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## Translation of the Preliminary Discourse to the Teatro de la legislación universal de España e Indias

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**TEATRO DE LA LEGISLACIÓN UNIVERSAL  
DE ESPAÑA E INDIAS:  
PRELIMINARY DISCOURSE**

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Translated by H. Barlow Holley<sup>\*</sup>

Keywords: Spanish law, legal history, *fueros*, canon law, colonial law, codification/compilation



Book I

*Janua difficilis filo est inventa relecto.*

[“The difficult door was found by the thread (of Ariadne) gathered up again.”]

Ovid. *Metamor.* Bk. VIII.

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The *Teatro* was published in Madrid, at the Printing Press of Manuel González, in 1791

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1 Although Natural Law and the Law of Nations should be the foundation and rule of the civil Legislation of every Catholic and cultivated Nation, nevertheless, as the same laws may necessitate that legitimate Powers determine, confirm, and contract [Natural Law and the Law of Nations] to the times and circumstances of the State, these determinations, or positive laws, and the Codes that contain them are most desirable and absolutely necessary, as much for the sound judgment of forensic [i.e., judicial] affairs as for the governance of civil life.

2 **Causes of the multitude of Spain's Codes and Laws.** In our Spain, as a result of the revolutions which its political constitution has suffered with the victories of the Goths, the invasion of the Mohammedans, and other lesser [invasions], the number of Codes, called Civil, Canon, and Royal, has grown considerably, as have those of uncompiled Resolutions on one or the other Law[s]. When that same Spain was subject to the Roman Empire, it obeyed its laws,<sup>1</sup> but as soon as the Goths dominated it, [such obedience] ceased, or at least the observance of that Jurisprudence was weakened in the extreme. Given that the Gothic Nation [was] as inclined toward arms as it was alien to letters, it did not substitute other laws until after many years had passed [after the establishment of] its Monarchy, and it appears that it governed itself by usages and customs. Afterward, the sacred Literature flourished among the Ecclesiastics, and the two Powers, spiritual and temporal, being consummately united, appropriate regulations of both species of Powers were established in the National Councils.

3 **Origin and idea of the *Fuero Juzgo*.** From these rulings, and from other ones authorized and published by the Gothic Kings, was formed the *Fuero Juzgo*, which was promulgated in the year 693 of the Christian Era. This Code, the first of the Nation and of its own law, is divided into 12 books, and is subdivided into several titles.

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1. Arthurus [Arthur] Duck, *de Usu et auctoritate Jur[is] Civ[ilis] Rom[anorum] in dominiis principum Christianorum* (London, Richard Hodgkinson, 1653) (U.K.),] Bk. II. ch. 6. § 4.

In the first of those [books] is set out the election of the Princes, the Legislator, and the laws; in the second, that of the Judges, civil trials, and the persons and instruments that intervene in them; in the third, that of matrimony, venereal [i.e., sexual] crimes, kinship, inheritance, and tutors, concluding with the title on foundlings; in the fifth, that of alienation of things belonging to Churches, donations, and contracts; and [the Code] lastly discusses manumissions. Accusations and the sentences corresponding to various crimes are addressed in the three following books; in the ninth, that of fugitive slaves, deserters, and the immunity of Churches; in the tenth, that of partitions of lands, prescriptions, and public boundaries; in the eleventh, that of [medical] Doctors and patients, the violation of sepulchers, and Merchants; and in the twelfth and last [book], that of equity, heretics, and injuries. Now, it is seen that the more excellent this Code is in certain respects, the more typical it is of an elective Monarchy rather than of Spain's present Monarchy, which is heritable for the Kingdom's happiness, and the former [Monarchy] conforms more to a warlike Nation not well consolidated and which cares little for agriculture, the arts, and commerce, which are the bases of a strong and cultivated Empire, as the Spanish [Empire] is today.

**4 Causes of the observance of the *Fuero Juzgo* having been altered.** Nevertheless, the Kingdom's political constitution continued in this way until the Mohammedan invasion occurring in the year 714 changed and almost annihilated it. That fatal catastrophe made the remains of the tottering Monarchy retreat to the mountains of Asturias. From here, Don Pelayo [Pelagius of Asturias], descendant of the Royal blood of the Goths, and afterward his august Successors, were little by little shaking off the Muslim yoke, and extending our Holy Religion with their victorious arms up to the Peninsula's borders.

**5 Necessity and origin of other *fueros*.** In those calamitous times, the Kings needed the immediate aid of the Grandees and Hidalgos, those who served them with their persons, and people funded

at their expense. For this reason, it was necessary to remunerate such good services made to the State and to the Fatherland with lands that were being acquired in the conquests, dividing them among the same Grandees and Hidalgos—[these lands being] already inhabited by vassals or with the purpose of being populated afterward—along with other corresponding privileges. When some considerable City or Village was won, it was normal, and almost necessary, to bestow to their Conquerors and Settlers various Royal land grants, and the *fuero*, named from the population, like that of Toledo, Seville, etc. Also, it was necessary to promulgate the Hidalgos' own *fuero*. Their rights were many and considerable, and their observance then, more indispensable than ever. These circumstances occasioned the publication of the *fuero* called [the *fuero*] of the Hidalgos, and finally it was equally necessary to promulgate a *fuero* for government in general and the conduct of actions [i.e., lawsuits], like the *Fuero Viejo*, which was published in the year 992 and other similar ones.

6 Dr. Don Francisco [de] Espinosa el Tío [“the Uncle”] addresses all these ancient *fueros* with erudition and soundness in the valuable manuscript that he created in the sixteenth century; but I, considering that many of such *fueros* are peculiar and for this same reason [that] they do not correspond to the plan of my Work and [also considering] that others are not printed and consequently lack the necessary publication of all laws, [for] which in subjects so remote it was necessary that today the printing press facilitated [the publication], I will give only a brief idea of the *Fuero Viejo*, which in the year 1771 two illustrious Jurisconsults<sup>2</sup> printed and published.

7 **Analysis of the *Fuero Viejo*.** This *Fuero* comprises the ancient and general usages and customs of the Nation, especially th[ose] which correspond to the administration of particular [i.e., private] law and justice and also several past *fazañas* or rulings that

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2. Drs. Don Ignacio Jordán [Claudio] de As[s]o [y del Río] and Don Miguel de Manuel y Rodríguez [el malogrado (“the ill-fated”).] IGNACIO JORDÁN CLAUDIO DE ASSO Y DEL RÍO & MIGUEL DE MANUEL Y RODRÍGUEZ, *EL FUERO VIEJO DE CASTILLA* (Madrid, Joachin Ibarra, 1771) (Spain).]

had acquired the authority of [a] thing adjudged [*res judicata* (or *causæ finitæ*) and] which then served as rules to determine similar cases and actions. All of it is divided into five books, each one composed of divers titles. In the first of those [titles] are prescribed the laws corresponding to royal prerogatives, surrenders of the *Castillos* [Castles] to the King, and rights and government of the vassals, Grandees who are expelled by the King from his land, the settlement of duels, prohibition of [private] forces, and the mode of preventing them [the raising of such forces], [and] vassals [who resided on lands belonging to the King], towns with elective rather than hereditary lords [*behetrías*], and their *fueros*. [The first book] concludes with a title on investigators against the powerful who caused vexations against the said vassals and in their towns, unduly demanding of them [obedience to] some provisions. The penal laws against various classes of crimes are included in the second book; in the third, those corresponding to the régime for persons who intervene in judicial proceedings, and to their evidence and sentences. [The third book] ends with some titles that address debts and their sureties and securities. In the fourth are discussed some contracts, the mode of acquiring ownership of things, public works, and the building of mills. In the fifth and last book are found dispositions relating to dowry pledges, inheritances, [and] partition of lands that are given on terms, and it concludes with titles pertaining to tutors, disinherisons, [and] legitimate and illegitimate children, with an appendix of this same *fuego*.

**8 State of the Monarchy which the *Fuero Viejo* denotes.** In this work were lacking, as in the *Fuero Juzgo*, appropriate regulations so that agriculture, the arts, and commerce might flourish, and besides, it is recognized in the titles that discuss duels, forces, investigators, and other such things, that the Monarchy and its Government did not then have the just and necessary power—for the purpose of containing the powerful within the limits of reason—and due subordination to the Sovereign and to the Fatherland [which are] jointly indispensable to public tranquility and happiness. Thus, this

Legislation, no matter how esteemed it may be, and although necessary in order to understand many modern laws that address vassalage, allodial lands [i.e., lands held *in allodium*], towns with elective lords, duels, the Grandees' and Hidalgos' prerogatives, and other things in this vein, it was, nevertheless, as the Critics say, typical of feudal Anarchy; and it neither agrees nor can be reconciled in many points with the flourishing and vigorous state of our [present] Monarchy.

**9 Notable events that altered Jurisprudence in Spain and in all of Europe.** Since the year 992, in which the *Fuero Viejo* was published, until that of 1255, in which the [*Fuero*] *Real* or [*Fuero*] *de las leyes* was promulgated, two notable events occurred in the literary World, especially in the juridical one: one was the public teaching of the *Digest*, and other parts of the Civil Law, called Common [*ius commune*], which began to take place at the University of Bologna; and the other was the formation of the *Decretum* [*Gratiani*], privately executed by the monk Gratian in the year 1151, and the compilation of the Decretals [or *Liber extra*] in the year 1236 by St. Raymond of Peñafort [or Penyaafort], by virtue of the Supreme Pontiff Gregory IX's order, and also, above all, the public teaching of this Canon Law in the same University of Bologna.

**10 Reasons why Civil and Canon *Ius Commune* were extended to all of Europe.** As, on the one hand, there had not been at that time other general Studies in Europe and all the professors happened [to be] at that University and [since], on the other hand, the said Civil and Canon Bodies [of Law] had been more organized and had contained more enlightened principles and rules in all branches of Jurisprudence than the particular principles and rules of each Nation, these [Bodies of Law] spread throughout all of Europe with such universal praise and fame that each Kingdom was adopting the study of the same Civil and Canon Codes in the subsequent erection and establishment of their respective Universities, where their study survives up to today.

**11 What merit Roman Law may have.** I disregard the orderliness or disorderliness of these Civil Bodies [of Law] and the justice and utility of their decisions [i.e., rulings], about which there is currently a very lively and intense controversy among the Law Professors, and in my opinion, it is well that [those Bodies of Law] contain much learning. I see that the famous [Jean] Domat did nothing more than sort them out, methodizing them in his work known by the name of *The Civil Law* [*Les loix civiles dans leur ordre naturel*], [a work] arranged by [a] natural order. I see that the celebrated Wolfius [Christian Wolff] and other Authors of Natural Law and the Law of Nations, who address Jurisprudence in a philosophical and geometric way, differ very little from the Civil Law as regards contracts, last wills [and testaments], and other parts of particular [private] Law. Finally, I see that the same occurs with the Institutes or Code that the famous Frederick II [the Great], King of Prussia, formed for the good government of his Kingdoms.

**12 Reasons why Civil Law is inserted into this work.** But, in all honesty, captivated by a species of enthusiasm toward the Civil Law, I have almost involuntarily drawn myself away from the principal object of my Work, since to include [the Civil Law] in my Work it suffices that in ancient [times] it was the Law of Spain, that almost all had been adopted and authorized by King Don Alfonso [X] the Wise in his celebrated Code of the *Partidas*, which is currently studied in our Universities, that it [the Civil Law] is the language of our Laws and Jurisconsults, and that it is permitted to cite in the absence of Royal laws.<sup>3</sup>

**13 Origin and idea of the *Pandects* or *Digest*.** The continuous study of this [Civil] Law that the Professors in our Universities and accurate histories make, like those of [Giovanni Vincenzo] Gravina and [Antoine] Terrasson which explain it, causes few Jurists to ignore the origin, formation, and method of the Civil Codes. For this

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3. *Aut[o Acordado]* I, tit. I, bk. II, *Recop[ilación]*.



reason, and that of [the Codes] not having legislative force in Spanish dominions, I will give only a general idea of such Bodies of Law as may be conducive to my ends. It is widely known that the Emperor Justinian ordered the formation of the *Digest* and that by his order the Jurisconsults Tribonian, Theophilus, and Dorotheus composed it, giving to it such a name because they oversaw it, shall we say, or [because] they selected from innumerable Codes and Roman laws that had been scattered as much as if the same were executed now in Spain. This work was published in the year 533, composed of 50 books, each one divided into divers titles. [The *Digest*] thus comprehends private Law, or that corresponding to persons considered in a private state, which addresses contracts and other subjects of this class, as well as public [Law], which pertains to the State of the Empire, such as the establishment and government of Tribunals and many other topics of the same nature.

14 Its general method is reduced to addressing persons first, afterward things or property, and lastly actions. [It is a] certainly very well-organized method, given that the first are the subjects of all Law; the second, [those] on which [the first] rests; and the last, the means of acquiring that which is due to each [person]. But it is suitable to note that persons are legally different when considered in relation to private Law than with respect to public Law. In the first concept, it is required only to examine the difference between those who have rights and those who do not, that is to say, between the parents and children of a family, lords and servants, in order for them to know if they can or cannot acquire ownership of things, enter into contracts, and appear in court, those subjects and similar topics about which private Law revolves; but public Law resulting directly in the good of the State, the consideration of persons in this Law and their differences consist in the degree and employment that they obtain in the Kingdom, that is to say, if they are Nobles, or [part] of the general State, Ministers, Judges, etc.

15 **Of the *Institutes*.** For this reason, persons under one or the other concept [i.e., Private or Public Law] are addressed in the first

book of the *Digest*, but [it is] not so in the *Institutes*, called *Civil*, because, being only one compendium of private or particular Law, [it] only discusses them in the first book. One need not notice anything notable in this work, except that it was formed in the same year of 533 for the easy and brief study of Roman law.

**16 Of the *Codex*.** In the following [year] of 534, another collection of the same Law reformed by the Emperor Justinian was published, and it is known by antonomasia with the name of *Codex*. Since it is composed of only twelve books, this [work] differs in its method from the *Digest* in the number of books: in view of the [fact] that from one of this work's title[s] are formed several titles in that work [i.e., the *Digest*]. Lastly, [the *Codex* differs from the *Digest* in that] the *Digest* for the most part includes the decisions of the ancient Jurisconsults of Rome; and the *Codex*, the constitutions and rescripts of the Emperors who preceded Justinian. Furthermore, the *Codex* [also diverges from the *Digest* in that it] addresses with more individuality and extent the topics pertaining to Public Law.

**17 Of the *Novellæ*.** The already indicated method of the *Digest* and *Institutes* so much conforms to any class of Jurisprudence that, as [Zeger Bernhard] [v]an Espen notes, Saint Raymond of Peñafort followed it in the collection of the *Decretals*, which is the same [method] that the *Sexto* [the Sixth Book of the *Decretals*] and other Canon Bodies [of Law] follow, and which [v]an Espen himself, [Julius Laurentius] Selvagius [Julio Laurencio/Laurentio Selvagio], and other famous Jurisconsults observe. Lastly, the *Novellæ* is nothing other than a collection of the Emperor Justinian's new constitutions and rescripts which was formed in the year 529, Justin I being [then] Emperor of the East.

**18 Civil Law's connection with Royal Law.** Despite the repeated derogations from the Civil Law made at divers times by Royal laws, which refer to an *Auto Acordado*,<sup>4</sup> its [the Civil Law's]

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4. *Aut[o Acordado]* I, bk. II, tit. I, *Recop[ilación]*.

connection with that of Castile and other Kingdoms of Spain, including those of the Indies, is so great that Sr. King Don Alfonso the Wise inserted and in large part authorized it, especially the private Law of the Civil Bodies [of Law], in his Code of the *Partidas*. Thus, many of the Kingdom's other, subsequent laws referred to it [the Civil Law], and in Aragon, Navarre, and Catalonia, it enjoys yet more acceptance. It is, of course, true that in the absence of these Provinces' private law, Roman law must not be resorted to, as some Authors want. Rather, to the Royal [law] of Castile [must resort be taken], as [Juan Martínez de] Olano and A[r]mendáriz<sup>5</sup> formerly considered, and it must now stand with more [of a] basis by virtue of two Royal Resolutions promulgated in this century, which give greater force of law to the latter opinion.<sup>6</sup>

**19 Differences between Roman Law and Royal Law.** Despite the close connection between the Civil Law and Spain's Law, there are innumerable important topics in the latter that are lacking in the former, many other [topics] are absolutely altered, and the political [laws] or public law almost cannot be adapted to our Monarchy's current constitution.

**20 When and why the study of Roman and Canon *Ius Commune* spread in Spain.** The Romans' legal bodies came down with

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5. [Juan Martínez de] Olano, in *Præfat[io], Concord[ia et nova reductio antinomiariū] Jur[is] Com[unis.] ac Regi[j] [Hispaniarum: in qua veræ horum iurium differentia, & quàmplurium legum regiarum, communiūque intellectus, & recepta praxis causarum forensium explicantur. Cui additæ differentia, ac concordia inter iur regium, & regni Nauarra. Et superadditus est perutilis epilogus legum septem partitarum, quæ per alias leges posteriores, & per desuetudinem, aut contrarium usum, in totum, vel partem correctæ, atque abrogatæ inueniuntur: per ordinem ipsarum partitarum, & titulorum digessus: in gratiam studiosorum iudicum, & advocatorum totius Hispanæ. Authore Ioáne Martínez de Olano, in supremo region Senatu & curia Catholica Advocato. Ad illustrissimum dominum Didacum Couarruias à Leiua Episcopum Segobiensem, & suppremi regij Senatus Præsidentem.* (Burgos, Felipe de Junta, 1575) (Spain)], no. 11. A[r]mendáriz in the Prologue of the *Recopilación* of Navarre [*Prólogo de la RECOPIACIÓN DE TODAS LAS LEYES DEL REYNO DE NAVARRA A SUPPLICACION DE LOS TRES ESTADOS DEL DICHO REYNO CONCEDIDAS, Y JURADAS POR LOS SEÑORES REYES DEL. ESTAN RECOPIADAS POR EL LICENCIADO ARMENDÁRIZ, NATURAL, Y VEZINO DE LA CIUDAD DE PAMPLONA, Y ABOGADO DE LAS AUDIENCIAS REALES DEL DICHO REYNO* (Pamplona, Carlos de Labàyen, 1614) (Spain)].

6. *Aut[os Acordados]* III and X, tit. II, bk. III. *Recop[ilación]*.

the fall of the Roman Empire in such a way that they were enshrouded or hidden among [the Empire's ruins] until the *Digest* appeared in Bologna at the beginning of the twelfth century. Irnerius, a Professor of Humanities in the school of that City, enamored with its doctrine, explained it publicly. From there, [Roman Law] spread throughout all Europe with utmost regard, causing one of the notable revolutions in the Republic of Letters, especially that of Astræa, as I have [already] noted. The other [Body of Law (Canon Law)] proceeded from the formation of the *Decretum* and *Decretals* and from the establishment of its public study and teaching, firstly in the same University [of Bologna] and afterward in all the [Universities] in Spain and the Indies. This outcome intimately and essentially links these Canon Bodies [of Law] with all those uncompiled Royal [Bodies of Law] and Resolutions of both Kingdoms, and [this in turn] makes me have to insert the subsequent *Decretals* and *Codes* in my Work and give some idea of them here.

**21 Canon or Ecclesiastical Law's Authority on certain points.** It seems to me accurate to assume that Canon Law, taken in a strict sense, obliges all the faithful on matters of Faith, Evangelical Morality, and [other] spiritual subjects conducive to the means and attainment of the unearthly and ultimate end goal of true Catholics. Furthermore, the Sacred Law has been the most important branch of public [law] of all civilized Nations, and even of the barbarians, and by innumerable laws of the Kingdom it has been confirmed and commanded to be observed. It has even been inserted almost entirely into the *Partidas* and other Royal Bodies [of Law].

**22 What is the authority of the Collections of Canons, and which correspond to the Monarchy's current state.** Such [acceptance] did not happen to each particular collection of Canons, and disregarding those previous to the *Decretum* and *Decretals*, which are not within my examination, the [collections] corresponding to this Monarchy can be reduced to the National Councils, the *Decretum*, *Decretals of the Supreme Pontiff Gregory IX* up to the *Extravagantes communes*, the Holy Council of Trent, and the Bulls

and Briefs admitted in Spain and the Indies. The national Councils are a precious treasure of the Catholic Faith's purity, wholesome and truly Evangelical Morality, and Ecclesiastical Discipline, adjusted to the Kingdom's times and circumstances in the respective epoch [in which] they took place. For this reason, many Canons and Decretals have been and are famous in the universal Church. Nevertheless, the difference[s] of those times and circumstances and other causes have made it that many points of external Discipline cannot adjust to the current constitution of Spain's Church, nor are these [Canons and Decretals] admitted by [Spain's] laws and customs. Even those jurisdictional points, which certain Authors celebrate with enthusiasm, seen in another respect have some drawbacks that not many years ago a wise Minister of State demonstrated in a censure or manuscript [i.e., handwritten] opinion that he gave by order of the Government on such matters.<sup>7</sup> These considerations prove that the National Councils should not be included directly in my Work.

**23 What authority or order does the *Decretum Gratiani* have?** No Canonist doubts that the *Decretum* lacks legislative force, since the Monk Gratian privately formed it and the Supreme Pontiffs have never given this collection such authority. On the other hand, the darkness that obscured the Republic of Letters in the twelfth century gave rise to Gratian inserting into his *Decretum* many truncated Canons and even several apocryphal Decretals, as our celebrated Archbishop of Tarragona Don Antonio Agustín [y Albanell], [Jean] Doujat, [v]an Espen, and the same [C]orrección [R]omana demonstrate. The said darkness and a lack of review occasioned the scarce method, or properly speaking, the disorder of this collection, of which I can testify by my own experience, since, having made the greatest of efforts to accommodate the *Decretum's* *distinctiones*,

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7. His Excellency Don Manuel de Roda [y Arrieta] of the Council of State and Secretary of the Universal Office of Mercy and Justice.

*causæ, quæstiones*, and Canons to the articles of this *Teatro* in topical order, I have not been able to achieve it exactly because of its miscellany, which comprehends that work in an appropriately called *quæstio*. In such terms so as not to lengthen and confuse my [Work] with the insertion of a Body [of Law] which is neither legislative nor useful, I have omitted inserting its extracts, contenting myself with indicating the corresponding *distinction, causa*, and *quæstio* in the small plan that precedes each article. For the same reason and having no more room in the Plan that precedes the *Teatro*, I have quit including it [in the *Teatro*]. Nevertheless, I offered to put it in the prospectus that I published for the subscription.

**24 Of the authority of the *Decretals* in general.** Although many Canonists hold that the *Decretals* of the Supreme Pontiff Gregory IX and other Canon Codes up to the *Extravagantes Communes* have the force of Canon law, even so the learned Theologian and Canonist Eusebius Amort holds in the prologue of the *Summa* or compendium of those very *Decretals*, not long ago published in the same Roman Curia, that neither that Supreme Pontiff nor any other one has issued them as legislative Bodies [of Law], but only so that the [*Decretals*] may be publically taught and expounded in the University of Bologna, because the Bull that is at the beginning of that Collection is addressed to it and to its Drs. and only aims at their public teaching in the School of that City.

**25 Of the authority of the *Decretals* in these Kingdoms.** But, whatever the case on this point, the enduring [truth] is that the aforementioned Canon Bodies [of Law] in almost all matters of judicial discipline and order are authorized by the Laws and customs of the Nation and the indisputable practice of its Tribunals, as much Ecclesiastical as Secular. King Don Alfonso the Wise adopted and inserted these same *Decretals* in the first and fourth *Partida[s]* of his aforementioned famous Code, to which many other laws of the Kingdom refer, and, to say it once [and for all], which, joined with the rulings of the Holy Council of Trent, and amended by that General Synod, by the laudable customs of Spain and the Indies, and by

the Bulls and Briefs admitted in both Kingdoms, form the Nation's surviving Practical-Canon Law. From this incontrovertible assumption are deduced the two following consequences: one, that the said Canon Bodies [of Law] are extremely [or intimately] connected with the Royal [Bodies of Law], and the other, that for the same reason they are conducive to the goal of my *Teatro*, and [that, therefore,] I must insert [in my *Teatro*] the [Canon Bodies of Law] joined with the uncompiled Canon decisions.

**26 Analysis of the *Decretals*.** As I have noted with [v]an Espen, Saint Raymond of Peñafort kept the method of the Pandects in the formation of the *Decretals*; since, although he divided them into only five books, each one [is] composed of different titles. In the first, after several preliminaries of a Canon Collection, Ecclesiastical Dignitaries and Persons are addressed, concluding with some titles concerning ecclesiastical trials, which is the subject of the second book. After returning to discuss the same Ecclesiastical Persons in another capacity and Benefices and Prebends, in the third book follow titles on the arrangement of various contracts [and] what should be understood of those [contracts] that deal with ecclesiastical property or that pertain to their jurisdiction on the grounds of the persons sued. This book thus continues discussing the immunity of Churches, of the Regular [Clergy], and like things. The fourth occupies itself absolutely in setting out matrimony and its antecedents and consequents, and the fifth and last occupies itself with criminal trials and the punishments corresponding to ecclesiastical crimes, such as simony, and also Ecclesiastical Persons. Hence, in the fifth book are found treatises on Censures, and it concludes in the style of the Pandects with titles on the meaning of words and rules of Law. As the *Sexto* and other later Collections keep the same order, I need not detain myself in their explication.

**27 Reasons why Saint King Don Fernando and his son Don Alfonso the Wise pondered and finally executed a new Code of general Legislation.** In this state of Civil and Canon Jurisprudence, Saint King Don Fernando III gave much more extension, strength,

and soundness to the Spanish Monarchy in the middle of the thirteenth century than it had had in previous times with the glorious conquests of the Kingdoms of Cordoba and Seville and with his consummate prudence and sound governance. Thus, that Monarch and his son and successor, Don Alfonso the Wise, knew that the multitude of particular *fueros* and the exorbitant privileges conceded to the Grandees and Hidalgos divided the Kingdom and, therefore, that in order to avoid its desolation, a Body of Laws or general Code was needed that, grouping all the classes of the State, notwithstanding difference[s] and ordered ranking, would prevent the fearsome and harmful effects of feudal Anarchy, restrain the Powerful within the limits of the obedience owed to the Sovereign, guard against factions and discords among the wealthy families and their respective vassals, and give general rules for good judicial order and the upright administration of justice.

**28 Analysis of the *Fuero Real*.** The death of the Saint King, having befallen shortly after the Conquest of Seville in the year 1252, prevented him from executing a project so salutary, but his son Don Alfonso the Wise carried it out through the formation of two legal Codes. The first is the *Fuero Real*, and the second, the *Partidas*, forming the former in the year 1255 so as it might serve as a precursor to the latter. The said *Fuero* is divided into four books, each one composed of several titles. The first of those titles begins with the laws that command observing the Catholic Faith, the King's guard and that of his children, thus prescribing the proper obligations of a Christian and a Vassal, which are the fundamental bases of true Religion [and] wholesome Morality and Politics. Afterwards follow the titles on the alienation of the property of Churches and regarding the laws [relating thereto], and it concludes with those pertaining to public offices, such as those of Mayors, Lawyers, Notaries, etc. The second book occupies all of itself in giving rules about judicial proceedings and, therefore, discusses the competent Forum, summons, the complaint's answer, all manner of evidence and exceptions, and it concludes by decreeing what is proper relative



to final judgments, appeals, and *res judicata* [*causæ finitæ*]. The third [book] first discusses matrimony, dowry pledges, community property, and partitions of lands that are given on terms. Afterwards, [the third book discusses] legacies and *fideicommissa*, inheritances and tutors, and the matters incidental to these subjects. From title 10 to the 20th and last title of this book are found laws pertaining to various classes of contracts. Finally, the fourth and last book begins discussing apostates, Jews, Saracens, and their slaves. It continues indicating the punishments for all manner of crimes and ends with titles on adoptions, emancipations, foundlings, pilgrims, and ships. From this short analysis, it follows that the *Fuero Real* is a Code formed principally for the upright administration of commutative and criminal justice among all the classes and Provinces of the Kingdom and, in a word, that it is a Body [of Law] similar to the *Institutes* of the Emperor Justinian or the *Codex Frederico*[-*Augustinus*], whose primary object is private law and judicial proceedings, in which the said Code is excellent. But, Public Law not being its principal end, [the *Fuero Real*] only indicates these subjects of State incidentally or as accessories to those of private Jurisprudence.

**29 Description of the *Partidas*.** The *Partidas*, which King Don Alfonso the Wise finished in the year 1260, is the complete Body of Law that gathers together Public Law as much as Private Law, and it comprehends it all with a scientific, sound, Christian, just, and equitable method. [It is] in all respects and truly a Code and [one] which will perhaps not have an equal in Europe. Indeed, the first *Partida* is a detailed compendium of the Canon Law that flourished in that epoch. The second [*Partida*] is a tried and true summary of the ancient *fueros* and customs of the Nation, which forms a legal history of the same, and it also comprehends the most wholesome Politics. The third, fifth, and sixth *Partidas*, in short, contain the best [Law], including Roman Law on lawsuits, contracts, and last wills [and testaments], all adjusted to the constitution of the Monarchy in that time, and deciding various uncertain points in the Civil Law. The fourth *Partida* is a compendium of the Canons and Civil Laws

pertaining to betrothals and marriages and their incidental subjects. The seventh and last *Partida* is the same [i.e., a compendium] regarding crimes and punishments, ending in the style of the *Pandects* and *Decretals* with titles on the meaning of words and rules of Law.

**30 Excellence of the *Partidas*.** This work, for whose praise the Nation's Politicians and Wise Men<sup>8</sup> do not find words sufficient, comprehends so many and so sound rules of Religion, Justice, and pure and Christian Politics that a thick volume would be necessary to gather together the principal rules, and in all honesty, what more orderly and useful disposition [could there be] than that which prescribes the Kingdom's succession?<sup>9</sup> What more convenient and advantageous [means could there be] than that which provides that the King should honor all the classes of serviceable vassals with inclusion of craftsmen and artisans by the reasons that it proposes?<sup>10</sup> Where [else] is found another thing more in accordance with the spirit of the Gospels than that which commands honoring and supporting the true, recent convert to our Holy Catholic Faith?<sup>11</sup> What is more humane and equitable than that which subdues the infamy of true criminals without transcendence to their families?<sup>12</sup> And finally, what is more advantageous to the people than that which promotes marriages with the most persuasive reasons?<sup>13</sup>

**31 When the *Partidas* were published.** Nevertheless, because the Powerful already knew of the blow that the publication of the *Partidas* was going to give to their excessive privileges and for other political reasons that intervened shortly after their formation, [publication] was not done until the year 1348 in the *Cortes* that took place in Alcalá de Henares under the reign of Don Alfonso XI, and it is probable even that the death of this Monarch, having befallen

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8. Among others, Don Diego de Saavedra Fajardo and Don Gregorio Mayáns y Siscár.

9. L[aw] 9, tit. 9, *Part[ida]* I.

10. L[aw] 3, tit. 10, *Part[ida]* II.

11. L[aw] 6, tit. 24, *Part[ida]* VII.

12. L[aw] 9, tit. 31, *Part[ida]* III.

13. L[aw] 1, tit. 20, *Part[ida]* II.

shortly afterward in the year 1350, impeded the effects of its publication, and [the *Partidas*] were not completely effective until the year 1505 when [such effect] was given by King Don Fernando [II the Catholic] and Queen Doña Juana [I the Mad] in the *Cortes* that took place in the City of Toro.

**32 Of the *Leyes de Estilo*.** In the time that spanned from the formation of the *Partidas* to their first publication done in the *Cortes* of Alcalá, only the *Leyes de Estilo*, which added up to the number of 252 without the least division into books or other members or parts, were promulgated in the year 1310. Most [of the laws] address judicial proceedings, civil as well as criminal, and, therefore, the persons and evidence that intervene in them, and some also discuss contracts and last wills [and testaments]. As the[ir] style is the custom of the Courts and Tribunals in proceedings to conduct trials, it is a natural consequence that the said laws include all that which in that time was practiced in the conduct of actions and forensic affairs besides that which was not contained in the *fueros*, and even sometimes in particular cases against what was provided in [the *fueros*], just as a legitimately introduced, special custom derogates the general Law. Finally, [there is] that which later laws of the Kingdom provide regarding these same *Leyes de Estilo*, [which] is that they are to be observed inasmuch as they have been well received in practice.<sup>14</sup>

**33 In what National [i.e., Domestic] Jurisprudence consisted until the middle of the fourteenth century.** In accordance with these antecedents, until the middle of the fourteenth century Spain's Jurisprudence consisted of the ancient and general usages and customs of the Nation reduced to Codes, which are the *Fueros*, and in those pertaining to judicial proceedings, which were written afterward, in this way forming the *Leyes de Estilo*, since, even though the *Partidas*—which include besides a considerable multitude of

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14. L[aw] 3, tit. 1, bk. II, *Recopilación*.

Canon and Civil decisions corresponding to all the branches of Private and Public Law—were already composed, they could not govern in forensic and political affairs, as they were not published until the year 1348 in the *Cortes* of Alcalá

**34 From the beginning of the sixteenth century the aspect of National [i.e., Domestic] Jurisprudence changed.** From this time and markedly after the *Cortes* that took place in Toro in the year 1505, National [i.e., Domestic] Legislation took on another aspect. [This was so] because, [on the one hand,] the Laws of the *Partidas* [were] already authorized and published in order that they govern when there was no *Fuero* on the matter<sup>15</sup> and, on the other hand, the inclination of the Practitioners of the last centuries being very impassioned, no less toward the Civil Law as toward the Canon Law of the *Decretals* with which the same *Partidas* concur, such Laws continued to be introduced and observed, which survive until today with certain modifications.

**35 Of the *Ordenamiento de Alcalá*.** These reforms and many new Laws or Pragmatics were published in accordance with how the cases arising and the times and circumstances of the State demanded it. After there were a considerable number of them or many were formed in one go, the [Laws or Pragmatics] were compiled into one or more volumes by virtue of Royal Orders, giving them legislative force. Of this latter class the first Code is the *Ordenamiento de Alcalá* made and authorized in the said *Cortes* [of Alcalá] and in the year 1348, which [Code] is divided into thirty-two titles, each one composed of divers laws relating to the order of conducting proceedings, arranging some contracts and testaments in part, and curbing and condemning crimes with corresponding punishments.

**36 Of the Laws of Toro.** The second [of this class of compilations] is that one which comprehends the 83 Laws that were made and published in the celebrated *Cortes* that took place in the City of Toro in the year 1505 in order to arrange solemnities of testaments;

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15. L[aw] 3, tit. 1, bk. II, *Recopilación*].

testamentary and abintestate successions; special, extra portions of the one-third and one-fifth; the order of succeeding in Spain's Primogenitures; the alimonies that fathers must pay to illegitimate children; the right of rescission [i.e., the right of first refusal]; the punishment for adultery; and other incidental subjects. [Since all of these] laws [are] inserted into the corresponding titles of the *Recopilación*, I summarize them in this Body without making particular mention of them.

**37 Of the *Ordenamiento Real*.** Before and after the *Cortes* of Toro, several collections of the Pragmatics, *Cédulas*, and other Royal rulings that have been successively published, were made, as the circumstances of the Monarchy and arising affairs had demanded it. The first of them is that known by the title of *Ordenamiento Real*, authorized and published by the Catholic Monarchs Don Fernando [II of Aragon] and Doña Isabel [I of Castile] in the year 1496, [itself] laid out into eight books, and these, into divers titles, in which are located absolute or partial derogations from the ancient *Fueros* and Laws and also the newly established Laws in some matters. [As it is the case] that the greatest part of these Laws are inserted into the *Recopilación* and that the titles of that former Body [of Law] correspond with those of the latter, I should not detain myself anymore in their explication.

**38 Of the *Recopilación*.** The *Recopilación* was thus first published in the year 1567 by virtue of King Don Felipe II's order, which authorized it and made it include the laws of the *Ordenamiento de Alcalá*, the [*Ordenamiento*] *Real*, all the [Laws] of Toro, and others that had been published in the interval, that were not found derogated. From the said year of 1567 until that of 1777, several editions of this Body [of Law] have been made with some short additions, unless this title be given to the *Autos Acordados*, or rulings and reports of the [King's] Council authorized and published by the King and that by virtue of Royal Order were gathered together in a volume divided into books and titles under the same method as that of the *Recopilación*. [The *Autos Acordados*] were published for

the first time in the year 1745, forming the third and last volume of the same *Recopilación*, with which it concordantly runs and [which] has been reprinted with small additions.

39 **The *Recopilación*'s method.** These two Bodies [of Law, i.e., the *Recopilación* and *Autos Acordados*] are divided into nine books, each one composed of divers titles. With the purpose of including the derogations or amplifications of the antecedent laws and only some new ones for resolving doubts, cases and actions that ensued in accordance with arising circumstances and which presupposed an arranged Code, which are the *Partidas*. [As] the Compilers of the *Recopilación* and *Auto Acordados* also assumed [the applicability of] the general, scientific principles and rules of private and public Jurisprudence, [the two Bodies of Law] did not keep any other method than that conducive to their principal end, [that method] which is reduced to giving a species of manual and collection in which the proper modifications and new laws published for insinuated reasons, might be found with ease.

40 **Analysis of the *Recopilación*.** Indeed, in the first book after the title on the Catholic Faith, there are up to twelve [titles] that address Ecclesiastical subjects added to the old ones, in whose number it is worthy of noting the title on Royal Patronage [*el patronato real*] and that of other Patrons and the title on the Commission of the Crusades. The second [book] begins to discuss the laws, and there follow many titles which prescribe the obligations of Presidents and Judges of the *Audiencias* and Chancelleries and of their subaltern Ministers. The fourth [title], which addresses [the obligations] of the King's Council, is especially significant. The third book begins with the establishment and arrangement of various *Audiencias*, afterward discusses the *Corregidores* [or *Alcaldes Mayores*] and *Residencias*, and continues [by] providing [laws] about the *Alcaldes de Sacas*, the Jurisdiction of the Prior and Consuls of Bilbao, the Council of the *Mesta*, [and] the Court's Chamberlains. It concludes with titles concerning the First Physicians [to the King] and Examiners of Medicine, Apothecaries, Blood-letters, and Veterinarians.

41 In the first title of the fourth book are found the proper rules for maintaining the just rights of the Royal Jurisdiction. Afterward, up to title 22, [there] are discussed judicial proceedings with some novelty regarding old Jurisprudence, prescribing the circumstances of the Court's cases and what term there is for the answer of the demand, pleading dilatory or peremptory exceptions, and impeaching witnesses. The order of conducting actions in the first and second instance; of proceeding in case of the litigants' default; of the *Cédulas* [i.e., letters patent] that are issued against the law, recusals, sentences, appeals, first and second petitions, executions, deliveries, and of costs and their assessment are addressed as well. From title 23 to the 33rd and last title, the obligations of Court and Chancellery Bailiffs and of Jailers are laid out, and [the fourth book] concludes with some court fees of various officials of justice.

42 In the fifth book, these three subjects with ones incidental thereto are principally included: first, that of betrothals and marriages; second, that of inheritances and successions; and the last, that of contracts, concluding with titles regarding Mints and their officials, silversmiths and goldsmiths, and the rate of bread. In this book are notable titles: the fourth [title] that discusses the agents empowered to make testaments, a peculiar subject and one not very old in our Jurisprudence; the sixth [title] that gives powers for the extra portions of one-third and one-fifth, albeit today these are found to be restricted by the Royal Decree issued on the 28th of April of 1789; the seventh [title] that provides the rules for succeeding in Primogenitures, which title, being the first one that is found in our Codes, proves that its foundations were not previously so common and known; lastly, title 15 is special for prescribing the rules that are to be observed in the annuity land rents, about which there were previously several debates.

43 The treatises or titles of the sixth book are more in conformity with Spain's ancient *Fueros* and with those that are contained in the second *Partida* than are the other titles, since they [the treatises and titles of the sixth book] address the Noblemen and Hidalgos, towns

with elective lords, vassals, and jointly castles and forts, the King's Court and Attorneys, Ambassadors and the chief Messenger, imposts, tributes, tolls and state-run shops, *yantares*, treasures, gold and silver mines, and things prohibited to be taken out of the Kingdom. It concludes with titles on huntsmen, poulterers, the King's hunters, and the Kingdom's cartwrights, among which are found [titles] concerning the breeding of horses of good stock and another [title], which is the last, concerning servants in general.

44 The seventh [book] begins with the important subjects that lead to the good government of City Councils: [the] guardianship of the privileges of Cities [and] municipal offices [and] resignations from public offices, the property and rents of Councils, apportionment, public boundaries, and hunting and fishing. Then follow several titles that have no connection among themselves or with their antecedents, like the tenth [title], that discusses ships; the eleventh, which discusses artisans and workers; the twelfth, which discusses dress and clothes; the thirteenth and following titles up to the seventeenth, which discuss textile mills. It concludes with those titles that address wax and tallow chandlers, tanners, and the Kingdom's boilermakers.

45 The eighth book retains more connection among its titles and subjects, since it begins with [the title on] investigations and investigators for uncovering and punishing crimes. The punishments corresponding to each class of crimes are imposed in the following titles up to title twenty-three, among which the eighth title—which imposes the ultimate punishment [i.e., death] to him who challenges to duel or who accepts the duel, along with other grave punishments, like that of outlawry—is worth noting. In this imposition is seen the difference between the [current] Monarchy and the ancient and modern Laws, since, the State not then having the forces sufficient to contain by the processes of justice the excesses of the Grandees and Hidalgos and the injuries that were reciprocally made to each other, aided by their families and partisans, it was a stroke of excellent and useful policy for the Houses and the Kingdom to permit and



authorize dueling under certain rules which curbed the excesses in order not to run the risk of such a terrible quarrel and which prevented homicides. [This was so] because convincing evidence of a real and grave injury was now necessary to proceed to the duel, and because Hidalgos were classified as perfidious and infamous who would go on to take justice by their [own] hand[s] without these requirements, [just as] those [Noblemen] who did not accept just dueling or who broke the peace or the established truce among the same Hidalgos [were so classified], so that the hideous circus prepared for the duel, that seemed like the bloody theater of homicides, was [precisely] that which timely prevented the homicides. Thus, few of those solemn duels are mentioned in the History of Spain, and the Hidalgos subdued the torrent of their power and factions and properly had to prefer the judgment pronounced by the Judges and Tribunals to that of a haphazard and fatal sword strike.

46 Nevertheless, as[, on the one hand,] duels were frequent after that Epoch without observing the solemnities of dueling and under the ridiculous pretexts of a fantastic honor and, on the other hand, as the King and his Government had fortunately acquired from the Nation the forces sufficient to contain the most powerful noblemen and to classify their grievances in the Tribunals in accordance with the limits of reason and justice, dueling, which, [besides], is a species of direct contempt for Royal and legitimate Authority, has been justly prohibited with such grave punishments. But, returning to my intent, from which I have almost involuntarily separated myself through the importance of such [an] event [i.e., dueling], the book [to which I] referred concludes with titles leading to those convicted by Justices, pardons, and punishments from Chambers [*in camera*].

47 The ninth and last book occupies itself in addressing all the branches of the Royal Treasury and, therefore, discusses in the first place the great Comptrollers and Judges of the Revenue Office who today compose the Royal Treasury Council and right after [them] the High Revenue Office. Afterward, it discusses the judicial proceeding in actions involving taxation, their [the tax collector's]

leases [of], biddings [for], and commitments [on condemned property], and the administration of the same. Next, are found titles on sales taxes and confiscations, tax-free fairs and markets, [and] Royal one-third tithes, and those [titles] that arrange various species of import and export duties, such as that of the Archbishopric of Seville, that of the Kingdom of Granada, etc. The book ends with titles on the Royal tithes, legal tender, and the Armies' suppliers. It has seemed to me convenient to make more extensive analysis of these two Bodies [of Law] than of the previous ones, because among all the laws compiled or reduced to Codes, theirs are the ones that should be observed in the first place, informing with regard to this issue that there are many titles lacking in the *Autos Acordados* that are found in [the *Recopilación*], since there have been no novelties after the *Recopilación* that may have been worthy of repeating in the *Autos Acordados*.

**48 Since the sixteenth century the Monarchy began to decline until the present, in which it has been reestablished.** Although the Monarchy arrived at its greatest splendor and grandeur along all lines in the sixteenth century, whether by the Crowns of Aragon and Navarre uniting with that of Castile, [or] whether by the conquest of the Kingdom of Granada and absolute expulsion of the Mohammedans from those Kingdoms, and finally by the discovery of America and other political causes, nevertheless, one observes that from the end of the same sixteenth century up to the beginning of the present [eighteenth century] the Monarchy was little by little falling from that degree of opulence until the reigning August House [of Bourbon], especially Señor Don Carlos III, Father of the Fatherland, and his August son and successor, climbed to the Throne of Spain and began to reestablish [that degree of opulence], as much its heroic virtues as its vast Dominions, carrying out the wise policies that have recognized and remedied the ills that weakened the State and establishing other wise laws that lead it to its previous splendor.

49 These three notable states of peak, decline, and reestablishment demonstrate that since the middle of the sixteenth century various maxims, laws, and customs that were perverting the Body politic were being introduced into legislation and the political constitution, just as sicknesses corrupt the human [body], and they also evidenced that the remedies applied in these last times, especially in the previous Reign, are appropriate and effective for the reestablishment of public health. Neither is it fitting for me nor is it typical of my intent to discover the causes of those ills, nor to single these out, but only to indicate them, proposing a small idea of the same remedies applied in order to reestablish no less the true Ecclesiastical Discipline than useful and suitable Public Law, in consideration of [the fact] that these wise regulations are found scattered over the Pragmatics, Royal *cédulas*, Decrees, Instructions, [Papal] Bulls, and Briefs accepted in Spain and the Indies and uncompiled until now. I say uncompiled since there are only three copies of them, although I do not disregard that the Council's order has had a Collection made of all these Resolutions belonging to the Government of Castile, which compose more than 30 volumes in folio, and thus that is consequently why, as containing many reformed [resolutions] for other later ones, they are like a hidden treasure that needs to be discovered and purified so that it may serve public uses.

50 **New Regulations to reestablish National Ecclesiastical Discipline.** In truth, in this collection, or accumulation of uncompiled resolutions, many [resolutions] are found that have reestablished the Discipline of Spain's Church, for example the celebrated Concordats with the Holy See of the years 1737 and 1753; the Bulls obtained at the King's bidding to reduce the immunity or the right of asylum to their due limits; the establishment of the Rota of Spain or the new arrangement of the Nunciature, by virtue of which no Ecclesiastical case leaves the Kingdom and all the provisions of Benefices and Prebends are made in the same, except those corresponding to the 52 [provisions] reserved to the Apostolic See. To this class also belong the dispositions relating to the good use of

the Ecclesiastical State's censures, *fuero[s]*, and contributions; the residence[s] of Benefices; and many other [dispositions] that have given force and effect to that [régime] decreed by the Holy Council of Trent and to that which conforms with the true spirit of the Church.

**51 Other regulations for the establishment and improvement of Public Law.** Not less salutary are the resolutions relating to other branches of Public Law, such as the creation of Procurators [i.e., mandataries] of the Community and Deputies for supplies; the arrangement and administration of Public Property and rents; the prudent freedom of commerce, as much in Spain as in the Indies; [and] the promotion of the mechanical arts, whether by exempting raw materials from contributions or by honoring artisans. To the same end of the public benefit contribute the reform and new method of Education, the creation of patriotic Societies and maritime and land Consulates, the creation of *montepíos* for widows and orphans, the strength and increase in land and sea arms, the establishment of the new *Audiencia* of Extremadura and the extension of territory conceded to the *Audiencia* of Seville, the arrangement of the *Corregimientos* and [the] new Rules governing *Corregidores*, and innumerable other dispositions that would be bothersome to point out, given that all of them are to be inserted in this work.

**52 The close and essential link between all the ancient and modern Laws and Codes.** I have insinuated the successive order of the Legislation of Castile and of all its scattered Codes and Resolutions, including those pertaining to Canon Law and National Ecclesiastical Discipline in order now to demonstrate the close and essential connection and relations that the same Codes and Laws have between themselves from the first to the last. That link is as reciprocal and great as that one that is between the referent [i.e., reality] and the tale and between light and visible objects, since each Code and Law, or later Laws, certainly and evidently refer to previous ones, and most times those later Codes and Laws do nothing more than modify [these earlier Codes and Laws], derogating or adding to

them in part and leaving them to survive in other parts. Thus it is for this reason, but also because the last *Auto [A]cordado*, which discusses this subject, decrees that the reasoning of the same derogated law should be preferred, in the absence of another legal disposition, to the opinions of Authors, especially foreign ones,<sup>16</sup> for the defense and determination of forensic and political affairs; [that] the study of the ancient laws is known to be indispensable to each Practitioner of Law for the understanding of the modern ones; and that the ones and the others are closely and essentially linked and joined.

**53 The necessity of learning and studying the ancient Laws and Codes.** The necessity of the said study is recognized more and more [when] attending to that which the aforementioned *Auto [A]cordado* by the entire Council [of Castile] decree[d] on the 4th of December of 1713, with reference to many prior laws that are found in the *Fuero Juzgo* and other ancient [codes], in the *Partidas*, *Ordenamientos*, the first [of the] Law[s] of Toro, the Pragmatic that is at the beginning of the new *Recopilación*, and various others, inasmuch as they provide this. In order to act upon as much as to determine the actions and causes [i.e., lawsuits] that may be brought,

the Laws of the *Recopilación* of these Kingdoms, the *Ordenamientos* and Pragmatics, [and] the Laws of the *Partida[s]* and the other *Fueros* (in that they were still in use) are to be entirely observed despite that it is said of them that they are neither used nor observed, and that in the event that there be no law in all of them that decides the question, or in the event that there be one, it itself being uncertain, there must be recourse precisely to His Majesty so that he may explain it.

Sr. D. Felipe V confirmed the same on the 12th of June of 1714, mandating that the laws of the Kingdom be observed although it is said that they are not in use.<sup>17</sup> Therefore, one comes again to deduce as a necessary consequence the close connection of the modern Codes and Laws with the ancient ones and that the knowledge and

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16. *Aut[o Acordado]* I, tit. 2, bk. II, *Recop[ilación]*.

17. *Aut[o Acordado]* II, same tit. [tit. 2, bk. II].

study of one and the other is indispensable to defending and determining actions and political matters. For how else is it possible that Lawyers and Judges might acquire a complete instruction of each juridical subject, not to mention represent and decide causes according to ancient laws in the absence of modern ones?

54 [This] now being a legal demonstration that all the aforementioned Bodies and Laws are closely and essentially linked, as much in form as in substance, I must not detain myself in corroborating it, whether by means of repeating that the *Partidas* are the meeting point of the prior *Fueros*, of the Civil and Canon Law that they insert and authorize, and of the Codes and uncompiled Resolutions of both Laws which refer to the laws of the same *Partidas*: recollecting the reasons for this close link, for example, that legal and political alterations successively fall upon the government of a particular Nation which with difficulty varies its character and moral and physical constitution [and which] absolutely impedes changing it, and it was normal that many ancient customs and *fueros* always be preserved and that the new ones might do no more than modify them, leaving them surviving in large part. Thus, for truth's sake[,] the aforementioned essential connection being a proved fact, whatever might be added to its confirmation would be superabundant.

**55 Of the Laws of the Indies and of their connection to those of Castile.** The Laws and Jurisprudence of the Indies have the same link with those of Castile and also among themselves. The certainty of the first [point] is recognized, considering that Civil and Canon Law is equally studied in the Universities of those Kingdoms as in those of this Peninsula and above all that, as it is provided in repeated Laws of the *Recopilación* of the Indies, in their absence the Laws of Castile must be observed there.<sup>18</sup>

**56 Connection between the ancient and modern Laws of the Indies.** The connection that the Law of the Indies has within itself is more regular and clear. This [Law] can be divided into three

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18. L[aw] 2, tit. 1, bk. II, *Recopilación* of the Indies.

epochs and classes: first, the Royal *Cédulas* and dispositions that preceded their Compilation [i.e., the *Recopilación de Leyes de las Indias*] and served to form it in the year 1661, inserting and summarizing those [*Cédulas* and dispositions] that the Government considered appropriate; second, the same *Recopilación*; and the third and last, subsequent Resolutions, as much Royal as Canon, admitted but not compiled until the present. Although the first class is a copious and useful source for the understanding of the later [Resolutions], nevertheless, it does not enter into the Plan of my Work, and besides, its inclusion would have made it drawn-out and irritating enough, as the Royal *Cédulas* and dispositions from which the aforementioned Code is drawn and formed are innumerable.

**57 Reasons why Legislation of the Indies is inserted into this Work.** But, I have considered it appropriate to insert in this *Teatro* the *summulae* of the compiled laws and subsequent rulings that have been published to date for the Government of those Kingdoms and that are still found [to be] scattered. The principal reason for this insertion is the importance and utility of the Law of the Indies, as much for the Practitioners who aspire to obtain Judgeships and Robes therein as for those who are destined to represent actions and litigants in this Court and in other considerable towns of the Kingdom. Our Indies are a new world whose great distance, diversity of climates and customs, and both its immense extension and riches demand in many particulars a different law from the one that is observed in the Peninsula, and they require it more than any other Province or Kingdom located in our continent, whose physical, moral, and political constitution differs little within its borders. For this reason, I have likewise not inserted the general Laws for a given Kingdom or Province of Spain, especially considering that, in accordance with the spirit of two *Autos Acordados*, juridical uniformity regarding the general points of Jurisprudence is desired in

all of them, save the particular *Fueros* that each Kingdom or Province enjoys and that remain untouched.<sup>19</sup> But, since it is not possible even to touch upon these due to their infinite number, it has seemed appropriate to me to note only by way of an appendix the notable differences that are found between the Law of Castile and those of other Kingdoms and dominions united with the Crown of that [Kingdom (Castile)].

**58 Analysis of the *Recopilación* of the Indies.** Returning now to address the Law of the Indies, the intimate and essential connection that is found among the compiled laws and the Pragmatics and other Royal and Canon Resolutions that are still scattered, is evident because almost all of the latter are mere explications, confirmations, or partial derogations of the former. The *Recopilación* of those Kingdoms [i.e., the Indies] is very similar to that of Castile in the order of its formation and even on the subjects of which [both] Law[s] are formed. Thus, that [*Recopilación* of the Indies] is divided into nine books and subdivided into titles. In the first book, all the dispositions concerning Ecclesiastical points are inserted. In the second [book], after discussing the laws, the order and arrangement of the Council of the Indies and their other Superior Tribunals are prescribed, together with that of all their dependent or subaltern [Tribunals]. The third [book] begins by addressing the Royal Dominion and provisions of Offices; afterward discusses Viceroys, Presidents, Governors, and military things or those typical of fortifications and war, and it concludes with titles that discuss ceremonies, courtesies, messengers, and *Chasquis* [or *Chaskis*] Indians.

59 The fourth book begins with treatises relating to discoveries by land and sea; afterward discusses cities and settlements and of their property, grain barns, and taxes; immediately afterward addresses public works and roads, gold and silver mines, and things incidental thereto; and concludes by discussing fishing, pearl hunting, and textile mills. The fifth [book] first addresses the boundaries

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19. *Aut[o Acordado]* III and X, tit. 2, bk. III, *Recop[ilación]*.



and divisions of Governments, after which follows a miscellany of titles, such as the fourth [title] that discusses the Holy Brotherhood, the fifth [title that discusses] the President and Council of the *Mesta*, the sixth [title that discusses] First Physicians [to the King] and Examiners [of Medicine], albeit from the ninth [title] onwards [the fifth book] addresses judicial proceeding and various recourses, like that of appeal. The [fifth book] concludes with the title on *residencias*.

60 The sixth book occupies itself almost completely in addressing the Indians, *Encomenderos* [i.e., the Holders of *Encomiendas*] and *Encomiendas*, and points incidental to the same subjects. The largest part of criminal Jurisprudence is found in the seventh [book], beginning with the title on Investigators and concluding with that on crimes and punishments. The eighth [book] contains that [title] regarding the Royal Treasury, such as its Revenue Office, Comptrollers, Tribunals, Treasurers, its Administration, sales taxes, seizures, customs duties, *medias anatas*, one-ninth tithes and vacancy taxes of Bishoprics, and other things of this sort. The ninth and last [book] occupies itself principally with two matters which have disappeared or which at least have the most notable difference [in nature] today; such are the *Audiencia de la Contrataci[ó]n*, that has just become defunct, and navies and fleets, that are governed in another way since the establishment of free Trade to the Indies.

61 **All the titles of the same class should have been united, and [of the] detriment that continues to be found [because they are] scattered.** In this state of national Jurisprudence, in which the ancient Codes and Laws are found [to be] closely and essentially linked with the modern ones, each title or subject had to form a united Body [of Law] and also, in order so to explain to myself, organized so that the spirit of the ones and the others may be communicated amongst each other. But, as a result of the said political revolutions, all the subjects are found dismembered, such as that on Lawyers in 16 titles all separated, most of which are placed in a different Code, besides many scattered and uncompiled decisions. From this comes the difficulty of finding all of them today, when

knowledge of them is necessary. From this comes the doubt and confusion in which at every turn Practitioners find themselves about whether the title or law that they have in view is derogated by a subsequent one or whether it depends upon the lights that earlier ones offer. It is from this that Practitioners normally find themselves isolated, some in the Civil Law, others in Canon Law, and [still] others in Royal and Practical Law. Finally, from this [it] arises that enlightened Persons desire with longing [to find] a thread that leads with certainty from one extreme of this species of labyrinth to another.

**62 No printed work contains the essential meeting point between ancient and modern Legislation.** It is true that there are many works of Jurisprudence and excellent, both foreign as well as national, formed under divers method[s] and order[s]. Some are mere expositions or glosses of the texts, others address one or more juridical subjects, and there are Dictionaries of Civil and Canon Law jointly in the French and Latin languages and two in Castilian [Spanish], of which one explains various terms or words of our Jurisprudence and the other, the antiquated Laws of the *Partidas*. Additionally, there are different indices and repertoires of some national Bodies [of Law]. Finally, there are the concordances that in recent times have been incorporated into the Civil Institutes [*Institutionum Imperialium*] commented upon by [Arnold] Vinnius [or Vinnen], Selvagius's Canon Institutes [*Institutionum Canoniarum*], and [Lucio] Ferraris's *Library* [*Bibliotheca*, that is] likewise [on] Canon [Law].

**63 Foreign and National [i.e., Domestic] Dictionaries do not contain this meeting point.** But, in truth, none of these Works fulfill the desired idea, although they show the way of arriving to it. In order to demonstrate this proposition, I do not have a reason to detain myself on the foreign Works, including those that address Civil and Canon *Ius Commune*. Since, how can they reveal the link that the *Fueros*, *Partidas*, *Ordenamientos*, *Recopilación*, Pragmatics, and other uncompiled Royal and Canon Resolutions have among themselves, Works that do not include any of these laws, except only

seldom and by chance, that do not keep a chronological order, and that do not conform this [order] to their object and subject? The Dictionaries that there are of our Law are the one that Sr. Don Andrés Cornejo, Knight of the Order of Santiago, [member] of His Majesty's Council and his *Alcalde de Casa y Corte* at that time, and today on the Supreme [Council] of Castile, published in the year 1779, entitled *Historical and Forensic Dictionary of the Royal Law of Spain* [*Diccionario histórico y forense del Derecho Real de España*], to which he added an Appendix in the year 1784. The other [Dictionary] is that of the antiquated terms of the *Partidas*, to which the Lawyer Don Diego Pérez Mozún, a long-standing Attorney of the Illustrious Bar of this Court, has just given birth. [They are] both excellent along their own lines, but as this latter [Dictionary] limits [itself] to the explication of terms and none of their Authors aimed to point to the central meeting [point] of all the ancient and modern Laws and Canons of Spain and the Indies, it is not strange that they had not arrived at this end.

**64 Neither do the repertoires and indices of any National [i.e., Domestic] Code [contain this meeting point].** The repertoires and indices that there are of some national Code or Codes are reduced to that one that Dr. Hugo [de] Celso published in the year 1540, [which] includes some Laws of the *Fuero Juzgo*, the [*Fuero*] *Real*, and other decisions that had been published up to that time. If this Work had been composed now, [making it] more complete, placing it in chronological order, and putting in notes on derogations, it would have prevented my *Teatro* [from being written]; but as two and a half centuries have run from its publication to the present, in which [time] our Law has been considerably increased and differentiated, it does not make up for [my *Teatro*'s] absence, especially [since] such a repertoire is difficult to find, and it provides merely 786 articles or, properly speaking, words without a chronological order, note[s] on derogated [Laws and decisions], or other [guides] conducive to the illustration of our Jurisprudence.

65 The other repertoires and indices are only of this or that national Code, like that of the *Partidas* that Dr. Alonso Díaz de Montalvo published in the year 15[5]0, and that most exact [repertoire] of the same [*Partidas*] that was printed in the year 1611, composed by Dr. Gregorio López de Tovar, grandson of Sr. Gregorio López, the famous interpreter of those very own *Partidas*. Not to bother the Public with other [repertoires] of less moment, the most modern and significant are that [index] of the *Recopilación* that Dr. D. Santiago Magro [y Zúrita] composed until the year 1724 and that he printed in the year 1726 and those [indices] that are found at the end of the *Recopilación* and *Autos Acordados*, especially in the [*Recopilación*] of the Indies, which is more copious. But, nevertheless, the same difference of times; the considerable increase of our Legislation from the year 1724 to the present; the giving of a new order or place to the *Autos Acordados* in this interim; and [the fact] that each one of the aforementioned indices is [only] partial and does not include the succession of our Jurisprudence, nor does it contain notes on derogated [Laws], or other illuminating features, make it such that such [repertoires and indices] are very far from containing the meeting point of the reciprocal relations that there are between the ancient and modern Codes and Laws and between the diverse classes of Jurisprudence.

66 **Neither do the concordances put into various foreign works [contain this meeting point].** The concordances of our Law with the Civil and Canon *Ius Commune* are ultimately very useful and conform to that which an *Auto Acordado*<sup>20</sup> provides and also lead more directly to the goal of this Work. But, on the one hand, such concordances keep to Civil subjects of private Law and to the Canon subjects that this or that foreign Author has addressed. On the other hand, these same works lack innumerable matters, the most important ones, as much o[n] our Royal Jurisprudence as o[n] our Canon Jurisprudence, and for the same reason they cannot fulfill the

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20. *Aut[o Acordado]* III, bk. II, tit. 1. *Recop[ilación]*.

indicated idea that is desired. Besides the fact that they do not keep a chronological order and that a Work will always be better by having our Jurisprudence in the first place, in accordance with what is proper, the Civil and Canon *Ius Commune* are made accessories to it [i.e., our Jurisprudence] rather than, to the contrary, forming it in an inverse order.

**67 Possible methods of forming a work conducive to the indicated goal, and the difficulty of the first [method].** In this situation and [set of] circumstances, three ways of composing a Work conducive to presenting from one point of view on each subject the close link and relations between the ancient and modern Jurisprudence, are offered. The first is to follow a method similar to that kept by [v]an Espen in his Work entitled *Universal Ecclesiastical Law* [*Jus Ecclesiasticum universum*], in which the reasoned order[ing] shines, as much among the earlier and later chapters as in the placement of points that each one addresses separately. Recounting with criticism and soundness the Church's spirit and that which it has observed from its establishment up to now in matters of Discipline, [van Espen's Work] offers the most complete idea of each one. A Work of this sort could also have been made in alphabetical order, despite not being the most suitable for the sound study of the sciences; it is so, nevertheless, in order to easily and quickly find the points that are desired and to learn them with little work.

**68 Difficulty of the second [method].** The second method would be to place in chronological and alphabetical order the repeated resolutions on the same subject scattered in all the ancient and modern Laws and Codes. But, here is the work and the difficulty. Some quick-witted persons do not believe this operation difficult because they find it feasible in one or another subject, which they examine separated from the others. But, if they got into discovering the almost infinite multitude of laws that some same sentences repeat on innumerable points, they could see by their own experience a similar Work to be almost impossible.

**69 Execution of the third [method] and the idea of this Work in general.** As regards myself, I confess in good faith that forming [this Work] under one of those two methods exceeds my strength, and I recognize it [is] so after having laid out the plan in both [methods] and executed repeated attempts at its formation. Nevertheless, desirous of replacing them with another, equivalent method, the idea was offered to me that I would be able to achieve [my goal by] bringing together all the principal titles and subjects of Civil and Canon Jurisprudence and of the Royal [Jurisprudence] of Spain and the Indies, which are found separated in many Codes and uncompiled Decisions, in alphabetical order and placing each one thus brought together in temporal [i.e., chronological] order, beginning with the most ancient and descending by degrees up to the most modern. Indeed, I made some attempts at this operation, in which by the method indicated I placed extracts of the uncompiled Laws and Resolutions pertaining to each title and subject, and it seemed to me that success corresponded to my desires, even with more advantages than I thought in the beginning. Since, on the one hand, the Codes and Laws are the rule and the origin of forensic and political acts and, on the other hand, this method presents [the Codes and Laws] with more vividness and exactitude than any other, it seems that it should be preferred so that the portrait may be more similar to its original, this being the reason why I gave my Work the title of *Teatro*, [a thing] which equates in the moral vein to that of a portrait in the physical.

**70 Various enlightened persons approved of the project.** Nevertheless, not trusting myself on my own judgment, I discussed the idea and its plan with various enlightened and impartial Persons, all of whom approved of [them]. In addition, Señor Don Rafael Antúnez y Acevedo, of the Council of His Majesty in the Supreme [Council] of the Indies, generously allowed me to insert in the same Work the extracts from the Laws of the *Recopilación* and *Autos Acordados* of Castile made by his immediate kin, Doctor Don

Alonso María de Acevedo, well known in the Republic of Letters for his precious productions.

71 In high spirits over a donation and the most appreciable opinions, I formed the Juridical *Teatro* that I now have the satisfaction of offering to the Public. It being convenient to give to the same Public an idea of this Work and of its ends and external causes, so that it may be at the disposal of their judgment, it seems to me that there is no means more commensurate to present [the idea of my Work] with suitable clarity than to manifest its analysis, both in general and of each article, with its notes, references, and appendices.

**72 Of the Plan and chronological index of universal Jurisprudence, previously necessary to the formation of this Work.** With regard to the first [i.e., the general analysis of my Work], in order to form this same Work it was necessary beforehand to gather in alphabetical order all the titles and principal subjects that comprehend the Civil, Canon, and Royal Codes of Castile and the Indies, together with the uncompiled Decisions of one or the other Law, which the plan denotes “number 1.” All the articles of a certain species were [also] thus gathered to place each one in chronological order. This necessary operation having been previously executed—and that is the *Teatro*’s key—I judged that its publication would be useful not only by being a plan and index of the Work itself and of its articles, but principally by being both [a plan and index] with respect to universal Legislation, since, as with the ease of Dictionaries, it points out in temporal order the Code or an uncompiled Canon or Royal Decision, in which there might or might not be found a treatise or title on the infinite principal subjects of all the Law. For this reason, I have given birth to the said plan and index before the principal Work, no less for the Public’s utility than in order that this [Public] may recognize that all [of the Work] is found [to be] ordered and arranged with mature reflection and thus that it is not difficult to finish [the Work], perfect it, and give it to the printing press.

**73 Analysis of the articles.** The analysis of each article is reduced, considering, on the one hand, that the Civil Law enters into many articles according to the proposed plan and that it would be tedious and almost useless to extract it law by law and, on the other hand, that it would also be disagreeable and confusing to begin the principal articles with the aridity of the extracts, it seemed to me convenient and even necessary that each one of those [articles] should begin, as [indeed] occurs, with an introduction that includes the definition or description of the respective subject, its nomenclature, and principles and rules transcendental to divers Laws that [the article] includes, so that it may serve as a light to all. Moreover, [when] concurring with the Civil Law, if divergent from Royal dispositions, [the article] note[s] their differences in a summary of its content; yet, [if the Civil Law] conforms with the same Royal Law, [the article] refers [to the Royal Law], by which means bothersome repetitions are avoided.

**74 Of the extracts.** Immediately after this introduction [of each article's subject] follow specific extracts from the Canon Bodies [of Law], if there are any, and from the Royal [Bodies of Law] as well as uncompiled Resolutions of Spain and the Indies, observing in those [extracts] the order of their titles, that is to say, the placement that the laws have in these [extracts], so that the portrait may be more in conformance with its original.

**75 Of the notes conducive to repeated, concordant, and derogated laws.** As in the Work's progress I noted that there are laws completely repeated in several Codes, others that are repeated in part, and many derogated in whole or in some points, it seemed to me conducive to make use of this economy with respect to the aforementioned particulars. With a view to the first [group], I omit the extract of the law completely repeated in the first Codes, instead putting a note or reference regarding the last [Code] in which it is extracted. With regard to the second [group], [I realized] that the laws repeated in part are innumerable and that for the same reason to indicate their concordance would be difficult, as it demonstrates



the scant accuracy of the [repetitions] that are found already put in some Codes; besides, it would be bothersome and above all useless, since one living law in each matter suffices for the direction and determination of political and forensic affairs. Thus, I refrained from noting these partial concordances, even though I began to put them [in the Work] as the first articles might demonstrate. But, since it happened all to the contrary with respect to derogated or surviving laws, whose discernment is so necessary that without it accuracy is impossible in the same affairs, I have put the greatest care in noting the laws derogated in whole or in part with some simple references to the surviving laws, that may serve as a lodestar for Practitioners and the Public.

**76 Of the laws corresponding to a title, scattered in other [laws].** Considering also that, besides the laws included in the titles of each Code, there are many [laws] scattered in others of the same Body [of Law], whether pertaining to different subjects or including diverse matters, that I have not thought it convenient to dislocate them, and also for other reasons, I put at the end of the title of each Code of the principal [laws] for the practice [of Law], the laws scattered in it that correspond to the intent [of the Code], summarized in brief sentences and regarding their site of origin, where they are specifically extracted. I do not execute this in the less important Bodies [of Law] to avoid annoyances and more [book] volume without considerable utility.

**77 Of the Pragmatics and other uncompiled Canon and Royal Resolutions.** It is true that almost all the scattered *Cédulas* and other Resolutions are some mere modifications of the compiled laws, to which they add or derogate in part, and, therefore, these [Resolutions] ought to be placed right after those [laws they modify]. But, upon reflecting that many of the compiled [laws] are in titles in which it is not common that they be searched for, such as the Law, which apparently considered mechanical trades to be vile and base, found in the title on Knights, which has little connection with craftsmen and artisans, or at least for which it is not common

that this subject be searched with that on Knights, it has seemed to me more useful to put the Royal *Cédulas* that declare the said trades, artisans, and craftsmen to be honorable [professions] under those names rather than in the word Knights, and thus I practice this method in other like cases, inserting *the decision[s]* of the most important uncompiled Resolutions to the letter for the absolute certainty of Practitioners.

78 **Of the Appendices to various articles.** Although, strictly speaking, my Work should have been reduced to the method already expressed, nevertheless, consulting public utility more, especially that of the studious youth, whose approach to the laws is to be more strict in analysis, I have made some additions which, without altering the project, contribute to the common benefit. In such terms, considering in the first place that there are many words through which, despite not indicating principal juridical subjects, Practitioners can go look up the point that they seek, I have intercalated among the articles these same words reduced to short sentences [and] regarding the titles and principal subjects so that those [Practitioners] might with greatest rapidity and ease find the matter that they may seek or at least a guide that might lead them to this very term.

79 These references are not made to all the Bodies [of Law], but rather, like the preceding ones, to the principal [Bodies of Law], which are the *Partidas*, *Recopilación*, and *Autos Acordados* of Spain and the Indies, by being the most important [Bodies of Law] both in temporal and political matters—on which there is no doubt—and in Canon matters, in regards to the fact that in those laws are inserted and confirmed almost all the decisions included in the *Decretals*, the Holy Council of Trent, and Bulls admitted in both Kingdoms. Therefore, [on the one hand,] the multiplication of references would be useless and, on the other hand, bothersome, voluminous, and almost impossible to be verified.

80 Although references only refer to the articles and paragraphs of this *Teatro*, of which many will not be printed until some time [has] passed, the [references] are, nevertheless, useful because

Readers can, of course, find them in the corresponding Codes, looking up the article which is referenced in the general plan in this way: [under] the word “*Abad*” is put its definition in accordance with a Law of the *Partidas*, which is cited in this way: “*L. 16. §. Partidas, art. Regulares.*” Now then, see the word “Regulars” in the said plan, and it will be found that the Law cited is Law 16 of title 7, *Partida* I. By this means, this and other like citations can be found with the greatest brevity in their respective Codes. And, here is another reason for having the aforementioned plan printed before the Work [is printed] and other evident proof that this [Work] is found [well] ordered and oriented, so that it can go be published without considerable difficulty or delay.

**81 Of the Authors.** Besides, the inclination of many Practitioners toward the opinions and sentences of the practicing Authors is widely known and, ignoring the criticism that is made against them, it suffices for their esteem that an *Auto Acordado* recommends them.<sup>21</sup> For this reason, I cite two or three of the best national Authors on various subjects by way of [my] appendix so that, by resorting to them, readers may find the desired point without the necessity of specifying them one by one, which would cause annoyance without any known advantage.

**82 Of practical notes and forms.** Lastly, having reflected [on the fact] that the whole, principal end of Jurisprudence is an accurate and enlightened practice [of Law], to whose attainment contribute the Authors who are its witnesses, besides the forms which are conductors of the same, I also put by [means of] the appendix practical notes and models of the principal documents of petitions in any action or injunction, of those that include dilatory and peremptory exceptions, and of ordinary and extraordinary recourses, or at the least I propose the clauses that differentiate one document from the other. Because even though there are ancient and modern practices that are notable, it has seemed to me useful to give a taste of them so that

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21. *Aut[o Acordado]* I, tit. 1, bk. II, *Recop[ilación]*.

studious youths might find gathered in one work all that is found scattered in many [others].

**83 The judgment that various enlightened Persons have formed of this work.** These are the reasons and external aims and also the analysis of my *Teatro*, of which I should now repeat that which I published in its prospectus: that the intelligent Persons who have examined it judge that its disposition offers to Practitioners the ease typical of Dictionaries for finding whatever they may desire, the certainty of all the decisions on a matter being found together in the same place with notes on their principal derogations, and the light that the earlier laws diffuse to the later, and that it also presents to the Historian the apparatus for forming our legal History, which we absolutely lack.<sup>22</sup> To him [who undertakes] Critic[al study of the Law], [my *Teatro*] offers the means of discerning between the diverse states of our Jurisprudence from the time of the Romans until today, and to the Government, it provides the scope of making a new Code, when it considers one convenient. Nevertheless, the enlightened Public will grade its true merit and rectify the defects, of which a work of such volume, formed with precision between the forensic hassle and the representation of Litigants, cannot be exempt. While the accuracy of the extracts from the *Recopilación* and *Autos Acordados* of Castile made by Dr. Acevedo [was] recognized and [they were] placed in the corresponding sites, inserting the decision[s] of the most important Pragmatics and Resolutions, [both] compiled and scattered, to the letter, frees [my Work] from errors in the principal Codes and practical Decisions and offers at the same time a word-for-word collection of the selected laws.

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22. In effect, there is no[t a comprehensive legal History] in Spain because that [account] entitled *Sacra Thermidis Hispanæ arcana [jurium legumque ortus, progressus, varietates et observantiam cum præcipuis glossarum, commentariorumque quibus illustrantur, autoribus et fori hispani praxi hodierna, publicæ luci exponit D. Gerardus Ernestus de Franckenau* (Hannover, Nikolaus Föster, 1703) (Ger.)] known by the name of “Franckenau” [its author], is only on the Royal Bodies [of Law].

## PLAN

<i>Years</i>	<i>Codes</i>	<i>Books</i>	<i>Titles</i>	<i>Laws and Canons</i>
	<b><i>Civil</i></b>			
533	<i>Digest</i>	50	431	9,148
533	<i>Institutes</i>	4	99	709
534	<i>Codex</i>	12	765	4,636
571	<i>Novellæ</i>	9	168	683
	<b><i>Canon</i></b>			
1151	<i>Decretum [Gratiani]</i>	149	71	3,824
1236	<i>Decretals [of Gregory IX]</i>	5	185	1,734
1300	<i>Sexto</i>	5	75	445
1305	<i>Clementines</i>	5	52	105
1322	<i>Extravagantes</i> of [Pope] John XXII		12	19
1335	<i>Extravagantes comunes</i>	4	35	73
1564	Tridentine Council [Council of Trent], Bulls admitted in both Kingdoms, etc.			∞
	<b><i>Royal</i></b>			
693	<i>Fuero Juzgo</i>	12	55	560
992	<i>Fuero Viejo</i>	5	33	229
1255	<i>Fuero Real</i>	4	72	549
1263 <sup>23</sup>	[ <i>Las Sietes</i> ] <i>Partidas</i>	7	182	2,479
1310	<i>Leyes de Estilo</i>			252
1348	<i>Ordenamiento de Alcalá</i>		32	125
1496	<i>Ordenamiento Real</i>	8	115	1,133
1567	<i>Recopilación</i>	9	214	3,391
1745	<i>Autos Acordados</i>	9	110	1,134
	Pragmatics and other Resolutions, etc.			∞
1661	<i>Recopilación</i> of the Indies	9	218	6,447

23. In the preliminary Discourse, it is said that the *Partidas* were completed in the year 1260, according to [Gerhard Ernst Franck von] Fra[n]ckenau; but, as recognized in their Prologue, it is evident that they were finalized in the year 1263.

<i>Years</i>	<i>Codes</i>	<i>Books</i>	<i>Titles</i>	<i>Laws and Canons</i>
	Royal Resolutions on them, etc.			∞
		<u>306</u>	<u>2924</u>	<u>37,675</u>

*Ex omnibus unum.* [Out of all, one.]