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Las Siete Partidas and its Predecessors

For about three and a half centuries following its promulgation the *Forum Judicum* remained the sole compilation of general laws in Spain. There were, of course, the local "fueros" and some of these afford great interest, notably those of Aragon whose *Fueros de Sobrarbe*, composed probably before the eleventh century, have been called the Magna Charta of the Aragonese nobles, and were safeguarded by an official styled "el justicia," the last of whom, Juan Lanuza, was executed in 1591 by order of Felipe II, though he had sworn to observe the *Fueros*. They were not, indeed, formally abrogated until 1707, and their remarkably free and democratic tone is illustrated by the following excerpts:

"Nos que valemus tanto como vos y podemos mas que vos, os elijimos rey con tal que guardareis nuestros fueros y libertades, y entre vos y nos un que manda mas que vos; si no, no!

(We, who count for as much as you and have more power than you, elect you king, that you may guard our privileges and liberties, and also one between you and us, who has more authority than you. If not, not!)

Que siempre que el rey quebrantasse sus fueros. pudiesen alijir otro rey, encora que sea pagano.

(If the king should ever break the fueros, they shall have the right to elect another king, even if he were a pagan.)

Toward the end of the tenth century the "Conde de Castilla," Don Sancho Garcia, inaugurated the preparation of a new code, which ultimately became known as the *Fuero*

Viejo.¹ Additions to it were made at the Cortes of Nagera in 1176 and it continued to have a certain force until nearly the middle of the fourteenth century.² It was probably composed in Latin,³ and in its final form consisted of five books loosely arranged and without logical accumulation of contents. Book III contained some provisions regarding proof and procedure but the work seems to have been designed primarily to meet the peculiar conditions prevailing in Castile, and to adjust the relations between its king and the nobility, and its force appears never to have extended beyond the territory of that kingdom and Leon. This necessarily left the Forum Judicum operative in other parts of Spain with consequent lack of uniformity.

The thirteenth century was one of general advance for the Spanish Christian kingdoms and law shared in the results. Moreover "the Bologna revival . . . soon spread its influence to Spain."⁴ The surrender of Sevilla to Fernando III in 1248 left that monarch leisure to consider the internal affairs of his dominions, and among other evils that confronted him were the diversity and confusion of the laws. To remedy these he conceived a comprehensive scheme of codification which was actually initiated by commencing the preparation of a new work entitled the Setenario.⁵ But before this or any other part of his plan could be carried into effect he died.

ALFONSO THE LEARNED.

The son and successor of San Fernando was Alfonso X, commonly known as "el sabio" (the learned), because of his attainments in science⁶ and letters. Almost immediately upon his accession he took up his father's legal project and his reign

¹ It is reprinted in *Codigos Españoles* (Antonio de San Martin, Editor (Madrid, 1872) Tomo I, preceded by a valuable historical sketch

² Id. 239.

³ Id. 226.

⁴ Hunter, *Roman Law*, 107 Cf. *Códigos Españoles*, 2 Int., XXXIV.

⁵ "Su objeto fué recoger las mejores leyes que se contenian tanto en los fueros generales como municipales, y formar de ellas un solo cuerpo que fuera único y general en toda la monarquia, introduciendo de este modo el órden y la subordinación, y extirpando los abusos y malos que pululaban por do quiera." *La Serna*, *Introducción Histórica Códigos Españoles*, 2, IV.

⁶ E. g., he was deeply interested in Astronomy.

was marked by a succession of works culminating in the Partidas.

Opinions differ⁷ as to whether the Setenario was actually completed under Alfonso; but he caused the publication of the *Especulo*,⁸ ("Espejo de todos los derechos," or mirror⁹ of all rights), and later, (probably¹⁰), the *Fuero Real*,¹¹ (Royal Law). The four books of the latter touched on many subjects belonging to practically all branches of the law-government, criminal law, private, substantive law and procedure. The deficiencies most apparent in it,—superficiality and lack of logical arrangement,—are those of the age to which it belongs. But it was not without its merits.

"No es este Código una obra de ciencia," observes a Spanish author¹² "sino, una obra de actualidad, una obra de observación y de recopilación, de mod que logró hacer un Código nacional. . . ."

Incomplete en la parte política, lo es y ordenado en la parte civil, estando el procedimiento fundamentado en los más sanos y prudentes principios, y deducidas lógicamente

⁷ Marina thinks that it was completed only as the Partidas; La Serna seems to be certain that it was finished as a separate work.

⁸ "Este código se hizo, segun nos dice el rey, con consejo y acuerdo de los arzobispos, de los obispos, de los ricos homes y de las personas más instruidas en derecho de aquella época, recogiendo las relas mejores y más equitativas de los fueros de Leon y de Castilla. Comunicóse á las villas sellado con el sello de plomo; se mandó guardar por todos, y se destinó para que principalmente se juzgasen por él las apelaciones en la corte del rey. Su autoridad fué grande en el siglo XVI, si bien olvidado despues." La Serna, *Introducción Historica, Códigos Españoles*, 2, V "El *Especulo*, pare nosotros, no significa más que el primitivo proyecto del de las *Siete Partidas*, en lo que estamos de acuerdo con muchos autores que sustentan esta misma opinion." Henas y Muñoz, *códigos antiguos de España*, (Edited by Alcubilla, Madrid, 1885) I, 590.

⁹ Cf. the English "Mirrour of the Justices."

¹⁰ La Serna admits that it is hardly more than conjecture, *Introducción Historica, Códigos Españoles*, 2, V.

¹¹ Likewise reprinted in *Códigos Españoles*, tomo I "El Rey Sabio procedió para su promulgación comunicádolo á cada uno de los concejos en forma de privilegio y á guisá de fuero municipal, constando que fué concedido como tal á la villa de Aguilar de Campo en 14 de Marzo del mismo año 1255; á la de Sahagun en 25 de Abril, á Soria y aldeas de su alfoz, en 18 de Julio de 1256; á Burgos en 27 del mismo mes y año; á la villa de Escalona en 5 de Marzo de 1261 y á otras poblaciones de alguna importancia sucesivamente." Henas y Muñoz, *Reseña historica* (edited by Alcubilla) I, 103.

¹² Henao y Muñoz, *Reseña historica*, I, 104.

sus consecuencias, excepción del sistema de probanzas, que corresponde al atraso en que yacía aquel pueblo por más que implicaba ya un adelanto.

Limitado el comercio en aquella época excusada es decir que apenas contiene parte mercantil, pero en cambio en lo referente á la parte penal presenta un cuadro bastante complete, dadas las circunstancias y la manera de ser y de existir de aquella sociedad, por cuya razón podemos concluir diciendo que el Fuero Real puede considerarse como un Código donde se advierte bastante unidad y método; que hay claridad en sus leyes; que sus disposiciones no son casuísticas; y que abraza cuanto exigían las necesidades de la época."

The introduction to the Fuero Real contained the recital "mandamos que este Fuero sea guardado por siempre jamás,"¹³ but whether this was anything more than the expression of a hope may well be doubted. Political conditions were decidedly unfavorable to a piece of legislation of this character¹⁴ and its active life was brief. In Castile it was displaced as early as 1272 by reestablishing the Fuero Viejo,¹⁵ though the former retained a certain authority long after the promulgation of the Partidas,¹⁶ and many of its provisions are even found in the Novísima Recopilación¹⁷ of 1805.

THE CONSUMMATION.

In the year following the promulgation of the Fuero Real a commission of Spanish jurists, appointed by the king but

¹³ Cf. La Serna, Códigos Españoles, 2, VI.

¹⁴ "La nobleza de Castilla, conociendo que por este Código se la despojaba de sus antiguos fueros y privilegios, y se robustecía y ampliaba la potestad de la Corona, formó el empeño mas tenaz de echarle abajo, y leegó por conseguir su objeto, hasta el exceso de amotinarse y conspirar en cierta manera contra el Soberano presentándose armada en la villa de Lerma." Escriche, Diccionario, Ad verbum.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. Ley 1, tit. 2, L. 1, tit. 4, Ll. 1, 2, and 3, tit. 5, Ll. 1, 2, 3, 4, and 5, tit. 30, Book 1; L. 1 tit. 1, Ll. 1. and 2, tit. 2, Book 3, et al. of the Novísima Recopilación are said to be respectively, Ley 8, tit. 5, L. 8, tit. 5 Ll. 2 and 3, tit. 5, L. 5, tit. 5. Book 1, L. 1, 2 and 4, tit. 24, Book 4, Ley unica, tit. 3, Book 1, Ll. 1 and 2, tit. 6, Ll. 3 and 4, tit. 6, Book 1, et al. of the Fuero Real.

"whose names have not come down to us,"¹⁸ entered upon the actual preparation of the new code that was to realize the dream of San Fernando. The work is supposed¹⁹ to have been completed in 1263—"seven books in seven years"—but this proved, after all, to be only the beginning.

For the *Siete Partidas*²⁰ are largely a compilation of Roman law and their adoption involved the displacement of the existing "fueros" and customs, which, as we have seen, were of Germanic origin. In other words the completion of the *Partidas* marks the beginning of the final struggle for supremacy in Spain between the "leges barbarorum" and the "leges Romanae."²¹

And it was a long struggle—nearly two centuries and a half—and stubbornly contested. Immeasurably superior as were the *Partidas* to any preceding Spanish legislation, their merits did not impress the contemporary nobles and "hidalgos." As a learned editor²² observes, the new code, composed in great part of Roman law and decretals, was at war with the established prejudices of the country and opposed by powerful interests. And we who have participated in the partial translation of American jurisprudence to a new field know how formidable are such obstacles.

Accordingly not even their illustrious projector sought to put the *Partidas* in force in his time. During his reign and long after, their force was never more than "doctrinal." They do not appear even to have been promulgated before 1343, nor to have been given any legal force until the Cortes of Alcala in 1348. But meanwhile they were viewed with increasing respect as Commentaries and were studied in the

¹⁸ Moreau & Carlton, Preface, VIII. This agrees with La Serna's conclusion. The latter rejecting the theory that either King Alfonso himself, or the Italian jurist Azo was the author, thinks that Jacome (Jacobo) Ruiz, one of the king's authors, and Fernando Martinez, bishop elect of Oviedo, and the mestre Roldan, may have assisted. Tomo 2, Int. VI-XIII.

¹⁹ La Serna Int. XV (*Códigos Españoles*, 2) thinks the exact date uncertain.

²⁰ This name dates only from the fourteenth century. Previously it had been called "the book of the laws which the very noble king Alfonso prepared." *Códigos Españoles*, 2 Int., XV.

²¹ Stubbs, *Constitutional History of England*, I, sec. 8.

²² La Serna, *Introducción*, XVII.

law school of the University of Salamanca, one of the powerful agencies for the spread of Roman law in the peninsula. Finally at the Cortes of Alcalá in 1303 the Partidas were given full force and the Roman law thus attained complete predominance in Spain. The Code continued to grow in favor until now it is regarded by Spaniards with as much reverence and pride as is the Federal Constitution among Americans, and a manuscript text of the Partidas, now in the Biblioteca Nacional at Madrid, is one of the cherished treasures of the Spanish nation

A Royal Decree of 1530 provides:

"We order and command that in all causes, suits and litigations in which the laws of this compilation do not provide for the manner of their decision, and no such provision is found in special enactments passed for the Indies and still unrepealed, or those which may hereafter be so enacted, that then, the laws of this our Kingdom of Castile shall be followed, in conformity with the law of Toro, both with respect to the procedure to be followed in such cases, suits and litigations, and with respect to the decision of the same on the merits."²³

This had the effect of extending the Partidas to the Spanish colonies, and that such extension was no mere formality will appear from even a casual inspection of the Supreme Court Reports of one of them to wit, the Philippines. The series did not commence until 1901, yet in nearly every volume there are citations to the Partidas, while as regards at least one important subject—divorce—that collection still contains the only law in force.²⁴ Prior to the promulgation of the Civil Code resort to the Partidas must have been relatively much more frequent. Water rights and irrigation, e. g. were governed thereby down to the year 1866.²⁵

CHARACTER AND ARRANGEMENT.

No legislation, indeed, of Spain, and little of any country, has been the subject of so much praise, particularly from out-

²³ Recopilacion de las Leyes de Indias, Bk. II Tit. I Ley 2.

²⁴ *Benedicto v. de la Rama*, 3 Phil. 34, 40 Cf. Willard's notes on the Spanish Civil Code, pp. 16 et seq.

²⁵ *Ker v. Couden*, 6 Phil. 735, 4 Off. Gaz. 732; affirmed (1912) 223 U. S. 268, 56 Law Ed. 432.

side,²⁶ as *Las Siete Partidas*. Samuel Astley Dunham, whose five volume "History of Spain and Portugal" is still accounted the best work on the subject in any language, and "obtained for him the distinction of being made a member of the Royal Spanish Academy," who "is stated to have had a long and intimate acquaintance with Spain" and whose knowledge of the middle ages was regarded by his friend the poet Southey as "marvelous" presents the following estimate:

"It is by far the most valuable monument of legislation, not merely of Spain but of Europe, since the publication of the Roman (Justinian) Code. . . . No code in use during the middle ages is to be compared with this for extent, for natural arrangement, for the spirit of justice generally pervading its provisions, or for knowledge. It is, in fact, a complete body of morality and religion, defining the duties of every citizen, from the highest to the lowest station; assigning the grounds of their duties, and deducing one obligation from another with great precision and with some force of reasoning."²⁸

A French authority²⁹ declares:

"We find in every page of that work the highest wisdom, and the sternest justice. It gave to the monarch under whose auspices it was executed, titles more appropriate to the epithet of 'learned' bestowed upon him by his contemporaries, than his astronomical researches, and physical scientific knowledge, however surprising the one and the other may have been considered in an age when all studies were so much disregarded. It is in that precious code, that we must seek the early treasures

²⁶ For the estimates of Spanish writers see *Códigos Españoles*, Tomo II int. XXIII, quoting, Nicolas' Antonio's remark in paraphrase of Cicero that the *Partidas* were superior to all the philosopher's libraries.

²⁷ Stephen's Dictionary of National Biography (1888) XVI, 199.

²⁸ History of Spain and Portugal, (New York 1832-2) VI, 109, 131-2. Between these pages will also be found quite a complete synopsis of the provisions of this famous instrument. There is a Spanish edition of 1848 of the *Partidas* with a valuable introduction by Pedro Comez de la Serna. An English translation of the portions believed to be in force in Louisiana was made under the authority of the legislature of that state in 1819 by Messrs. Moreau and Carlton, and published in two volumes (New Orleans, 1820).

²⁹ *Dictionnaire Historique* (1810) I, 237.

of the Spanish language; there we shall find the characteristic features of that idiom, at a time when it retained yet a simplicity and turn, and form of expression, which gave it more freedom and ease than it now possesses, though written in an age when the language yet unpolished, preserved much of its primitive rudeness. We, however, perceive in the style of the work a grace, a facility worthy the elevated sentiments that pervade it; and, in spite of some defects, we believe that the Spanish language, such as it was, when the *Partidas* were compiled, had already arrived at a degree of perfection which the Italian writers did not attain until many years after." Not all the opinions however, have been so favorable.³⁰

"The great book of Spanish Law, called 'The *Partidas*,' observes Mr. Eugene F. Ware,³¹ 'has a similar history to the *Pandects*. The *Partidas* purpose to be an original compilation of the laws of Spain, but are in fact mainly a condensation of the *Pandects*. . . . The *Partidas* were heralded as the most wonderful production of the Spanish jurists. How small their work and how baseless the pretensions of the authors will be shown by a comparison of the two works. . . . The *Partidas* bear the appearance of a compilation of a rude people, made from the laws of a former highly civilized race."

It is undoubtedly true that the authors of this notable work borrowed extensively from Roman sources, although, as Moreau and Carleton suggest,³² "they carefully avoid confessing that fact," and vaguely refer to their authorities as "los sabios antiguos." The *Corpus Juris Civilis*, as the latest embodiment of the Roman Law, would naturally be most be resorted to though it is not to be supposed that preceding jurists were ignored. The Canon Law, which had already attained so considerable a development in Italy, was another important source. Indeed the contributions from these two sources not

³⁰ "Dr. Pedro de Peralta, Complaining that in many interesting points of civil law the *Partidas* are defective, says that frequently their authors dozed." *La Serna Códigos Españoles*, 2, Int. XXIII.

³¹ *Roman Water Law*, 17, 18, 141.

³² Preface, VIII.

improbably explain that famous maxim of the Partidas "a despot uproots the tree; a wise monarch prunes its branches."

But despite the predominance of these outside sources native usages and customs were not neglected, and for these the Forum Judicum and Fuero Viejo furnished abundant material. This will explain why so many features of the former reappear in the Partidas. Like all other Spanish codes, including the latest, they consisted of Roman law modified by local custom.

The arrangement of the Partidas, while somewhat more logical than that of the Forum Judicum, shows a similar tendency to separate analogous topics. The division into seven parts or books, is, of course, unscientific; there might better have been eight or nine. It has been suggested³³ that this plan was in imitation of Justinian's Digest. Possibly; but the "prologo,"³⁴ places foremost the symbolical and sacred character of the number, though it was also utilized to form an acrostic on the name of the work's principal projector, by combining the first letter of the initial words of each part's introduction. That these had little or no relation to the subject matter of the parts will appear from the following conspectus:

³³ La Serna Codigos Españoles, 2, Int. XV, Cf. Howe, Studies in Civil Law, (2nd Ed.) 142.

³⁴ Septenanio es cuento muy noble (30) a que loaron mucho les Sabios antiguos; porque se fallan en el muchas cosas, e muy señaladas. que se departen por cento de siete, assi como todas las criaturas que son departidas en siete maneras, ca segund dixo Aristoteles (31), e los otros Sabios: O es esta criatura que no a cuerpo ninguno, mas es espiritual, como Angel o alma; o es cuerpo simple, que ni se engendra, ni se corrompe por natura, y es celestial, assi como los Cielos e las Estrellas; o es cuerpo simple, que se engendra, e se corrompe por nature, como los elementos; o es cuerpo compuesto de alma de crescer, e de sentir, e de razonar, como el ome; o a a cuerpo compuesto de alma de crescer, y de sentir, e no de razon, assi como las animalias, que no son hombres; o es cuerpo compuesto del alma de crescer, mas no de sentimiento ni de razon, assi como los arboles, e todas las otras plantas; o a cuerpo compuesto, mas no a alma ninguna, ni sentimiento, como las piedras, e las cosas minerales, que se crían en la tierra. E otrosi todas las cosas naturales an mouimiento de siete maneras; ca o es a suso, o a yuso, a adelante, o otras, o a diestro, o a siniestro, o en derredor. E en este mismo cuento fallaron las Sabios antiguos las Siete Estrellas mas nombradas que se llaman Planetas; que son Saturno, Juppiter, Mars, Sol, Venus, Mercurio, Luna, de que tomaron cuento de los siete Cielos en que estauan, e pusieronles nombres, e ordenaron por ellas los siete dias de la semana. Otrosi los Sabios departieron por este cuento las siete

PARTIDA.

I	I
Introduction	Subject matter
A servicio de Dios, é pro- comunal de las gentes fezimos este libro, se- gun que mostramos en el comienzo.	Laws in general; usages, customs, "fueros," ecclesiasti- cal regulations (a digest of canon law). ³⁵

partes de toda la tierra; a que llaman Climas. Otrosi por este mismo cuento departieron los metales e algunos y ouo que por esto cuento los saberes, a que llaman las siete Artes; e eso mismo fizieron de la edad del ombre. E avn por este mismo cuento mostro Dios a los que eran sus amigos, muchas de sus poridades por fecho e e por semejanza, assi como a Noe, que mando fazer el Arca en que se saluasse el Diluio, en que mando que todas las cosas que fuesen limpias (32) e buenas, mentiesse en ella siete (33). E otrosi Jacob que fue Patriarca, siruio a su suegro siete años, por que le diesse por mujer a su fija Rachel; e porque le dio a Lya, siruiole otros siete años (34) por ella misma y este fue por gran signifianza (35) y Joseph su fijo que fue poderoso sobre toda la tierra de Egypto, por el sueño que solto al Rey Faraon de los siete años (36) de mengua, e los siete de abondo, segun el sueño que Rey soñara de las siete espigas, e de las siete vacas, e esto fue otros fecho por muy gran signifianza (37). E otrose Moysen quando le mando facer el Tabernaculo, en que ficessen oracion los fijos de Israel entre todas las otras cosas mandole señaladamente, que pusiesen en el dentro un danelero de oro, fecho en manero de arbol, en que ouiesse siete ramos, (38) que fue fecho por gran signifianza. E Daud otrosi, que fue Rey, de cuyo linage vine nuestro Señor Jesu Christo, fizo por Espíritu Santo el Salterio, que es vna de las mayores escripturas que ay en la Santa Eglesia. E otrosi, mostro en el siete cosas, assi como prophecia, e oracion, e loor, e bendicion, e arrepentimiento, e consejo, e penitencia. E despues de todo estol quando nuestro Señor quiso fazor tan gran merced al mundo, que vino a tomar carne de la Virgen Santa Maria por nos aduzir a saluacion, e porque lo pudiessemos ver visiblemente, e conoscer que era Dios y hombre, por este cuento mismo (segund dixo el Profeta) ouo el en si seite dones de Spiritu Santo. E otrosi, por queste cuento (segund dixerón los Santos) ouo Santa Maria siete gozos muy grandes con su fijo Jesu Christo, segund canta la San Eglesia. E por este mismo cuento nos dio nuestro señor Jesu Christo siete Sacramentos, porque nos pudiessemos saluar. E otrosi, por este cuento nos mostro la oracion del Pater noster, en que hay siete peticiones, con que le deuemos pedir merced. E otrosi San Juan Euangelista (que fue pardiante e amigo de nuestro Señor Jesu Christo) fizo vn libro que llaman Apocalysids, de muy grande poridades que el le mostro, y las mayores cosas que en el escrimiuo, son todas partidas por este cuento de siete. Onde por todas estas razones, que muestran muchos bienes que por este cuento son partidos, partimos este libro en siete partes." Septenario 4-5.

³⁵ Hunter Roman Law, 107.

	II	
L	a fé Catolica de nuestro de nuestro Señor Jesu-Christo auemos mostrado en la primera Partida deste libro, como se debe creer, e honrrar, e guardar.	Government and Administration.
	III	
F	izo nuestro Señor todas las cosas muy cumplidamente por el su grand saber e despues que las ouo fechas, mantouo a cada vna, en su estado.	Procedure and property. ³⁶
	IV	
O	rras señaladas dio nuestro Señor Dios al ome, sobre todas las criaturas quel fizó.	Domestic Relations.
	V	
N	ascen entre los omes muchos euxeocos, e grandes contiendas, en razon de los pleytos e de las posturas, que ponen los vnos con otros.	Obligations ³⁷ and Maritime Laws. ³⁸

³⁶ "Taken from Roman Law almost exclusively." Id.

³⁷ "Almost word for word from Roman Law." Id.

³⁸ "Bears so strong a family likeness to the Rules of Olerón, the basis of English Maritime Law, that if these are not derived from it, both have probably a common parent in the Consulado Raikes, Maritime Codes of Spain and Portugal, (1896), Preface.

	VI	
S	esudamente dixeron los Sabios antiguos que passan su tiempo, aquellos que bien faziendo bien su fazienda, tomando guarda en las posturas, e en los pleytos, que ponen vnos con otros.	Wills and inheritance; guardians.
	VII	
O	lvidanza e atrevimiento son las cosas que fazen a los omes errar mucho.	Crimes; exegesis (interpretation); General principles.

It is obvious enough now that the general matter in Books I and VII should have been combined; that Books III and V should each have been divided and that the provisions relating to guardians in Book VI belong in Book IV. But we are not to expect either scientific accuracy or logical arrangement from thirteenth century minds. In these particulars their work certainly excels the Forum Judicum, and the wonder is that they did so well.

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