte, sed quando quis non obdierit Principi, inducendo scisma, per id quod habetur in ca. deniq. 7. q. 1. Archi. 4. q. 1. in summa, vel quando non obdierit in his quæ tendunt ad vindictam malorum, secundum glo. ibi & Ioan. de Imo. in dict. ca. 2. & adde quæ dixi in di. l. 16. titu. 13. 2. parti.

e ¶ De creencia. Infideles ergo subditi Principis Christiani tenent ad obseruantiam legis ab ipso promulgatæ, vt hic & in l. Iudici. C. de Iudeis glo. in c. ius Quiritum. dist. Inno. in ca. quod super his de voto. Ioānes And. in c. gaudemus. de diuor. qualiter tamen succedat parentibus suis. vide quæ dixi in di. l. 6. tit. 24. 7. par. & in hoc iuris principio fundatur lex Constantini prohibentis sacrificia & templa pagano rum. in l. 1. C. de Paga. & templ. eorum.

f ¶ Nis de poder. Grauiora facit vitia, sublimitas peccantium. c. nulli fas. 25. q. 1.

g ¶ Nil. Sed contra. de. l. quæ adulterium. C. de adul. vbi vilitas vitæ nō Partida. j. B iij

Fig. 4: López (1555) (fol. 9r), SP 1.1.16 Continuation of Ley and glosses

his country, he undertook a fundamental restoration of the *Partidas*:

»I have worked tirelessly, I have pored over ancient manuscripts containing the *Partidas*, I have consulted learned men and the writings of the older sages⁵⁷ from which the *Partidas* were drawn.«⁵⁸

And through this painstaking work, he claims, the true text and splendour of the *Partidas* had been restored. That said, it is important to recognise that this was not the lonely effort of one man trying to produce a workable text of the *Siete Partidas*. López drew on the expertise and opinions of the jurists from the Crown Council. His diligence and the collective effort are both explicitly recognised in the royal decree (*cédula real*), in which López and his heirs were granted the licence for both the print edition and commentary (Valladolid, 7 September 1555)⁵⁹:

»[Y]ou have put much effort in [correcting] the many mistakes and errors that can be found in the printed edition [of Montalvo] and in the manuscripts; and you consulted the members of

my Council about your work: the councillors viewed it, and in many cases, where the difference between the text versions could have caused a discrepancy in the law, they discussed for many days, and examined the matter and decided upon the right wording, and this is how it is printed now in this work.«⁶⁰

López' aim was not an antiquarian one: he was neither interested in legal history nor in restoring the original wording of the *Partidas* as a historian's exercise.⁶¹ Instead, one can understand his work as a multi-stage approach in search of the »right« text – a version of the *Siete Partidas* that carried the *auctoritas*, i. e. the weight of the original, while at the same time making the »Gothic language«, as Espinosa and other jurists referred to the »the usual combination of popular and learned elements which is characteristic of Alphonsine manuscripts«,⁶² more accessible. Therefore, López was not only interested in clearing away the *faltas y errores* of the medieval manuscript tradition, but also in presenting a text that made sense to contemporary jurists. This is also why he discussed probable readings with his fellow jurists on the King's Council: a group of people committed to

57 For example, the glossator Azo (ca. 1170–ca. 1230) is one of those *sapienti antiqui* who were the sources of ideas and regulations expressed in the *Partidas*, cf. PÉREZ MARTÍN (2016) 491.

58 LÓPEZ (1555), SP 1.1.29 gl. »En su libro: (fol. 9v): »En su libro. ad quem recurri posset pro veritate literae, si alij deprauentur, vt recurritur ad Pandectas, quae sunt Pisis. ad quas fuit recursus per Barto. vt ipse testatur in l. si creditor. §. primo. ff. de distract. pigno. & etiam in l. si vt certo. [Dig. 20.5.7.1] § si duobus. vehiculum. col. quarta. ff. commoda. [Dig. 13.6.5.15] Dicit idem Bart. quod perscrutata est Pandectas. ego homunculus ita deprauatus reperi in litera libros istos Partitarum, quod in multis locis deficiebant integrae sententiae, & in multis legibus deficiebant plures lineae in ipsa contextura literae multae mendositates: ita quod sensus colligi non poterat: in multis vna litera pro alia, & ob Dei omnipotentis obsequium & amorem Patriae laboraui indefesse antiquissimos

Partitarum libros de manu conscriptos reuoluens, cum peritis conferens & dicta sapientum antiquorum, de quibus fuerunt sumpti, consyderans, & quantum potui, veritatem literae detexi, & suo candori restitui nullo humano adiutorio concurrente, vt firmiter credo, cum magis auxilium defecit humanum tanto largius successit diuinum suffragium, a quo cuncta bona procedunt.«

59 PÉREZ MARTÍN (2016) 490;

MARTÍNEZ CARDO (1960) 119 sq.

60 Cédula real, 7 Sept. 1555, printed in LÓPEZ (1555) vol. 3, s. n. [at the end of SP 7]; see also LÓPEZ NEVOT (2020) no. 36: »muchas faltas y errores, assi en los libros impresos de molde [tácita censura a la edición de Montalvo], como en los escritos de mano, [...] auiades passado en ello mucho trabajo; y hezistes relacion a los del mi consejo de lo que en esto auiades hecho: los quales lo vieron, y en muchas partes donde la diferencia de la letra podía causar diuersidad en el derecho, por muchos dias lo platicaron, y examinaron, y determinaron la

letra que quedasse, conforme a lo qual se ha imprimido la dicha obra. En la qual impression vos el dicho licenciado [Gregorio López] con mi licencia y mandado auiades estado presente, para que la impression no se errasse.«

61 Contrary to ANGELINI (2021) 209, who claims that López' edition of the *Partidas* »would have contributed to restoring its pureness«. Also contrary to HERRIOTT (1951/52) 169, who claims that »Montalvo, López, and the editors of the Academy edition [1807] all strove to establish a text approaching as nearly as possible the original of Alfonso el Sabio.« This antiquarian interest is not what is described in LÓPEZ (1555), in which emphasis is put on the homogeneity and practicability of the text, preferring interpretations or versions that would avoid any *diuisidad en el derecho* (cf. Cédula real, 7 Sept. 1555, here in fn. 44).

62 HERRIOTT (1938) 288 with examples of the specificities of Alphonsine (legal) language (288 sq.).

meeting the political and juridical needs of their day and age, including an ever-widening empire on more than one continent.

In 1829, Puch y Portolés critically sums up the results of López' work from an editorial perspective: »in this work we can never be certain if we read the words of King Alfonso the Wise or his commentator Gregorio López«. ⁶³ In 1852, however, Rafael de Floranes claims to have gone through a 14th-century manuscript of the Third Partida containing handwritten marginal annotations by López himself (the writing is »very small and difficult to read«, Floranes reports) ⁶⁴ without finding major changes López made to the substance of the original. ⁶⁵ Clarification of this claim, however, would require an in-depth study of the manuscript tradition, the manuscripts López used, and the differences to the printed edition. ⁶⁶ In any case, the royal decree authorising the printing of López' edition of the *Partidas* also authorised the glosses, and until the middle of the 18th century, no edition of the *Partidas* was printed without López' commentary. ⁶⁷

4 Gregorio López the Glossator

4.1 *The Technique of Glossating: How to get an old law book to answer new questions?*

To the restored text of the *Partidas*, López added an extensive apparatus of glosses and thus used the fundamental method of »text processing« ⁶⁸ that had been established at European universities since the High Middle Ages. With the exception of the *leyes* written in Castilian in the *Partidas*, the glosses are written in Latin. López wrote all of the glosses, most probably between 1544 and 1553, shortly prior to and during his time at the *Consejo de*

Indias. ⁶⁹ With regards to the structure, López follows the example of the great medieval glossators, producing a gloss apparatus that encompasses the *Siete Partidas* in their entirety. ⁷⁰ It is decisive for such a gloss apparatus that the glossing not focus only on isolated fragments of the basic text, but rather is carried out throughout the entire text. The boundaries between composing and compiling can be quite fluid, as the producer of a gloss apparatus almost invariably includes earlier glosses in his editing or at least relies heavily on other authors in producing his commentaries. This point is aptly demonstrated by the wealth of citations López makes to medieval and contemporary jurists, canonists and theologians. López' approach to commenting is inspired by the works of commentators like Bartolus de Sassoferrato, whom he cites many times in his own writings. The practical approach of this medieval Italian jurist echoes his own interests and intellectual needs: López' work combines the spirit of jurisprudential doctrine, practical needs and the recognition of a special – political – quality of the text, resulting in a dynamic process of interpretation, adaptation and actualisation. ⁷¹

The length of individual glosses varies greatly. Most of the glosses are very short, just like their medieval models. Some of them, however, approach the length of a small treatise, ⁷² most famously the so-called *Glossa Magna* (SP 2.23.2 »acrescentar el pueblo en su fe«), ⁷³ in which López discusses the justification of Spanish dominion in the Americas in no less than ten folio pages, the majority of which use the small font usually reserved for the margins. Other long glosses treat not only topics of utmost political relevance – e. g. the relationship between the Holy Roman Empire and the Castilian Kingdom – but also topics such as the economic regime of matrimony, primogeniture, *mayorazgos* and inalienable rights were the

63 PUCH Y PORTOLÉS (1829) 27: »en tal obra no podemos darnos por seguros de si leemos al sabio Rey don Alonso, ó á su comentador Gregorio Lopez«.

64 FLORANES (1852) 311: »la letra del Sr. Gregorio Lopez, que es muy menuda y difícil de leer«.

65 Ibidem; MARTÍNEZ CARDO (1960) 119 sq. provides the opinion of a number of Spanish historians about the fidelity of López' edition. A true in-depth study, however, is still lacking.

66 At the University of Valladolid, the long-term project »7 Partidas Digital« is currently working on a critical edition of the *Partidas* text: <https://7partidas.hypotheses.org/> (accessed: 15.5.2023).

67 PÉREZ MARTÍN (2016) 491.

68 KÄSTLE-LAMPARTER (2016) 114.

69 PÉREZ MARTÍN (2016) 491. MARTÍNEZ CARDO (1960) 114 dates the beginning of the work on edition and glosses before 1544.

70 See KÄSTLE-LAMPARTER (2016) 112.

71 For the glossators, see KÄSTLE-LAMPARTER (2016) 119. See also MADERO (2001) 343 for Baldus used by López.

72 PÉREZ MARTÍN (2016) 494–531 gives an overview of López' longer glosses and topics treated.

73 LÓPEZ (1555), vol. 2, 2.23.2 »acrescentar el pueblo en su fe« (fol. 79r–83v). Critical edition and Spanish translation of this gloss: BARRERO GARCÍA (2005).

subject of short, original treatises.⁷⁴ All in all, the commentary is unevenly distributed amongst the individual passages of the text, following the examples of 14th-century *ius commune* jurisprudence.⁷⁵

Moreover, the system López follows in composing his glosses for each law (*ley*) corresponds to the medieval tradition:⁷⁶

- an introductory gloss summarising the law's content (*introductio* or *casus legum* in the classical glossator tradition),⁷⁷
- explanatory glosses (including philological word explanations, text-critical remarks and genuinely legal explanations),
- allegations (i. e. parallel and contradictory passages from other parts of the *Partidas* or the *Corpus Iuris Civilis*),
- further elaborations taking up a concept or technical term and situating it within the legal, political and economic reality of 16th-century Castile.

The introductory glosses tend to be marked with an asterisk instead of a textual reference, and López uses them as a general introduction to the topic of the following law (*ley*) and its main topic. They seem to serve the didactic purpose of making it easier for 16th-century readers to grasp the content of the medieval law, as well as offer concise introductions to basic legal concepts like »war« (*guerra, bellum*)⁷⁸ or »just war« (*bellum justum*)⁷⁹.⁸⁰ In the course of his commentary,

López regularly points to corresponding texts in the *Corpus Iuris Civilis* and the *Corpus Iuris Canonici* with their treatment in the *Glossa ordinaria*. He not only cites the doctrines of the principal glossators and commentators, and to a lesser extent those of the canon law authors, but also makes frequent references to Castilian legislation and court decisions.⁸¹ Antonio Pérez Martín counts more than 150 reference works cited by López that he thinks are »first-hand citations« (thus postulating López' possession of an extensive library).⁸² He is also convinced that López not only knew of but, in some passages, also followed Alonso Díaz de Montalvo's edition and commentary of the *Siete Partidas*.⁸³ The common reading of the glosses in Spanish historiography till this day see López elevating the *texto vulgar de las Partidas* to a level befitting the classical and imperial epoch he and his contemporaries lived in, intending to serve the Spanish empire.⁸⁴

The overall character of López' commentary seems to be defined by the longer glosses that translate the concepts of the medieval Castilian legislation into the 16th-century context. López loosens the connection between the main text and the commentary – even more so than the *Glossa ordinaria* had done for the *Corpus Iuris Civilis*.⁸⁵ An intensive comparison of *Partidas* with the glosses is called for in each case; when reading the long glosses, however, the *Partidas* are almost

74 PÉREZ MARTÍN (2016) 492.

75 Cf. KÄSTLE-LAMPARTER (2016) 33.

76 PÉREZ MARTÍN (2016) 531.

77 KÄSTLE-LAMPARTER (2016) 120.

78 LÓPEZ (1555), vol. 2, SP 2.23.1 gl. »*« (fol. 78v): »Bellum est pacis segregatio, quietis remotio, compositorum destructio. & sunt quatuor genera belli iustum, iniustum, ciuile, plusquam ciuile.«

79 The commented text of LÓPEZ (1555), vol. 2, SP 2.23.2 enumerates the reasons for waging war, but without using the technical term in Spanish for the concept of a just war (*bellum iustum*).

80 LÓPEZ (1555), vol. 2, SP 2.23.2 gl. »*« (fol. 79r): »Bello iusto deus auxiliator & ingerit tale bellum fit audator & fortior & amici prouocantur ad iuuamen inimici consternuntur, & iustum bellum est quod fit ob augmentum fidei, & ad destructionem inimicorum illius, & quod fit ob

domini sui custodium honorem: & seruitium, & quod fit ob patriae defensionem & purgandum est regnum a malis hominibus. hoc dicit.«

81 PÉREZ MARTÍN (2016) 531.

82 Ibidem.

83 Ibidem; PÉREZ MARTÍN (2015) 662.

84 GIBERT (2000) 445–448, cited after PÉREZ MARTÍN (2016) 492: »El derecho real es para G. L. un derecho particular, y él es un tratadista de derecho común. Su singularidad, imposible en la época siguiente, es que ambos términos se hallan fundidos en la época a la que él pertenece, la presidida por el Rey-Emperador. El resumen (latino de las leyes) eleva el texto vulgar de las Partidas a las aspiraciones de una época clásica e imperial. Más que un extracto, la versión en latín es una reelaboración de las Partidas [...] Conserva el contenido normativo de las leyes, lo ha

limpiado del arcaísmo que en el siglo XVI debía (de) resonar en un escrito del siglo XIII [...] De una sencillez de líneas verdaderamente clásica. G. L. intentaba desde el campo de la gramática y el derecho [...] servir al Imperio. Las Partidas, que se concibieron en la aspiración de un rey castellano al Imperio germánico, en el siglo XIII, alcanzaron la plenitud de su sentido bajo Carlos V, emperador y rey de Castilla. El derecho sigue al Imperio. Nos imaginamos a aquel hombre del siglo XVI tomando la obra del siglo XIII y encontrándola fértil, jugosa, llena de significación, como una profecía. Con orgullo señala él en la glosa cómo los límites de la corona de Castilla bajo Alfonso X se han ampliado con el dominio de tierras extranjeras (Flandes, Italia) y con el Nuevo Mundo.«

85 Cf. KÄSTLE-LAMPARTER (2016) 167.

completely out of the picture. For example, when López discusses the justification of Spanish rule and Spanish wars on American soil,⁸⁶ the *palabras claves* of the law, »acrescentar el pueblo en su fe, serve only as a hook for a long text that has little to do with interpreting the original law. The text of the law itself, which the gloss is supposed to explain, is no longer necessary for understanding the gloss.

4.2 The Americas in López' Glosses

One field that clearly demonstrates the modernity of López' undertaking is his inclusion of American topics into the glosses. Both the *ius commune* tradition and the 13th-century legislation of the *Partidas* are viewed as opportunities to treat the problems of that time. His experience in drafting the *Leyes Nuevas* and dealing with other American questions influence his interpretation of the *Partidas*,⁸⁷ which is evident in various passages of his commentary. Given his intention to produce a workable commented edition of the *Partidas*, adapted to the juridical requirements of his time, this comes as no surprise. The best-known example for the treatment of American topics in the commentary to the *Partidas* is the *Glossa Magna* (SP 2.23.2 »acrescentar el pueblo en su fe«) mentioned above.⁸⁸ Having the length of a short treatise, Spanish historians have dedicated a fair amount of attention to it as an early juridical position justifying the *conquista* of the America. In 2005, Ana María Barrero García published a critical edition of the gloss alongside a modern Spanish translation.⁸⁹ In the text, López does refer to Francisco de Vitoria's *Relectio de Indis*, which the Dominican theologian held in 1539. This is the

reason that the traditional reading of the gloss by Spanish historians paint him as »Vitoria's first challenger« (*el primer impugnador de Vitoria*).⁹⁰

In his commentary on *Partida* 2.23.2,⁹¹ López starts off with a panoramic listing of the various juridical and canonist opinions, including those of Cardinal Cayetano, Hostiensis, Sinibaldus Fliscus (Pope Innocent IV), Oldrado de Ponte, Alfonso de Castro and others. He then turns his attention to Vitoria's contemporary position as found in his (then recent) *relectio*. The Dominican's arguments are carefully examined and the weak points highlighted. Finally, López states his own opinion in nine points: the Catholic Kings have, according to the papal donation, the right of conquest and peaceful dominion of the Americas, including the building of fortresses and encampments as centres of missionary and peaceful political activities. Should the indigenous population kill or forcibly expel the missionaries, a just war can be fought against them. However, neither their rejection of the faith preached to them by the missionaries nor their clinging to »idolatrous« practices are grounds for war, although some canonists would indeed insist on this point and consider this a reason for a just war. According to López, fighting the Indians would only be justified to hinder them from performing human sacrifices or to protect already converted Christians against mistreatment at the hands of their heathen neighbours or chieftains. López thereby rejects Hostiensis' position that every war against all non-Christians is justified as well as the Pope's authority. Regarding this conclusion, Alfonso García-Gallo had claimed that Vitoria's and López's respective approaches to the question should be understood as fundamentally coinciding.⁹²

86 LÓPEZ (1555), vol. 2, 2.23.2 »acrescentar el pueblo en su fe« (fol. 79r–83v); BARRERO GARCÍA (2005); cf. above at fn. 73.
87 LÓPEZ NEVOT (2020) no. 35: »La experiencia adquirida por Gregorio López en la gestión de los asuntos indios quedaría reflejada en su glosa a las *Partidas*.«
88 LÓPEZ (1555), vol. 2, 2.23.2 »acrescentar el pueblo en su fe« (fol. 79r–83v); BARRERO GARCÍA (2005). A translation of the entirety of López' Latin glosses to Part. 1 was attempted by ORDOVÁS (1878).

89 BARRERO GARCÍA (2005); cf. the review by SERRANO DAURA (2008).
90 The title of Rianza's influential text 1932; see PÉREZ MARTÍN (2016) 488, 492; ROVIRA GASPAS (2004) 205 sq., 253.
91 LÓPEZ (1555), vol. 2, 2.23.2 »acrescentar el pueblo en su fe« (fol. 79r–83v); BARRERO GARCÍA (2005).
92 GARCÍA-GALLO (1933) 511 in his review of Rianza (»Con diferencias de detalle, en lo fundamental coincide la forma de enfocar la cuestión en Vitoria y G. López,

entre el famoso teólogo y el no menos famoso jurisconsulto«); SERRANO DAURA (2008) 865.

For the purposes of this article, however, I am more interested in finding other, less well-known passages in which the Americas enter into and influence the commentary of the *Siete Partidas*. More specifically, I want to ask how the increasing knowledge about the Indies and the ever-changing political challenges were incorporated into the structure of a *ius commune*-based commentary, and how was normative knowledge needed by the contemporary jurists developed?⁹³ Since there is no systematic overview regarding all instances in which López treated topics and concepts related to the Americas, in the following I will look at a handful of glosses where such topics do appear. Finding the following passages involved a certain degree of serendipity, and I look forward to carrying out a more systematic and in-depth search once the complete full-text transcription of the López edition and glosses is available as part of the Frankfurt Salamanca project.⁹⁴

4.2.1 Stretching the Frontiers:

SP 1.prologue gl. ›Del Algarbe‹⁹⁵

The first occurrence is found in the comment to the prologue of the first *Partidas*: while the original text describes the territories of the Castilian crown in the 13th century, López comments: »Nowadays the frontiers have been widened and now include other nations and the Indians in the Americas who were unknown at the time when the *Partidas* were

written. They live in a world which is new to us, on fertile, delightful, and healthy land.« López claims that Christ had stretched the Castilian frontiers across the ocean and invoked him to bless Charles V so that the king may be able to reign virtuously over all these very different peoples.⁹⁶

4.2.2 A New Patriarch for the Indies:

SP 1.5.12 gl. ›otras dos‹⁹⁷

Shortly after this opening passage, the *Siete Partidas* include a passage with an explanation of why there are four patriarchs in the Catholic Church, namely Constantinople, Alexandria, Antiochia and Jerusalem, also detailing their privileges with regard to Rome (SP 1.5.12). Here, López seizes the chance to talk about the establishment of Church structures in the Americas. When a nation newly converts itself to the Catholic faith, he writes, a new *primas* has to be installed among them, provided a sufficient number of new Christians are there. And so the Pope, he continues, has installed a Patriarch of the West Indies (*Patriarcha Indiarum Maris Oceani*).⁹⁸ He makes this reference to the Patriarch of the West Indies at a time when he is preoccupied with the work of Antonio de Fonseca, former bishop of Pamplona and president of the Council of Castile.⁹⁹ The patriarchate was conceived as a pure titular see, i. e. only in name and honour, without any jurisdictional or spiritual power.¹⁰⁰ Nevertheless, López puts it with discern-

93 Cf. DUVE (2021) 15 on how mundane questions arising from the (theological or juridical) practice inspired the great treatises of Salmantine authors like Domingo de Soto et al. This also holds true for Gregorio López' work on the glosses to the *Siete Partidas*: a multitude of more and less significant questions from his juridical and political practice needed to be answered in an authoritative and reliable manner.

94 Cf. <https://www.salamanca.school>.

95 LÓPEZ (1555), vol. 1, SP 1.prologue gl. ›Del Algarbe‹ (fol. 3r).

96 Ibidem: ›Vides limites istos quibus concludetur Castellae coronae, iam sunt tercentum anni, vides & nunc ita eam ampliata, vt & subditas habeat barbaras gentes, maris Oceani incognitos vsque ad haec saecula Indos in orbe nobis nouo & incognito de gentes in solo fertili &

grato, atque salubri: sit CHRISTO summo honor & gloria & qui propagauit Imperium, det virtutum incrementum Regi nostro quibus regat populos sibi commissos.«

97 LÓPEZ (1555), vol. 1, SP 1.5.12 gl. ›otras dos‹ (fol. 37r).

98 Ibidem.

99 Cf. MÉNDEZ SILVA (1656) fol. 53v. In 1554, Charles V refers to Antonio de Fonseca as »Patriarca de las Indias, Presidente de Nuestro Consejo«; after Fonseca's death in 1557, however, the titular see remained unoccupied for about 40 years: RUIZ GARCÍA (1967) 461 sq.

100 King Ferdinand had already asked Pope Leo X in 1513 to create his counsellor Juan de Fonseca patriarch *de las Indias*, which the pope refused. Eleven years later, in 1524, the patriarchate was indeed established by Pope Clement VII, but as a pure

titular see from its inception. It is said the pope feared that a patriarch in the Americas, with full spiritual and jurisdictional powers, could lead to a schism.

ible pride in the long tradition of Jerusalem, Constantinople and the other ancient patriarchates of the Catholic Church.

4.2.3 Indians as *Personae Miserabiles*:
SP 1.6.48 gl. »A dezir al Rey«¹⁰¹

Continuing to reflect on the role of the Church, López advocates for an expansion of the political and judicial role of bishops in the Americas compared to their Spanish counterparts. If a provincial judge in Spain fails to deliver justice, the aggrieved party can turn to the king asking for a decision (*parecer*); in the Americas, the king is effectively out of reach due to the immense distances. For this reason, the king should enable the American bishops to stand in for him and allow them to handle such cases, even if they normally would not be within their ecclesiastical jurisdiction. Only in this way can the interests of socially vulnerable groups, i. e. those in danger of being oppressed by the powerful, be effectively addressed. López refers to the figure of the *personae miserabiles*, socially weak groups in the European *ius commune* tradition like widows, orphans, and the poor. The newly baptised Indians in the overseas territories also belong to this category, as López states explicitly.

This is quite remarkable for the time in which it was written, namely in the 1540s or early 50s. When Thomas Duve studied the adaptation of the *ius commune* category of *personae miserabiles* to the American context, he found that application of the category to Indians happened gradually from the 1570s onward.¹⁰² In his survey of a number of ecclesiastical and secular authors, Duve found that neither the American councils of México and Lima¹⁰³ nor authors like Francisco de Vitoria, Alonso de la Vera Cruz, José de Acosta¹⁰⁴ or Juan de Matienzo¹⁰⁵ used this category to describe the Indians.

In fact, Caroline Cunill has shown that the idea of stretching the concept of *persona miserabilis* to

include Indians can be pinpointed to a specific moment: in the midst of the struggle over the implementation of the New Laws (*Leyes Nuevas*, 1542), it was first proposed in 1545 by none other than Bartolomé de Las Casas.¹⁰⁶ Acting as the Bishop of Chiapas, and together with the bishops of Nicaragua and Guatemala, Las Casas presented a petition demanding that the royal authorities give jurisdiction over the indigenous population to the ecclesiastical courts. If the civil authorities would not accede to their demand, the three bishops threatened to excommunicate all members of the relevant bodies, including Gregorio López and the entire Council of the Indies.¹⁰⁷ As a consequence of this incident, Las Casas was invited to the Council of the Indies to give a personal account of how and why the Indians should be under ecclesiastical jurisdiction. In his response, Las Casas developed the idea of the Indians as *personae miserabiles*, a juridical category offering a conceptual justification for the intervention of the ecclesiastics in indigenous affairs.¹⁰⁸ What he presented to the councillors was the demand of exclusive jurisdiction of the bishops over the indigenous population, »even if there is no negligence or malice or suspicion of the lay judge«, because those »miserable people [are] oppressed and wronged« and therefore had to be placed under the Church's protection.¹⁰⁹ According to Las Casas, they had to be classified as *personae miserabiles* because they lived in a state of oppression and therefore their vulnerability and helplessness rendered them similar (but not equal) to widows and orphans, the core group constituting the *miserabiles*.¹¹⁰ This flexible application of the juridical concept aimed at taking the jurisdiction over the entire indigenous population away from the secular courts and the Crown and placing it in the hands of the Church.

López' answer to this maximum demand is found in the gloss. On the one hand, he *does* agree that the indigenous population is in need of great

101 LÓPEZ (1555), vol. 1, SP 1.6.48 gl. »A dezir al Rey« (fol. 65r). Full transcription of the text, see below: Appendix 1.

102 DUVE (2008) 174.

103 DUVE (2008) 170 sq.

104 DUVE (2008) 171 sq.

105 DUVE (2008) 173 sq.

106 CUNILL (2011) 232 sq. Cf. VARGAS DEL CARPIO (2020) 399 on the probable

frustration Las Casas felt regarding the non-compliance with the laws in favour of the freedom of the Indians and the way he found in his new episcopal office the possibility of using ecclesiastical jurisdiction as a new remedy for the Indies.

107 CUNILL (2011) 232; VARGAS DEL CARPIO (2020) 398.

108 CUNILL (2011) 232 sq.

109 Ibidem.

110 VARGAS DEL CARPIO (2020) 400.

er protections against unwilling or hostile judges and magistrates. On the other, he is emphatically *against* transferring the jurisdiction over them to the ecclesiastical courts lock, stock and barrel, which would result in the total loss of royal jurisdiction over the indigenous vassals. As a result, López accepts the idea of extending the concept of the *persona miserabilis* to the Americas but with two major caveats. First, he insists on the traditional requisite conditions that only upon the failure on the part of the secular judge to deliver justice is the bishop authorised to move the case to his jurisdiction. Second, López refuses to apply the category of *persona miserabilis* to the entire indigenous population. No reference is made to any miserable living conditions under the *encomienda* regime; instead, the status as neophytes is crucial.¹¹¹

The argument for López' equation of »newly baptised Indian = *persona miserabilis*« stems from a canon of the Third Council of the Lateran under Pope Alexander III. (X 5.6.5 »Iudaei sive Sarraceni«). It threatens every Christian who robs a Jew or Muslim of his belongings after his conversion to Christianity with excommunication: persons who have become Christians, the council agrees, must have a better legal status and enjoy greater protections than in their former heathen condition. If the secular judge is slow or unwilling to protect the property of newly baptised persons, the Church can threaten him with excommunication to carry out his duties in a just manner.¹¹²

This is the basis of López' argument. He does not explicitly cite the *Glossa Ordinaria* to the *Liber Extra*, but it is in line with his opinion: »This has to be understood that in any case, when the secular judge is negligent in doing justice, the Church

must involve itself and force him to do it.«¹¹³ So, the medieval canon law here offers López the two elements he needs: the conviction that a new Christian merits special help and protection as well as the characterisation of the Church as the guardian of secular justice, duty-bound to monitor its performance and, if necessary, to intervene. Both elements come together in López' position, triggered by the need to find a solution to the problem posed by the geographical reality of the great distances both to reach and within the American colonies.

4.2.4 Seneca's Prophecy: SP 3.18.77 gl. »Desde Seuilla fasta la Rochela«¹¹⁴

A more general reference to the presence of Spanish ships and merchants in the Americas can be found in a comment on a *ley* concerning the topic of the contracts of affreightment, which were used between merchants and sea captains for the charter of the ship to transport the merchant's goods (*carta del afletamiento*).¹¹⁵ The 13th-century *ley* provides a model text for the drafting of such a contract, citing the route »from Sevilla to La Rochelle« as a typical example. Commenting on this phrasing, López points out that at the time when this *ley* was written, the distances Spanish ships travelled were not nearly as long as contemporary 16th-century trips: »Because in our times we see that the words written by Seneca in his tragedy *Medea* have come true«, namely that »in later years a time will come when Oceanus shall relax his bars and a vast territory shall appear, and Typhis shall discover new worlds, and Thule shall be no longer be the remotest spot on earth.«¹¹⁶ Seneca's *Medea*

111 LÓPEZ (1555), vol. 1, 1.6.48 gl.
»A dezir al Rey: «[...] & saltem in partibus remotissimis, vt sunt terrae firmae, & insulae maris Oceani, vbi sunt Indi de nouo conuersi ad fidem, qui & dicuntur miserabiles personae secundum Innocentium in capitul. iudaei, siue Saraceni. de iude. [X 5.6.5]«.

112 X 5.6.5: »Si qui praetera Deo inspirante ad fidem se converterint Christianam, a possessionibus suis nullatenus excludantur, quum melioris conditionis ad fidem conversos esse oporteat, quam, antequam fidem susceperint, habebantur. Si autem

secus duerit factum, principibus seu potestatibus eorundem locorum iniungimus sub poena excommunicationis, ut portionem hereditatis suae et bonorum suorum ex integro eis faciant exhiberi.«

113 X 5.6.5 gl. »Excommunicationis« (Decretales Gregorii IX 1604, col. 1843): »Arg. quod iudex secularis compelli potest ad iustitiam seruandam. 23. q. 5. administratores [DG c. 23 q. 5 c. 26]. Et hoc videtur facere ratione fidei, quod intromittit se de haereditate, alias non debet. sup. qui fi. sint leg. causam [X 4.17.4]. sed illud intellige in quocunque casu,

vbi iudex secularis negligens est facere iustitiam quod ecclesia se intromittere debet, & compellere ipsum.«

114 LÓPEZ (1555), vol. 3, SP 3.18.77 (fol. 109r). Full transcription of the gloss, see below: Appendix 4.

115 LÓPEZ (1555), vol. 3, SP 3.18.77 (fol. 108v sq.): SP 3.18.77: »En que manera deue ser facha la carta del afletamiento de la naue.«

116 LÓPEZ (1555), vol. 3, SP 3.18.77 gl. »Desde Seuilla fasta la Rochela« (fol. 109r).

was translated into Castilian in the 14th century and was also widely read in Latin among the erudite Castilians.¹¹⁷ But more specifically, López refers here to the so-called »Senecan prophecy«¹¹⁸ used by Christopher Columbus to describe his role in the »discovery« of the Indies. He also follows Columbus' reading of the text, alluding to Typhis, the helmsman of the Argonauts, rather than to Tethys, goddess of the ocean.¹¹⁹ Columbus included the citation of Seneca's *Medea* in his »Libro de profecías«,¹²⁰ which he started in 1502.¹²¹ The lengthy concoction of biblical citations, snippets from other authoritative authors as well as excerpts from his own logbooks and writings was explicitly written for the Catholic Kings.¹²² Thus, it may well have been in the court archives or the holdings of the Council of the Indies that López came across this remarkable collection in which Columbus tried to present his travels as predestined and implicitly foretold by the Bible and ancient authors.¹²³ López takes up the idea of imbuing Seneca's words with a prophetic quality, but he references this to *Hispania* (not Castile as a political unit) as a nation deemed worthy of finding a way to the farthest corners of the earth and of spreading the Christian faith there – all to the greater glory of the king and for the greater good of the Spanish *res publica*. All in all, this gloss is an aside that does not really contribute information about a doctrinal or practical legal point; instead, it proudly underlines

the Castilian and Spanish achievements regarding the Americas.

4.2.5 Morally Dubious Merchants:
SP 1.4.25 gl. »Persona menor«¹²⁴

Pride regarding the extensive voyages of Spanish ships notwithstanding, López neither trusted the long distances nor the people who travel them. That becomes clear in his commentary on SP 1.4.25, a *ley* about the obligation of confessors to properly evaluate the sins of those entrusted to them by taking into account status, age, economic position and the circumstances of each case. López quotes approvingly the 13th-century canonist Hostiensis to prove that rich people have more opportunities to sin because they have leisure and more possibilities to put their wealth to bad use. Merchants who travel to distant lands, thus are gone for long periods of time, also have ample opportunity to engage in sinful activities, for example, committing adultery (with many foreign women) and causing their wives to enter into adulterous relationships at home, too. As Hostiensis sums it up: everybody knows exactly how much harm travelling merchants cause. López, always wary of merchants who, in his opinion, simply cannot ply their trade without sinning,¹²⁵ agrees enthusiastically: this scathing view of long-distance merchants is even more pertinent to contemporary traders

117 About the presence of Seneca's works in Castilian humanist circles from the 14th century onward, cf. ZINATO (2021) 258 sqq.

118 CLAY (1992).

119 About the two possible readings of the passage, cf. CLAY (1992).

120 »Seneca in VII tragetide Medee in choro »Audax nimium«, Vernán los tardos años del mundo ciertos tiempos en los cuales el mar Océano aflojera los atamentos de las cosas y se abrirá una grande tierra; y um nuebo marinero, como aquel que fue guía de Jasón, que obe nombre Tiphí, descubrirá nuebo mundo y entonces non será la isla Tille la postrera de las tierras«: citation taken from CLAY (1992) 619.

121 The full title reads: »Libro o colección de auctoridades, dichos, sentencias y profecías de la recuperación de la sancta ciudad y del monte de Dios, Sión, y acerca de la invención y

conversión de las islas de la India y de todas las gentes y naciones, a nuestros reyes hispanos«, cf. LEÓN AZCARATE (2006) 78.

122 LEÓN AZCARATE (2006) 78 sq.

123 LEÓN AZCARATE (2006) 79.

124 LÓPEZ (1555), vol. 1, SP 1.4.25 (fol. 22r). Full transcription of the text, see below: Appendix 2.

125 Cf. LÓPEZ (1555), vol. 1, SP 1.6.46 pr. (fol. 64v): »Non debet clericus mercatoris officium exercere, quia vix sine peccato exercetur, potest tamen scripturas & alia honesta operari: quibus victum habeat. hoc dicit«.

who cross the ocean to America and return only after extremely long periods of absence. Thus the position of the famous 13th-century canonist is directly applicable: »take note of this to use against the merchants who travel to the regions in the Indies«, López urges his readers.¹²⁶

4.2.6 Marriage in the Indies: SP 1.1.2 gl. »Casamiento«¹²⁷

Wives left at home, floundering in their marriages leads us to López' understanding of marriage in the Americas. López discusses what makes a marriage: first of all, it is a part of natural right (*derecho natural*), shared by humans and animals, which knows only the instinctive desire for mating that cannot be qualified by categories like sin or virtue, good or bad. It is simply a fact of nature and as such ethically neutral. This is why it is impossible to classify the mating of two animals, who only underly natural right, as sinful.

This is, of course, not the end of the story for humans. Not only do they need to take natural law into account but also civil law and the law of nations, which leads to a distinction between licit and illicit intercourse. Only the intercourse aimed at procreation, the raising of children and the passing on of the parents' memory is licit and thus inextricably linked with matrimony. True marriage can only consist in a licit intercourse, and intercourse is only licit within the confines of matrimony. Citing Thomas Aquinas, López describes the complicated institution of matrimony as consisting of no less than four intertwined roots:

- first, matrimony is so indispensable as the basis of raising a family that God created the institu-

tion even before the Fall of Man in the union of Adam and Eve in paradise;

- second, God instituted matrimony as a bulwark against the sins of the flesh after the Fall of Man as part of the natural law (*lex naturae*);
- third, matrimony as a formal recognition of the will of two people to raise a family together has its root in Mosaic law, and
- fourth and finally, Christian marriage is understood as a sacrament representing the union of Christ and Church following the New Law of the New Testament.

After laying out this theoretical toolkit derived from theology, López turns to the actual question he wants to address: »From what we have laid out before, we can now answer the question if among the American Indians who took wives in their state as infidels and heathens existed a true marriage (*verum matrimonium*)?«¹²⁸ But why is this even a question? According to López, he had heard that many American peoples were so extremely rude and ignorant (*maxima ruditas & ignorantia*) that they seemed like wild men from the woods (*ut homines silvestres*). This description recalls a passage from Cicero's *De Inventione*. The Roman orator had claimed that mankind was so wild, uncultured (*silvestres*) and rude at the beginning of time (*a principio seculi*) that no enduring bond between a man and a woman existed and therefore no marriage at all:¹²⁹

»For there was a time when men wandered at random over the fields, after the fashion of beasts, and supported life on the food of beasts; nor did they do anything by means of the reasoning powers of the mind; but almost every-

126 LÓPEZ (1555), vol. 1, SP 1.4.25 gl. »Persona menor« (fol. 22v). It seems from the citation (»Host. in summa de poeniten. & remissio. charta 8«) that López had not Hostiensis' full *Summa Aurea* in his hands, but rather the so-called *Summa de poenitentia et remissionibus*, which forms part of the fifth book of the *Summa Aurea*.

127 LÓPEZ (1555), vol. 1, SP 1.1.2 gl. »Casamiento« (fol. 4v). Full transcription of the text, see below: Appendix 3.

128 Ibidem: »Ex praedictis posset decidi quaestio an inter indos maris Oceani qui in sua infidelitate & gentilitate accipiebant vxores fuerit verum matrimonium«.

129 CICERO, *De Inventione*, lib. 1, no. 2: »Ac si volumus huius rei, quae vocatur eloquentia, sive artis sive studii sive exercitationis cuiusdam sive facultatis ab natura profectae considerare principium, reperiemus id ex honestissimis causis natum atque optimis rationibus profectum. Nam fuit quoddam tempus, cum in agris homines passim bestiarum modo vagabantur et sibi victu fero vitam propagabant nec ratione animi quicquam, sed pleraque viribus corporis administrabant, nondum divinae religionis, non humani officii ratio colebatur, nemo nuptias viderat legitimas, non certos quisquam

aspexerat liberos, non, ius aequabile quid utilitatis haberet, acceperat. Ita propter errorem atque inscientiam caeca ac temeraria dominatrix animi cupiditas ad se explendam viribus corporis abutebatur, perniciosissimis satellitibus.« Cited from the Latin Library online edition: <https://www.thelatinlibrary.com/cicero/inventione1.shtml#2> (visited: Febr. 24, 2023).

thing by bodily strength. No attention was as yet paid to any considerations of the religious reverence due to the gods, or of the duties which are owed to mankind: no one had ever seen any legitimate marriages, no one had beheld any children whose parentage was indubitable; nor had any one any idea what great advantage there might be in a system of equal law. And so, owing to error and ignorance, cupidity, that blind and rash sovereign of the mind, abused its bodily strength, that most pernicious of servants, for the purpose of gratifying itself.«¹³⁰

No less than the likes of Thomas Aquinas himself had lent his approval to this idea, explicitly stating that Cicero's words could well be applicable to some groups of people. Discussing the question »Whether marriage is natural« (*utrum matrimonium sit naturale*): Sent. 4 dist. 26 q. 2 art. 1) in his commentary on Peter Lombard's *Sentences*, Aquinas opened his answer with the ultimately rejected view that matrimony is not natural, referring to Cicero's vision of the marriageless wild men of a distant past:

»Furthermore, what is of natural law is found among people no matter what their state. But marriage has not existed in every state of man, for, as Cicero says in the beginning of his *Rhetoric*: *Men were living in the woods in the beginning, and back then no one knew his own children, nor were there any particular wedding ceremonies in which marriage consisted*. Therefore, it is not natural.«¹³¹

In the end, Aquinas rejected Cicero's view of an early mankind without marriage as a universally acceptable theory: the Bible tells us about the

universal beginning of mankind as God's creation, and the institution of marriage was already present back then. But, the Dominican theologian did not completely refute Cicero's musing about rude and ignorant peoples; instead, he saw a possibility that individual nations or peoples, as a result of their autochthonous origins and cultural development – or lack thereof – might fit this depiction.¹³²

Both Cicero and Aquinas, two recognised authorities, seem to agree on the possibility that peoples without natural reason and therefore without matrimony can indeed exist and that such peoples can be recognised by their rude and uncultured ways. And though reports from the Americas arrived painting the indigenous peoples in precisely this way, López does not share this opinion. He debunks this apparent congruity, rejecting Cicero's view outright and Aquinas' to an extent.

To be fair, Thomas Aquinas had already voiced doubts about Cicero's idea (*non autem es verum universaliter*): »from the beginning of the human race Sacred Scripture reports that there were marriages.«¹³³ López takes Aquinas' words and uses them to create a *pasticcio* (cf. Table 1), embedding his own opinion within the learned tradition while at the same time moving it forward: first, he rejects the idea that Cicero's musings about primordial humans, their rudeness and lack of matrimony could be accepted as true in any universal sense. To show this he cites Aquinas nearly verbatim. In a second step, he also rejects, although less explicitly, Aquinas' idea that the wild men Cicero describes might actually be observed in existing peoples. If that were indeed the case, those peoples would lack natural reason (*ratio naturalis*) – something that does not match his observations. He writes, »I find very difficult to observe« (*quod reputo difficile ad cognoscendum*) since all peoples are in discernible

130 English translation from https://en.wikisource.org/wiki/On_Invention/Book_1#2.

131 AQUINAS, Sent. 4 dist. 26 q. 2 art. 1 obj. 2: »Praeterea, id quod est de iure naturali, invenitur in hominibus secundum quemlibet eorum statum. Sed matrimonium non fuit in quolibet statu hominum: quia, sicut dicit Tullius in principio Rhetor., *homines a principio silvestres erant, et tunc nemo scivit proprios liberos, nec certas nuptias, in quibus matrimonium consistit*. Ergo non est naturale.« Original Latin text

and English translation are taken from the online edition: <https://aquinas.cc/la/en/~Sent.IV.D26.Q1.A1.7>.

132 AQUINAS, Sent. 4 dist. 26 q. 2 art. 1 Reply obj. 2: »Ad secundum dicendum, quod verbum Tullii potest esse verum quantum ad aliquam gentem; si tamen accipiatur principium proprium ipsius gentis per quod ab aliis gentibus est distincta, quia non in omnibus perducitur ad effectum hoc ad quod naturalis ratio inclinatur: non autem est verum universaliter, quia a principio humani generis sacra

Scriptura recitat fuisse conjugia.«

Original Latin text and English translation are taken from the online edition: <https://aquinas.cc/la/en/~Sent.IV.D26.Q1.A1.7>.

133 AQUINAS, Sent. 4 dist. 26 q. 2 art. 1 Reply obj. 2: »non autem est verum universaliter, quia a principio humani generis sacra Scriptura recitat fuisse conjugia«; original Latin text and English translation are taken from the online edition: <https://aquinas.cc/la/en/~Sent.IV.D26.Q1.A1.7>.

AQUINAS, Sent. 4 dist. 26 q. 2 art. 1	LÓPEZ, SP 1.1.2 gl. ›Casamiento‹
Ad secundum dicendum, <i>quod verbum Tullii potest esse verum quantum ad aliquam gentem; si tamen accipiatur principium proprium ipsius gentis per quod ab alijs gentibus est distincta</i> , quia non in omnibus perducitur ad effectum hoc ad quod naturalis ratio inclinatur: <i>non autem est verum universaliter, quia a principio humani generis sacra Scriptura recitat fuisse conjugia.</i>	Sanctus Thom. 3. parte quaest. 41. artic. 1. supra relato in responso ad secundum <i>quod verbum Tullij potest esse verum quantum ad aliquam gentem: si tamen accipiatur principium proximum illius gentis per quod ab alijs gentibus est distincta</i> , ex quo videtur velle quod si in tali gente deficeret ratio naturalis quae inclinatur ad matrimonium cum certae muliere, propter effectus supradictos non esset verum matrimonium, <u>quod reputo difficile ad cognoscendum</u> : quia regulariter in omnibus gentibus matrimonium producitur ad effectum per id ad quod naturalis ratio inclinatur, <i>neque dictum Tullij est verum uniuersaliter</i> cum dicit de principio seculi: <i>quia sacra scriptura recitat fuisse coniugia a principio humani generis.</i>

Table 1: Comparison between the texts by Aquinas and López; the passages taken verbatim by López are in italics; underlining signals the core of his own stance against Cicero and Aquinas

possession of *ratio naturalis* and therefore are naturally led to organise their relationships into a *matrimonium verum*.

So, López does underline the working of natural reason in all humans, the indigenous Americans included, implicitly also confirming the common origins of European and American mankind.

4.2.7 Dangerous Climates: SP 2.22.7 gl. ›Biuir‹

In SP 2.22.7,¹³⁴ López again finds an opportunity to translate Old World ideas to the Indies, this time about climate, its influence on people and the criminal behaviour of Spaniards towards Indians. The *ley* that López comments on here sets out that people who are employed to work in a certain geographical area have to be *acostumbrados, e guisados al ayre*, that is, accustomed and acclimatised to the climate of a place. If they are not acclimatised and compatible with the climate of the region they are supposed to work in, they cannot stay healthy in the long run (*E si tales no fuessen, non podrian luengo tiempo biuir sanos*).¹³⁵

In his glosses, López expands at length on the theme of the influence of climate on human character and physiognomy, citing Aristotle, Vegetius' *De re militari*, and Thomas Aquinas.¹³⁶ The

statement above about people not being able to stay healthy in a foreign climate offers him the opportunity to send a stern reminder to his readers: this passage applies to *encomenderos* and others who compel Indians from the colder regions to move to warmer parts and force them to work there. Many of those Indians have died, López writes, and the Spanish perpetrators have to be punished because they killed them as surely as if they had done it with their own hands.¹³⁷

5 Conclusion

After these impressions of López' work as an editor and commentator of the *Siete Partidas*, let me offer some remarks to conclude. López' intention in editing and commenting the *Siete Partidas* was to create an authoritative, practical foundation for Castilian jurisprudence: a patriotic undertaking as he was undoubtedly a »king's man«. ¹³⁸ To this end, the edition served the same purpose as the glosses: to produce a useful tool for contemporary lawyers living in the complex world of the 16th century; far from »rethinking what has already been thought«, ¹³⁹ López' aim is immensely practical. While respecting the original authority of the *Partidas*, he uses the glosses to fill in every conceiv-

134 LÓPEZ (1555), vol. 2, SP 2.22.7 (fol. 78r): »Quales deuen ser los peones, por la tierra, e como deuen ser escogidos y guisados«.

135 Ibidem.

136 LÓPEZ (1555), vol. 2, SP 2.22.7, gl. ›Caliente‹, fol. 78r sq.

137 LÓPEZ (1555), vol. 2, SP 2.22.7, gl. ›Biuir‹, fol. 78v: »Nota contra

compellententes indos frigidę regionis transire ad calidas regiones ex quo multi moriuntur sunt enim puniendi quia eos necant«.

138 Charles V certainly had good reason to personally select him as a member of the Council of the Indies after López expelled two former councillors due to irregularities in their office

during his visit with the council in 1542; see MARTÍNEZ CARDOS (1960) 84 sq.

139 Hence Erich Genzmer's erroneous old-school opinion, cited after KÄSTLE-LAMPARTER (2016) 157.

able gap left open in the medieval texts with knowledge both produced in and necessary for this time. The reader is repeatedly and directly addressed (»take note«, *nota*) to explicitly point out how to apply a given *ius commune* concept to a specific American question.

López cites not only juridical authorities in his glosses: Thomas Aquinas and Church fathers are mentioned throughout the text, and Erasmus is quoted several times as well. Among the jurists and canonists, he relies not only on Bartolus and Baldus but also on Sinibaldus Fliscus (Pope Innocent IV, † 1254), Hostiensis († 1271), Andrea de Isernia († 1316), Bartolomé de Saliceto († 1412), Juan de Ímola († 1436), Paulus de Castro († 1441), Panormitanus († 1445), Philip Decius († 1535) and others, thus drawing heavily on the *ius commune*'s Commentarist tradition. Moreover, he also cites contemporaries such as Francisco de Vitoria and Diego de Covarrubias y Leyva. All in all, López aims to base his arguments on a broad and dogmatically sound foundation. By taking the theological arguments into consideration – above all, those of Thomas Aquinas – he shows his intellectual nearness to the authors of the so-called School of Salamanca, with whom he had contact with as a member of the Council of the Indies, and possibly even earlier as a student.

The combination of the authoritative text edition, a profound knowledge of the *ius commune* and a decidedly practical orientation gave López' work the scope and depth it needed to become so influential in the following decades.

In 1612, Francisco Bermúdez de Pedraza explained how to use López' commentary for the study of law: to know law in Spain means to know the *Siete Partidas*, not only because of their local importance but also because, derived almost entirely from the *ius commune*, they open a path to this body of law.¹⁴⁰ To understand the *ius commune* in the Digests and to become acquainted with the various doctrinal controversies, Pedraza proclaimed that Spanish students could do no better than to study López' glosses to the *Siete Partidas*.¹⁴¹

At a later point in time, López was harshly criticised for his immersion in the *ius commune* tradition, and he was scolded for not being sufficiently well-versed in *historia y antigüedades de la nación*,¹⁴² that is, neither providing any kind of historical introduction to the *Partidas* nor offering information on their origins, their profile or their textual traditions.¹⁴³ It should be pointed out, however, that this critique, typical of 19th-century legal-historical interests, entirely misses the point of López' endeavour.

In the samples of glosses touching on American topics dealt with in this article, López' conception of the West Indies and their peoples comes across as essentially positive: fertile lands with a healthy climate and populated by people with perfectly intact natural reason who are capable – if not always willing – of accepting the Christian faith and of realising basic institutions of human relationships already in their original state. At the same time, he is acutely aware that the indigenous population is in dire need of protection against life-threatening exploitation by unscrupulous Spaniards. Moreover, it also shows that stereotypes of savage peoples circulated since European antiquity do not do justice to the actual indigenous peoples of the Americas and therefore, according to López, are insufficient to serve as the basis of the Castile crown's modern policy. His view is not only in line with the royal policy laid out in Isabela of Castile's testament, but it also echoes the ideas of Francisco de Vitoria and Bartolomé de Las Casas, even if López did not and could not agree with the Dominicans' more radical political demands. The findings suggest that a deeper analysis of the treatment of the Indies in the entirety of López commentary on the *Siete Partidas* can provide further insights into the process by which opinions and politics in the Council of the Indies and at the Castilian court are formed and can take us, to use the words of Daniel Panateri, on an »ocean of new ideas«. ¹⁴⁴ Digitalisation and a combination of distant reading analytical tools and close reading will help us to systematically navigate this ocean.

140 BERMÚDEZ DE PEDRAZA (1612) 70 sq.

141 BERMÚDEZ DE PEDRAZA (1612) 161; cf. also LÓPEZ NEVOT (2020) no. 45.

142 PUCH Y PORTOLÉS (1829) 25.

143 PUCH Y PORTOLÉS (1829) 26.

144 PANATERI (2012) 165

(»un mar de nuevas ideas«).

Appendices:

Transcriptions of Glosses from López (1555)

*Appendix 1: SP 1.6.48**gl. >A dezir al Rey¹⁴⁵*

Concord. cum authentico vt differentes iudices in principio colla. 9. Non ergo episcopus cognoscat de causa data negligentia iudicis secularis: sed rescribit Regi pro quo etiam facit ca. licet ex suscepto. de foro competen. Quid autem si isti essent miserabiles personae habitu & actu vel habitu tantum an si eis iustitia denegetur per iudicem secularem possint adire episcopum ut de causa cognoscat, vel an & tunc recurrendum sit ad Regem, vel proximum superiorum? Inno. in c. significantibus. De offic. deleg. ponit duas opiniones primam, quod tunc quando priores domini renuunt istis miserabilibus personis facere iustitiam, ecclesia seu iudex ecclesiasticus eos possit audire etiam non requisitis superioribus dominis, & sic intelligit Inno. cap. ex tenore de foro competen. & cap. de solatis [sic]. 87. distinct. & hoc ideo ne diu pro iustitia laborent & dicit Innocen. quod etiam dictae personae si habito respectu ad ea quae possident sint pauperes sed magnas haereditates, vel castra petant non venietur ad iudicem ecclesiasticum nisi prius deficiat secularis. postea vero ponit secundam opinionem dicens, quod alij dicunt, quod nunquam pro miserabilibus cognoscat iudex ecclesiasticus: nisi prius eis seculari iudice deficiente, sed si quis per violentiam eis bona auferat tunc defendet eos ecclesia & suis supplicationibus, & beneficijs iuuabit & sic intelligunt isti iura pro istis miserabilibus personis facientia. Primam tamen opinionem videtur firmare Inno. & Docto. communiter ita intelligunt Innocen. vt in illa opinio ne videatur residere: sed aduerte, quod petrus & Abbas antiquus intelligunt. dictum capi. ex tenore vt etiam in vidua requiratur negligentia etiam superioris iudicis, & ita intelligunt illum text. sed Doctores, magis communiter volunt, quod sufficiat negligentia primi iudicis ne viduae & miserabiles personae cogantur exire ex proprijs locis alibi querentes iustitiam immo plus vult Innocen. quod si persona sit miserabilis habitu & actu vt viduae & pupilli pauperes, vel diuturno morbo fatigati: vel pauperes duntaxat (nam miserabiles dicuntur secundum

Ioannem And. super quibus natura mouetur ad miserendum) possit etiam non data negligentia iudicis secularis trahere aduersarium coram iudice ecclesiastico. per textum, a contrario sensu. in dicto capitulo. significantibus vbi idem tenet Abbas capitul. super quibusdam in fine. de verborum significatione Hostien. vero in summa. de foro competenti. versi. expremis in principio intelligit, quod in petitorio non cognoscat iudex ecclesiasticus nisi in defectum, sed quantum ad possessorium indistincte, vt in capitulo. ex parte. eodem titulo. & quantum ad defensionem, seu tuitionem ne opprimantur a potentioribus: in petitorio vero dicit mero iure ad Reges pertinere. 23. quaestione quinta. capitul. Regum. l. vnica. C. quando impe. inter pu. & vidu. haec tamen difficulter obtinerentur in practica in istis regnis in causis mere prophanis quae sunt de iurisdictione Regis & inter laicos, seu quando laicus conueniretur: aequum tamen videretur, vt in partibus multum remotis vbi de facili non possit adiri Rex, data negligentia iudicum prouinciae permetteretur Episcopis in causis miserabilium personarum procedere qui alias opprimerentur de facili a potentibus a quibus non possent iustitiam consequi & quod Rex ita permetteret & committeret tales causas Episcopis, vt etiam auctoritate Regia in illis procederent facit ad hoc text. in dicta authentica, vt differentes iudices. § si vero. & quod notat Hostien. in capitul. nouit de iudic. Abbas in capitul. licet ex suscepto colum. 5. de foro competenti, & saltem in partibus remotissimis, vt sunt terrae firmae, & insulae maris Oceani, vbi sunt Indi de nouo conuersi ad fidem, qui & dicuntur miserabiles personae secundum Innocentium in capitul. iudaei, siue Saraceni. de iude. permittendum hoc esset Episcopis illarum prouinciarum, confert quod dicit. S. Thom. secunda secundae quaestione. 40. articul. 2. in respon. ad primum cum dicit, quod praelati debent resistere non solum lupis, qui spiritualiter interficiunt gregem: sed etiam raptoribus, & tyrannis, qui corporaliter vexant non autem materialibus armis in propria persona vtendo: sed spiritualibus secundum illum apostoli secunda ad Corinth. cap. 10. arma militiae nostrae non carnalia sunt: sed potentia a Deo, quae quidem sunt salubres admonitiones deuotae orationes: contra pertinaces excommunicationis sententia.

145 LÓPEZ (1555), vol. 1, fol. 65r.

Appendix 2: SP 1.4.25 gl. ›Persona menor¹⁴⁶

Milites, rustici, mercatores, vel alij de quibus vi-
latius per Host. in summa de poeniten. & remissio.
charta. 8. vers. cui miles. vers. cui rusticus, & vers.
cui mercator. & dicit ibi Host. quod vita rustico-
rum tutior est, quam quiescentium delitiosorum
diutum, & ociosorum, vnde versus diuitiis vti, res
est aduersa saluti. paucos crede bonos, quos beat
aeris honos, molities vestis, coitus, gula, cura qui-
etis? & circa mercatores nota signanter cum (nar-
rando in his quae peccant) dicit. Nono transferen-
dose ad regiones remotas & nimiam moram tra-
hentes, & ibi cum diuersis etiam alienis vxoribus
adulterium committendo, & suis causam adulterij
praebendo, de quibus quot mala proueniant dicit
ipse, nemo est qui ignoret, quod tu nota contra
mercatores transferentes se in regiones Indiarum
Maris Oceani. ibique nimiam moram trahentes. De
religiosis autem dic quod in tribus casibus in
eodem genere peccati plus peccant quam laici.
Primus cum religiosus peccat contra votum reli-
gionis, veluti fornicando contra votum continen-
tia, vel furando contra votum paupertatis, &
contra praeceptum decalogi. Secundus cum peccat
ex contemptu cum per id sit ingratus diuini benefi-
cij, quo sublimatus est, ad perfectionis statum.
Tertius propter scandalum, quia multi ad eius
vitam respiciunt, sed si religiosus non ex contemp-
tu, sed ex infirmitate vel ignorantia peccat non
contra votum suae religionis, & occulte, & absque
scandalo leuius peccat eodem genere peccati quam
secularis, nam ex multis bonis qui facit quasi
absorbetur peccatum illius si sit leue, & si sit
mortale facilius ab illo resurgit propter intentio-
nem quam habet erectam ad deum, quae licet ad
horam intercipiatur de facili reparatur, & quia
iuuatur etiam a socijs ad resurgendum. Haec sunt
ex S. Tho. 2. 2. q. 1. 186. art. fi. & tradit Ioan. And.
in c. accusatus. de haere. lib. 6. & nota quod non
est iniungendum in poenitentia monacho ieiunium,
in speciali propter scandalum fratrum. 20.
q. 1. c. monachi. & §. fi. potest tamen puniri in
ciborum abstinentia cum & sine scandalo possit
comedere magis vel minus, si tamen esset mona-
chus solitarius posset ei indici ieiunium. videas per
Hosti. vbi supra charta. 16. co. 1. vers. si sit

monachus, & de monachis. ibi etiam videri poteris,
de excessibus aliarum personarum.

Appendix 3: SP 1.1.2 gl. ›Casamiento¹⁴⁷

[fol. 4r] Consensus animorum non est de iure
naturali: quia de eo non participant animalia
bruta: sed motus ad coitum, & ipsa carnalis com-
mixtio, bene sunt de iure naturali. cum talis motus,
& coitus fuerunt ante ius gentium, vel ciuile & de
stimulis & instinctu naturae praecesserunt. & de eo
etiam animalia bruta participant, nec consideratur
licitum ab illicito, nec per hoc potest dici, quod ius
naturale inducat ad peccatum: quia eo iure quilibet
coitus maris, & foeminae erat impunitus, & per-
missus. neque erat distinctio filiorum legitimorum
& spuriorum, vt in authen. quibus modis natura.
effi. sui. §. penul. & fina. postea per alia iura
fuerunt distincti coitus, & aliqui reputati liciti, alij
illiciti, & licitus coitus appellatur matrimonium,
ex quo liberi procreantur, & memoria parentum
conseruatur. sic Iacobus de Arena. quem sequitur
Albericus declarat in dict. §. ius naturale. & his
dictis, videtur etiam assensisse Baldum ibi. dicit
tamen, quod coniunctio illicita potest considerari
dupliciter, vno modo quantum ad esse, alio modo
quantum ad deformitatem esse. [fol. 4v] Primo
modo, copula carnalis est de iure naturali: quia ius
& bonum conuertuntur. Secundo modo, non est
de iure naturali. Aduerte etiam quod nos: non
qualemcunque coitum maris, & foeminae matri-
monium appellamus, sed illum qui hominibus
licitus est secundum rationem, qua Deus dotauit
hominem mediante, scilicet matrimonio, & istud
est, quod vult ista litera &. d. §. ius naturale: cum
dicit quam nos matrimonium appellamus, vt sit
sensus, non quod ipsa maris & foeminae copula sit
matrimonium, sed quod sine matrimonio etiam de
iure naturali nobis licita non sit, vnde sequitur, nos
ideo maris, & foeminae coniunctionem, matrimo-
nium appellare eo, quod aliter quam ex matrimo-
nio nobis licita non sit, & idem vult. S. Tho. 3.
parte cum tractat de matrimonio. q. 4. arti. 1. quod
matrimonium eo modo dicitur de iure naturali
quo natura ad illud inclinatur & mediante libero
arbitrio completur, quia ratio naturalis ad ipsum
inclinatur dupliciter quantum, scilicet ad bonum

146 LÓPEZ (1555) vol. 1, fol. 22v.

147 LÓPEZ (1555), vol. 1, SP 1.1.2 gl.
›Casamiento‹ (fol. 4r sq.).

prolis, non solum in generatione verum etiam in procreatione & disciplina cum secundum Philosophum, tria sunt quae a parentibus habemus esse scilicet, & nutrimentum & disciplinam. Secundo quo ad secundarium finem matrimonij qui est mutuuum obsequium sibi a coniugibus in rebus domesticis impensum. Apparet ergo iure naturali hominibus illam tantum copulam conuenire: quae ratione, & iure subsistat, qualis est coniugalis, vt eleganter tradit Fortu. in dicto. §. ius naturale, & vult Ioannes Lupi Segouiensis in tracta. de matrimonio. colum. quinta. hoc idem vult Ioannes Fab. in principio institu. si quadru. paupe. feci. dica. dicens, quod cum homo sit rationalis a natura quicquid ratio dissuadet est sibi contra naturam. Cum igitur naturalis ratio suadeat foedus coniugij, & caeteros amplexus dissuadeat, non dubium facere hominem contra naturam caeteros sectando, quos ratio naturalis abhorret, & dicit Sanctus Thomas in quarto sententiarum distinct. 26. quod matrimonium prout est in officium, generandi prolem, quae erat necessaria, etiam peccato non extante: institutum fuit a Deo, etiam ante peccatum adae, vt patet Genesis. 2. Crescite & multiplicamini. &c. Sed vt est remedium contra peccatum institutum, fuit post peccatum tempore legis naturae, Secundum vero determinationem personarum contrahentium, institutum fuit in l. Moysi, Secundum vero quod est sacramentum repraesentans coniunctionem Christi, & ecclesiae, institutum est in noua lege, & secundum hoc est sacramentum nouae legis. Ex praedictis posset decidi quaestio an inter indos maris Oceani qui in sua infidelitate & gentilitate accipiebant vxores fuerit verum matrimonium: quia vt audiui in multis gentibus illarum prouinciarum erat maxima ruditas & ignorantia, & erant vt homines

siluestres & sicut dicit Tullius in primo rethoricae homines a principio seculi siluestres erant, & tunc nemo sciuit proprias neque certas nuptias in quibus matrimonium consistit, & dicit. Sanctus Thom. 3. parte quaest. 41. artic. 1. supra relato in responso ad secundum quod verbum Tullij potest esse verum quantum ad aliquam gentem: si tamen accipiatur principium proximum illius gentis per quod ab alijs gentibus est distincta, ex quo videtur velle quod si in tali gente deficeret ratio naturalis quae inclinatur ad matrimonium cum certa muliere, propter effectus supradictos non esset verum matrimonium, quod reputo difficile ad cognoscendum: quia regulariter in omnibus gentibus matrimonium producit ad effectum per id ad quod naturalis ratio inclinatur, neque dictum Tullij est verum vniuersaliter cum dicit de principio seculi: quia sacra scriptura recitat fuisse coniugia a principio humani generis.

Appendix 4: SP 3.18.77

gl. ›Desde Seuilla fasta la Rochela‹¹⁴⁸

Non erat tempore quo leges istae conditae fuerunt, ita spaciosa sicut nunc Hispanica nauagatione, nam temporibus nostris verificatum videmus in Hispania illud Senecae in tragedia Medae, venient annis secula seris: quibus Oceanus vincula rerum laxet, & ingens pateat tellus: tephisque nouos detegat orbis, neque sit terris vltima Thule. Summo & omnipotenti deo placeat qui nouum orbem Hispaniae dedit Christiana eum religione perpetuis temporibus communire, summa cum felicitate regum nostrorum, & totius nostrae reipublicae vtilitate.



148 LÓPEZ (1555), vol. 3, 3.18.77 (fol. 109r).

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