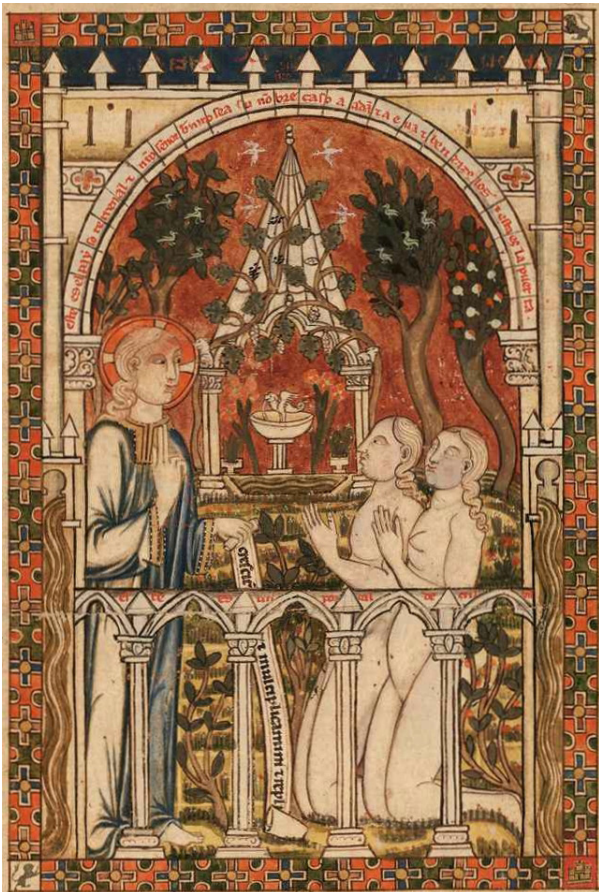


CALIFORNIA'S LEGAL HERITAGE

On the eve of California's statehood, numerous debates raged among the drafters of its constitution. One argument centered upon the proposed retention of civil law principles inherited from Spain and Mexico, which offered community property rights not conferred by the common law. Delegates for and against the incorporation of civil law elements into California's common law future used dramatic, fiery language to make their cases, with parties on both sides taking opportunities to deride the "barbarous principles of the early ages." Though invoked for drama, such statements were surprisingly accurate. The civil law tradition in question was one that in fact derived from the time when the Visigoths, one of the so-called "barbarian" tribes, invaded and won Spanish territory from a waning Roman Empire. This feat set in motion a trajectory that would take the Spanish law from Europe to all parts of Spanish America, eventually reaching its last settled territory, Alta California.



Fuero juzgo: 1241 illumination, MS 82 Biblioteca Nacional, Madrid

Spanish Civil Law Tradition

To understand the historic roots of the legal tradition that California brought with it to statehood in 1850, we must go back to Visigothic Spain. The Visigoths famously sacked Rome in 410 CE after years of war, but then became allies of the Romans against the Vandal and Suevian tribes. They were rewarded with the right to establish their kingdom in Roman territories of Southern France (Gallia) and Spain (Hispania). By the late fifth century, the Visigoths achieved complete independence from Rome, and King Euric established a code of law for the Visigothic nation. This was the first codification of Germanic customary law, but it also incorporated principles of Roman law. Euric's son and successor, Alaric, ordered a separate code of law known as the *Lex Romana Visigothorum* for the Hispanic Romans living under Visigothic rule. In 654 AD, King Recceswinth reorganized these two codes into a new, expansive code of law known as the *Liber Judiciorum* or, in its later Spanish version, the *Fuero Juzgo*. In doing so, the Visigothic king departed from the ancient tradition of maintaining different codes of law for Romans and non-Romans. Under the *Liber Judiciorum* the Visigoths created one jurisdiction for all inhabitants of their territories, and the new code became the law across Hispania.

When the Ummayyads invaded the Iberian Peninsula in 711 AD, the legislative and political unity of Visigothic Spain was shattered, but Visigothic law did not disappear. The Muslim rulers of Al-Andalus, as Islamic Iberia was called, allowed Christian and Jewish inhabitants to maintain religious and legal autonomy in civil matters within their own communities. Through seven centuries of the *Reconquista*, Spanish Christians established new kingdoms and municipalities that restored the principles of the Visigothic law embodied in the *Fuero Juzgo* and incorporated them into local customs and charters as well as the *fueros generales*, or general bodies of law.

This was the case in the kingdom of Castile, where Alfonso the Wise issued the *Fuero Real* in 1255 AD, which brought legal uniformity to the *fueros* and customs across Castile. A decade later he promulgated the *Siete Partidas*, which combined existing Spanish

law with Roman law and canon law into the most comprehensive and influential legal compilation of the middle ages. Spain's evolution into an imperial power after 1492, with Castile as the center of royal authority, meant that Castilian law would become the law of Spanish colonial territories as well. The medieval Spanish codes remained the principal sources of law for Latin America even through the establishment of modern national civil codes in the nineteenth century. It was in this way that Roman and Visigothic legal traditions that developed in medieval Spain would become the legal heritage of California, as a territory first of Spain and then Mexico.

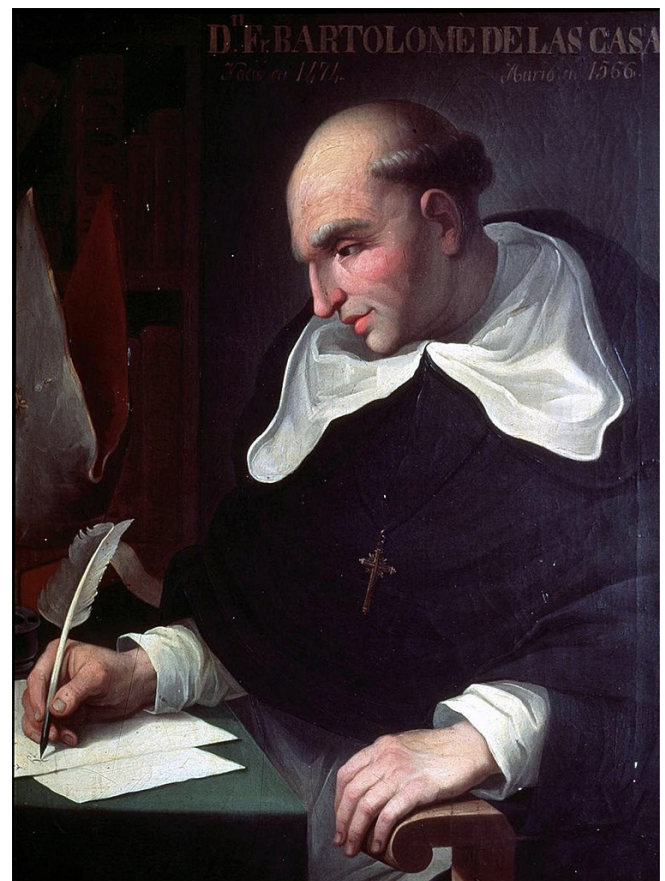
Spanish Law in America

The *Leyes de Toro* in 1505 were a response to the growing need for legislative clarity and unity in an Iberian monarchy that had dramatically consolidated its power under the joint rule of Isabella and Ferdinand. This need only increased as Spain rapidly evolved into an imperial power with its colonial expansion into the Americas beginning in 1492. The Spanish crown and its colonial representatives extended Castilian law to the Americas, where it remained the foundation of private law in Spanish America through the colonial period and beyond. But the distinct social, political, and economic conditions of the expanding colonies increasingly demanded that public law be crafted specifically for them.

The earliest laws created for the Indies were the *Leyes de Burgos* (Laws of Burgos) of 1512–3. They were promulgated for the island of Hispaniola (today Dominican Republic and Haiti), colonised by Columbus during his 1492 journey as the earliest site of territorial expansion. This set of thirty-nine laws sanctioned the establishment of the *encomienda* system, which placed indigenous peoples under the responsibility and protection of conquistadores and early Spanish settlers, who were allowed in turn to exploit their labor and wealth. The Dominican friar Bartolomé de Las Casas, one of the earliest and most outspoken defenders of indigenous rights, railed to the Crown against the ineffectiveness of the Laws of Burgos to prevent corruption and abuses against native peoples. Though Spanish abuse of natives continued, the protests of Las Casas and his contemporaries did not go unheard. In 1524 Spain recognized the need for direct royal authority and presence in the colonies and created the Council of the Indies to exer-

cise executive, legislative, and judicial power on behalf of the monarchy. The *Leyes Nuevas* (New Laws) of 1542 established a system of viceroalties and *Audiencias* (royal courts) within the Council to carry out the work of royal administration and justice. The New Laws also attempted, unsuccessfully, to phase out the corrupt *encomiendas* system. Though these early laws proved ineffectual, their limitations made clear the need for a more formal and effectively applied system of colonial law.

The traffic of scholars and intellectuals between Spain and the colonies increased throughout the 16th and 17th centuries. The earliest American scholars were to be found among the countless missionaries and clergy who, like Las Casas, went to serve in the institutions established to carry out Spain's religious mission in the colonies. Charged with the conversion and governance of native peoples, the missionary orders led some of the few and lasting efforts to record and preserve indigenous history, language, and culture, and founded the earliest American universities. A growing number of Spanish jurists also arrived to serve in the viceregal *Audiencias*. These jurists be-



Portrait of Bartolomé de Las Casas (c.1484 - 1566)

gan to produce theoretical and instructional treatises based on their firsthand experience of colonial law and practice.

From the early champion of indigenous rights, Las Casas, to the colonial expert on *derecho indiano*, Juan de Solórzano y Pereira, royal and religious administrators directly faced the challenges of colonial rule and bureaucracy. As a result, they produced a diverse body of work that combined their understanding of Castilian law with their experience of the unique legal issues of Spanish America and the governance of its European settlers and native peoples. These treatises on law and legal theory helped to build a coherent set of laws for the Indies that evolved throughout the colonial period.



Carta esférica de la costa de la Alta California. This map of the coast of Alta California was published in 1839. It shows many of the main Missions and presidios from San Diego north to current day Solano County, California. From the Library of Congress Geography and Map Division.

California From Settlement to Statehood

In other southwestern states that were once part of the Spanish Empire, such as Texas and New Mexico, colonial exploration and settlement began in the early 1500s, within a decade or two of the Spanish arrival on the American mainland. At the remotest northern edge of Spanish America, however, California remained largely unexplored by the colonists for two more centuries, until well into the 1700s. The establishment of missions and presidios began in Baja California in the 1680s and slowly moved north, with interest in this last frontier spurred in the mid-eighteenth century by Russian exploration and territorial interest in North America. Exploration was largely coastal until the Anza expedition, the first extensive overland journey through upper California, brought the first Spanish settlers as far as the Bay Area to settle in 1775–6. The settler brought with them a civilian government and established their colonial administrative and judicial institutions on this northern frontier.

From the earliest days of non-native settlement, the vast territory and natural resources of California were a focus of interest for government and settlers alike. It is little surprise, therefore, that many of the most notable legal issues and controversies to shape California's history, through its transition from Spanish to Mexican to U.S. territory and into statehood, have revolved around property rights. Within decades of their arrival in Alta California, many of the original Spanish settlers received large land grants from the crown. The Mexican government granted many more ranchos after independence from Spain in 1821. A relatively small number of Spanish and Mexican families formed the nucleus of a small Californio population that forged its own community and enjoyed in relative isolation the territory's natural wealth and splendor. This all changed almost overnight. The end of the Mexican-American war and the Gold Rush in 1848 brought a sudden and tremendous influx of American and international fortune-seekers across its mountains and to its shores. These events had dramatically transformed California's population and its political and economic landscape by the time statehood was granted in 1850. The great opportunities of wealth that California presented to newcomers brought with them continuous legal challenges in the form of ever evolving and competing claims to ownership.

Al-Andalus – the parts of the Iberian Peninsula that came under Muslim rule after the Umayyad conquest of 711-714. The emirate established by the Umayyads in the 8th century gave way to the caliphate of Córdoba in the early 10th century. After more than 20 years of unrest, the caliphate splintered into numerous independent kingdoms, or *tā'ifas*. This marked the beginning of a complicated period in Iberian history, when the Christian principalities in the north began to expand more aggressively and Muslim rulers from North Africa sought to wrest back territory and exert control over the fractious Andalusians. By 1300 only Granada remained under Islamic control until its capitulation in 1492. Even after the end of Islamic rule, Muslims remained part of Iberian Peninsula until the expulsions of the early 17th century.

Alfonso the Wise – Alfonso X of Castile, the king who ruled Castile, León, and Galicia from 1252 until his death in 1284. He issued the *Fuero Real* in 1255 and began the compilation of *Siete Partidas*.

Anza expedition – An overland expedition and colonization effort led by Juan Bautista de Anza beginning in 1774. The route began south of modern-day Tucson, Arizona, and ended in the San Francisco Bay Area. After his first expedition north, Juan Bautista was ordered to lead a group of colonists to settle in Alta California.

Audiencias – A system of appellate courts in the Spanish empire first founded in the 14th century. They were extended to Spanish colonies in the Americas in the early 16th century in an attempt to bring the colonists under royal control. *Audiencias* in the Americas had legislative functions in addition to their judicial ones.

Bartolomé de Las Casas – A Spanish colonist, friar, priest, and social reformer, born in 1484 and died in 1566. One of the first Spanish colonists in the Americas, he was appalled by the abuses committed against the indigenous people and advocated for the abolition of the *encomienda* system.

derecho indiano – a term used to refer to laws and norms governing indigenous Americans that were used by the Spanish colonists in the Americas

encomienda – a Spanish labor system that rewarded colonists with the slave labor of indigenous Americans. Under this system, the Spanish crown granted a person a number of slaves from a specific community but did not dictate which individuals in that community had to provide their slave labor. The *encomienda* system was abolished in 1542.

King Alaric – referring to King Alaric II, king of the Visigoths from 484 until his death in 507. He ordered the creation of the *Lex Romana Visigothorum*, which governed Hispanic Romans living under Visigothic rule.

King Euric – King of the Visigoths from 466 until 484. In 475 he forced Western Roman Emperor Julius Nepos to recognize the independence of the Visigothic kingdom. He was the first Visigoth king to formally codify his people's laws, with the *Code of Euric* in 471.

King Recceswinth – King of the Visigoths from 649 to 672. In 654 he promulgated the *Liber Judiciorum*, which placed a common law over Visigoths and Hispano-Romans living under his rule. The *Liber Judiciorum* was heavily influenced by Roman law.

ranchos – land grants given to soldiers and well-connected people in Alta California under Spanish and Mexican rule. By 1846, *ranchos* made up nearly 800 million acres of land, one eighth of the area of current-day California. When California was admitted to the United States, many *ranchos* were taken from the Mexican settlers.

Visigoths – an early Germanic people who were one of the major political entities in the Roman Empire. Under their first leader, Alaric I, they invaded and sacked Rome in 410. Afterwards, they settled in southern Gaul and Hispania, current-day southern France, Spain, and Portugal.

Council of the Indies – or Consejo de Indias, was the administrative and judicial body that governed Spain's colonies in the Americas. Created in 1524 and based in Madrid, the Council prepared and issued the legislation; oversaw colonial officials, both civil and ecclesiastical; and was the court of last resort for civil cases tried by the audiencias.

CODICIS
LEGVM WISIGOTHORVM
LIBRI XII.

ISIDORI HISPALENSIS EPISCOPI DE
GOTHIS WANDALIS ET SVEVIS
Historia siue Chronicon.

Ex Bibliotheca PETRI PITHOEI I.C.

PROCOPII CÆSARIENSIS RHETORIS
*ex lib. VIII. Histor. locus de Gothorum origine qui in exempla-
ribus editis hactenus desideratur.*



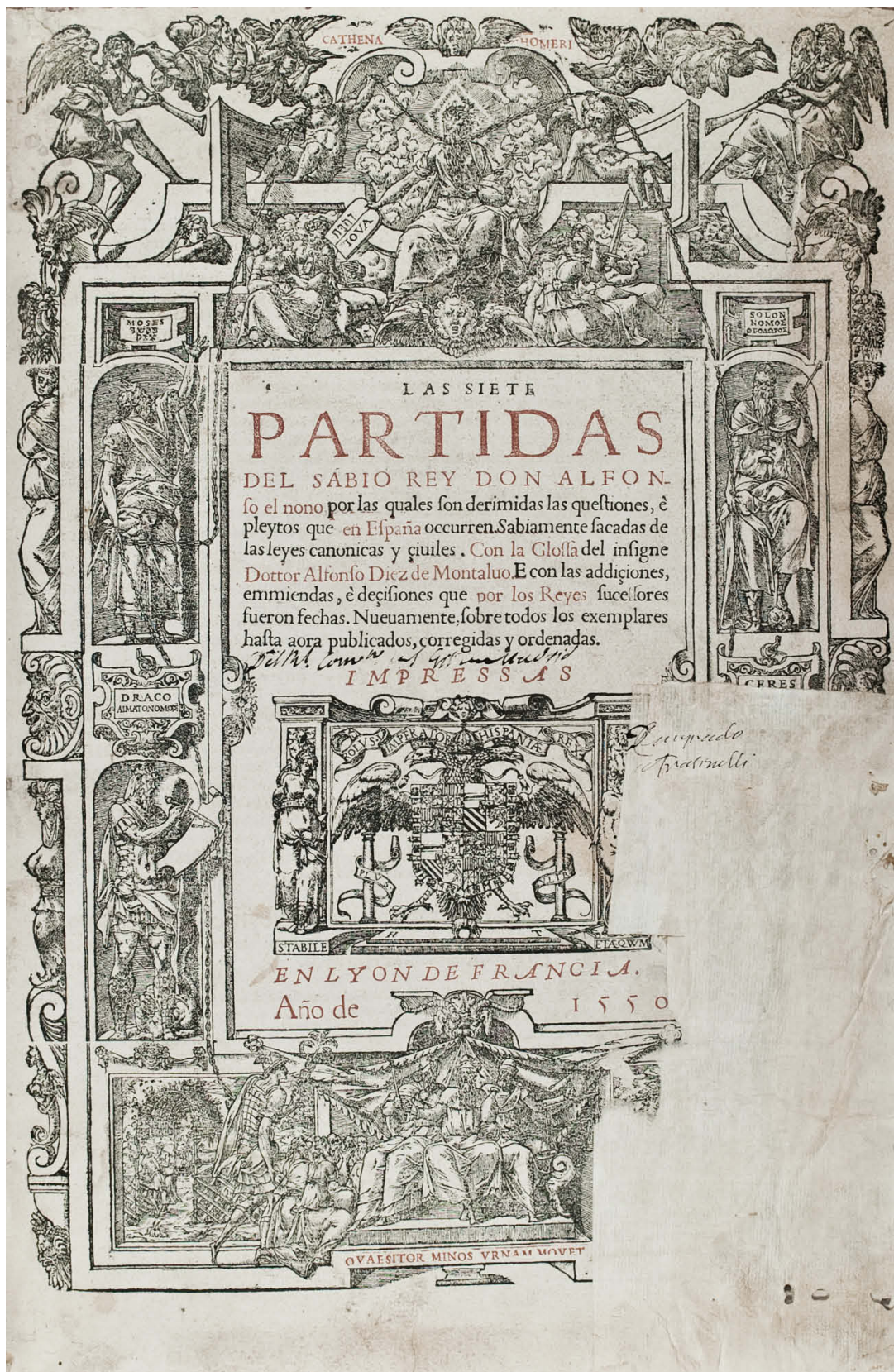
PARISIIS,

Apud Sebastianum Niuellium, sub
Ciconiis, via Iacobæa.

M. D. LXXIX.

CVM PRIVILEGIO REGIS.

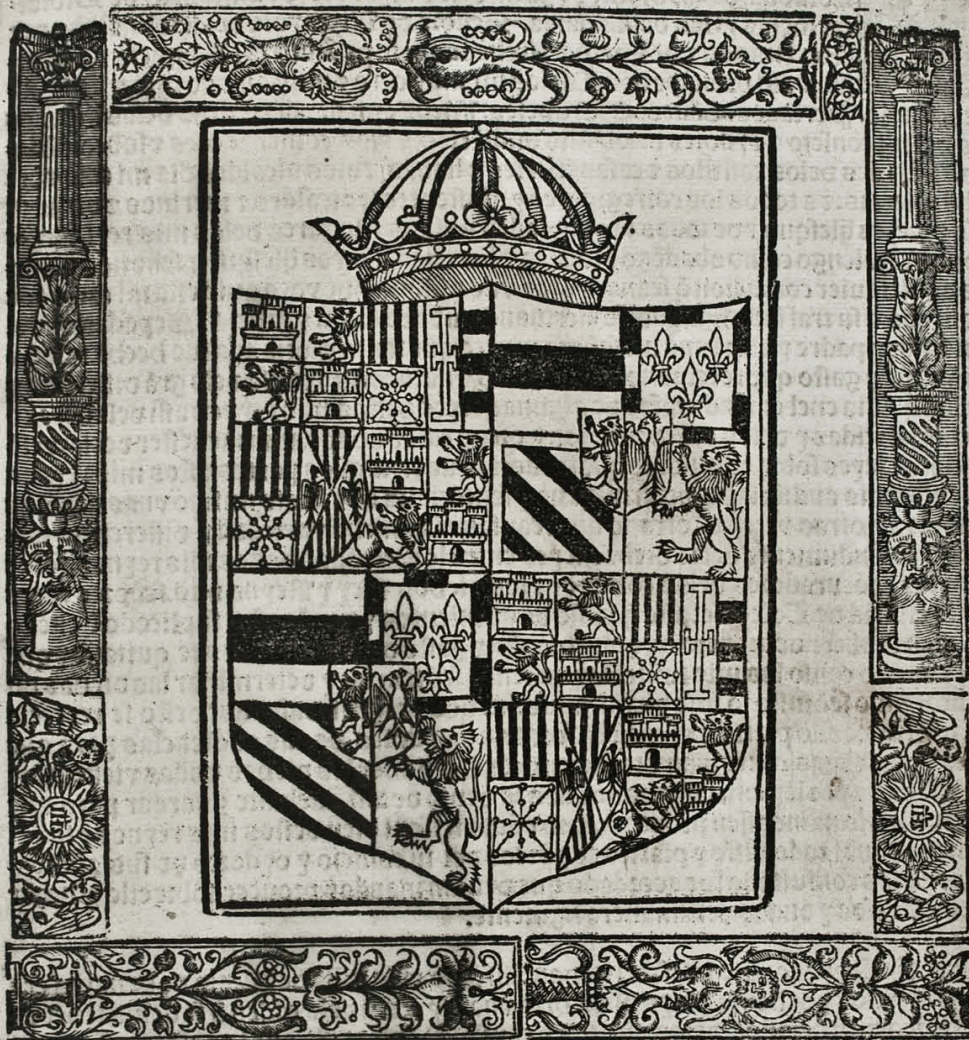
Codices legvm Wisigothorum, libri XII: Isidori Hispaliensis Episcopi De Gothis, Wandalis, et Svevis historia sive chronicon, ex bibliotheca Petri Pithoei. Procopii Caesariensis ... ex lib VIII. Histor. locus de Gothorum origine que in exemplaribus editis hactenus desiderantur. (Parisiis: apud S. Nivellium, 1579)



Las Siete Partidas del sabio rey don Alfonso el Nono: por las quales son derimidas las questionnes, è pleytos que en España ocurren: sabiamente sacadas de las leyes canonicas y çiuiles con la glossa del insigne dottor Alfonso Diez de Montaluo. E con las addiciones, emmiendas, è deçisiones que por los reyes sucessores fueron fechas. Nueuamente, sobre todos los exemplares hasta aora publicados, corregidas y ordenadas.

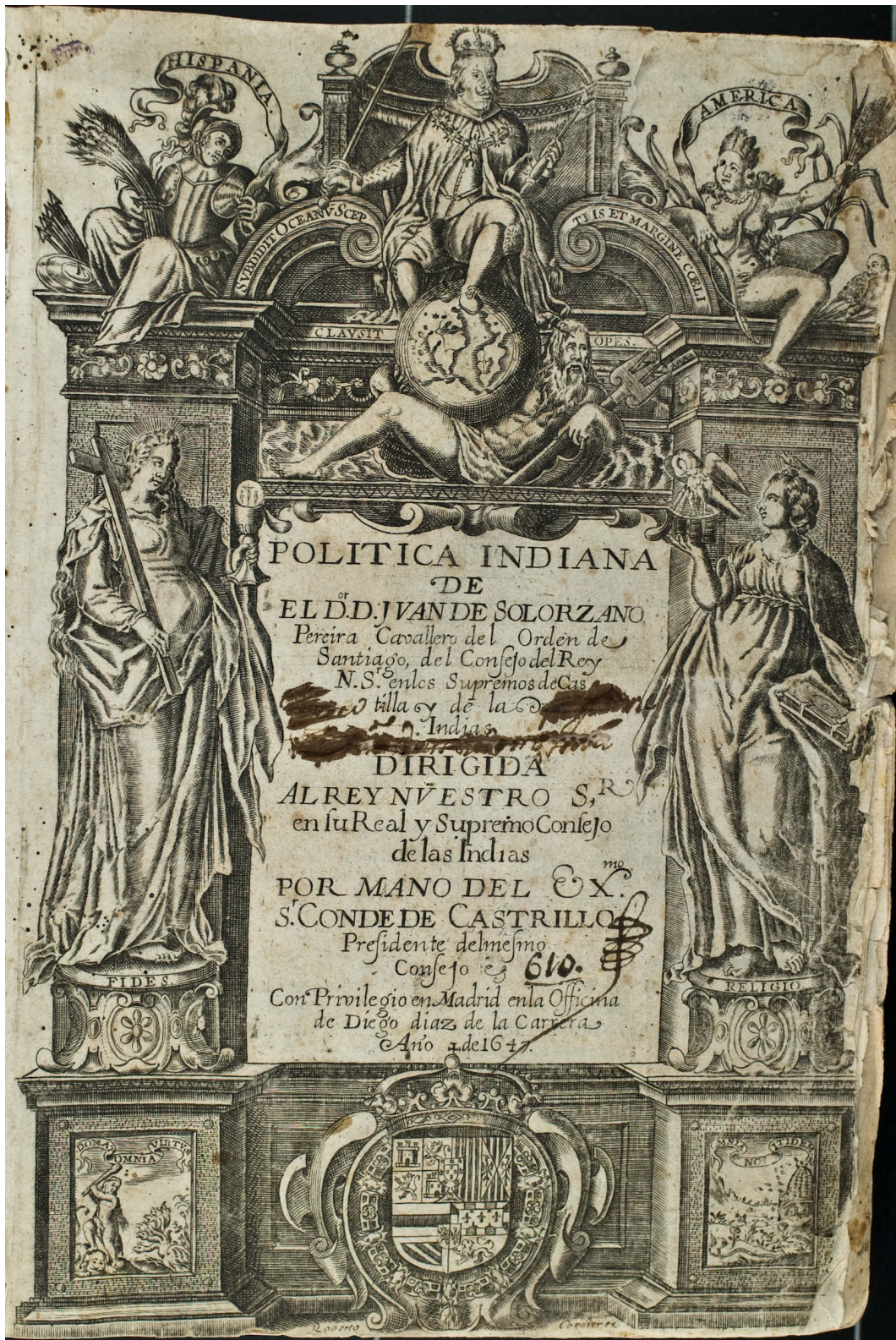
(Impressas en Lyon de Francia: [M. Bonhomme for A. Gomez and H. Toti], año de 1550)

Leyes de Toro.



Quaderno de las leyes y nuevas decisiones hechas y ordenadas en la ciudad de Toro sobre las dudas de derecho que continuamente solian y suelen ocurrir en estos reynos en q auia mucha diuersidad de opiniones entre los doctores y letrados destos Reynos.

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(Salamanca : Juan de Junta, 27 Apr. 1544)



Juan de Solórzano Pereira

Politica indiana: Sacada en lengua castellana de los dos tomos del derecho, i gobierno municipal de las Indias Occidentales que mas copiosamente escribio en la latina el dotor Don Ivan de Solorzano Pereira ... por el mesmo avtor, dividida en seis libros. En los quales con gran distinction i estvdio se trata, i retencion de las mesmas Indias, i su gobierno particular, assi cerca las personas de los Indios

(Madrid: D. Diaz de la Carrera, 1648)

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