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Varia

Torture and Nature *in the Spanish Legal Discourse during the Middle Ages*[1]

Torture et Nature *dans le discours juridique espagnol au Moyen Âge*

Tortura y Naturaleza *en el discurso jurídico castellano de la Edad Media*

Tortura eta Natura *Espainiako diskurtso legalean Erdi Aroan*

Daniel A. PANATERI*

LICH-Consejo Nacional de Investigaciones Científicas y Técnicas
Universidad Nacional de San Martín

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Abstract: *This paper analyzes the relationship between the concept of* nature *and the language of Law. On the one hand, I will show how* nature *worked in the «Roman Law». On the other hand, taking this functioning, I will try to explain how the use of this juridical concept was readjusted during the Middle Ages. Although the difference in the functioning of the concept of* nature *in Rome and the Middle Ages is well known, I believe that the key point in my research involves understanding how these institutions and legal concepts functioned within the juridical discourse, rather than emphasizing the extent of their limitations. In summary, I intend to show that there was a linguistic rather than a conceptual adaptation of the concept of* nature *to discuss the (non-historical) foundation of institutions. To do so, I will take different texts from the classical and post-classical periods and compare them with what is outlined in the* Siete Partidas *(1256-1284). I will also take up some notions of the Common Law. The preferred element of analysis will be the use of* nature *within the institute of judicial torture. I hope to achieve a thorough examination of how Roman Law functioned in the very formation of the legal narrative complex during the 13th century.*

Keywords: *Law. Discourse. Torture. Philosophy. Monarchy.*

Resumen: *En este trabajo se pretende analizar la relación entre el concepto de* naturaleza *y el lenguaje jurídico. Por un lado, mostraré cómo funcionaba la* naturaleza *en el «Derecho Romano». Por otro lado, partiendo de este funcionamiento, intentaré explicar cómo se reajustó este concepto jurídico durante la Edad Media. Aunque la diferencia en el funcionamiento del concepto de* naturaleza *en Roma y en la Edad Media es bien conocida, creo que el punto clave de mi investigación consiste en comprender cómo funcionaban estas instituciones y conceptos jurídicos dentro del propio discurso, más que determinar cuál fue el alcance de sus limitaciones. En resumen, pretendo demostrar que hubo una adaptación lingüística, más que conceptual, del concepto de* naturaleza *para hablar de la fundamentación (no histórica) de las instituciones. Para ello, tomaré diferentes textos del periodo clásico y postclásico y los compararé con lo esbozado en las* Siete Partidas *(1256-1284). También retomaré algunas nociones del Derecho Común. El elemento preferente de análisis será el uso de la* naturaleza *dentro del instituto de la tortura judicial. Espero alcanzar una visión completa de cómo funcionó el Derecho Romano en la propia formación del complejo narrativo jurídico durante el siglo XIII.*

Palabras clave: *Derecho. Discurso. Tortura. Filosofía. Monarquía.*

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* ***Corresponding author:*** Daniel A. Panateri. TDA, Universidad Nacional de San Martín. Casilla de Correo, n.º 7, Correo Argentino (1650 Sucursal San Martín). – dpanateri@unsam.edu.ar – https://orcid.org/0000-0002-4690-8917

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Résumé: *Cet article vise à analyser la relation entre le concept de* nature *et le langage du droit. D'une part, je montrerai comment le concept de* nature *fonctionnait dans le « droit romain ». D'autre part, à partir de l'étude de ce fonctionnement, j'essaierai d'expliquer comment l'utilisation de ce concept juridique a été réajustée au cours du Moyen Âge. Bien que la différence de fonctionnement de ce concept à Rome et au Moyen Âge soit bien connue, je crois que l'essentiel de ma recherche consiste à comprendre comment ces institutions et concepts juridiques fonctionnent dans le discours juridique, plutôt que d'envisager l'étendue de leurs limites. En résumé, j'ai l'intention de montrer qu'il y a eu une adaptation linguistique plutôt que conceptuelle du concept de* nature *pour discuter du fondement non historique des institutions. Pour ce faire, j'examinerai différents textes des périodes classique et postclassique et les comparerai à ce qui est exposé dans les* Siete Partidas *(1256-1284). Je reprendrai également quelques notions de Common Law. L'élément d'analyse privilégié sera l'utilisation de la* nature *au sein de l'institution de la torture judiciaire. J'espère parvenir à une vision approfondie du fonctionnement du droit romain dans la formation même du complexe narrativo-juridique au cours du XIII^e siècle.*

Mots-clés: *Droit. Discours. Torture. Philosophie. Monarchie.*

Laburpena: *Lan honetan,* naturaren *eta hizkuntza juridikoaren arteko harremana aztertu nahi da. Alde batetik,* naturak *«zuzenbide erromatarrean» nola funtzionatzen zuen erakutsiko dut. Bestalde, funtzionamendu horretatik abiatuta, kontzeptu juridiko hori Erdi Aroan nola berregokitu zen azaltzen saiatuko naiz.* Naturaren *kontzeptuak Erroman eta Erdi Aroan izandako funtzionamendu ezberdina aski ezaguna den arren, nire ikerketak gako bat ematen duela uste dut: diskurtso horren barruan instituzio eta kontzeptu juridiko horiek nola funtzionatzen zuten azaltzen du, beren mugen irismena zehazteaz harago. Laburbilduz,* naturaren *kontzeptuaren egokitzapen linguistiko bat egon zela frogatu nahi dut (egokitzapen kontzeptuala bainoago), instituzioen fundamentazio ez-historikoaz hitz egiteko. Horretarako, aldi klasikoko eta post-klasikoko hainbat testu hartu eta* Siete Partidas *(1256-1284) izenekoan jasotakoarekin alderatuko ditut. Halaber, zuzenbide komuneko nozio batzuk hartuko ditut. Aztertuko den elementu nagusia* naturak *tortura judizialaren institutuaren barruan duen erabilera izango da. Hala, XVIII. mendean zuzenbide erromatarrak esparru narratibo juridikoa eratzeko orduan izan zuen funtzionamenduaren ikuspegi zabala ematea espero dut.*

Giltza-hitzak: *Zuzenbidea. Diskurtsoa. Tortura. Filosofia. Monarkia.*

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1. Introduction

This paper analyzes how the legal discourse of Alfonso X constructed a system wherein the concept of *Señor Natural* and the institution of torture functioned together as mechanisms for legislating resistance. To achieve this, I will divide my exposition into three parts. Firstly, I will discuss the contemporary understanding of torture and its implications. Secondly, I will explore the diachronic aspects of the concept of nature and the institution of torture, including the medieval reception of Roman law. Thirdly, I will examine the rhetorical construction established in *Siete Partidas* between *Señor Natural* and *desnaturación* to elucidate the fictional system that provides meaning to this reflection. Finally, I will describe the relationship between nature and torture, taking into account the legislation of resistance that I aim to elucidate.

2. Torture and language

It is crucial to clarify how the institution of torture has evolved to the present day. This entails a brief historical overview with language as the organizing principle. I will analyze how legal discourse has employed judicial torture, its procedural implications, and how it has been received socially, leading to its current status as illegal in the West[2].

Broadly speaking, torture can be defined in two ways. Firstly, its judicial character does not fully encompass all its constituent elements. Secondly, its use generally represents a form of violence inflicted upon individual bodies to preserve the social body. In this analysis, I intentionally set aside the notion of torture as punishment.

The term «torture» derives from the Late Latin *tortūra*, originating from *torquere*, meaning «to twist.» This literal interpretation, to which judicial implications are later added, is defined by its very action. The torsion inflicted on bodies acquires procedural significance, as its purpose is to generate evidence within a judicial context.

During the Middle Ages, the relationship with judicial torture was complex[3]. The term *tormentum* was commonly preferred, as evidenced in *Siete Partidas*. This

[2] This section is only for illustrative purposes and serves what I would like to propose below. For a detailed study of the history of the institute in question, see the fantastic text by Giuliano Serges in Pace, Leonardo, Santucci, Simone and Serges, Giuliano, *Momenti di storia della giustizia: Materiali di un seminario* (Rome: Aracne editrice, 2011), 213-320.

[3] In relation to a deeply historical depiction of the torture in Spain, Gonzalo Martínez Díez, «La tortura judicial en la legislación histórica española», *Anuario de Historia del Derecho Español* XXXII (1962): 223-300; and Daniel Panateri, «La tortura en las Siete Partidas: la pena, la prueba y la majestad. Un análisis sobre la reinstauración del tormento en la legislación castellana del siglo XIII», *Estudios de Historia de España* 14 (2012): 83-109.

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technical designation reflects an intention to differentiate the act of torturing as an end in itself from the idea of twisting bodies as a means to achieve a different objective[4]—namely, a legal necessity imposed as a procedural condition in trials where the evidentiary requirements impede progress toward a conclusive decision. While this description may appear clinical, it is essential to delineate functions and conceptions to ensure accurate analysis. The re-emergence of torture in the 20th century does not adhere to the same juridical or even anthropological principles that underpinned the practice in the 13th century. Therefore, homogenizing historical expressions of torture leads to both methodological and, ultimately, political errors.

In the same vein, it is pertinent to distinguish torture as punishment, as both forms of physical violence correspond to different stages within a judicial process. As Giuliano Serges notes, in judicial torture, the legal status alters the practice, while in cases of torture as punishment, the practice itself modifies the status of the punishment. In this latter instance, torture is not merely a means or instrument of the process, but rather a distinct form of punishment with straightforward and discrete functions within the judicial sphere[5].

The objective of *tormentum* was to extract testimony or confession. Thus, the definition I seek implies a historical moment in which this institution developed. Terminologically, judicial torture —whether termed *tormento* or simply torture— functioned as a judicial device central to legal procedures, evolving during the Middle Ages within the Roman-canonical framework of *ius commune*.

Three points merit attention to attain a comprehensive understanding of this phenomenon. First, it is essential to set aside ideological assumptions regarding the use of Roman law during the Middle Ages. Second, it is necessary to acknowledge the textual influence of Roman law that legitimized torture within criminal procedures—both civil and canonical. Finally, I posit that a political dimension renders the institution of torture a tool for authoritative constructions. These considerations underscore the urgency of employing an interdisciplinary perspective to grasp the intricate relationships between law and violence, law and politics, and law and literature.

Returning to the primary focus of this section —language— an accessible way to understand the concept of torture in the legal intellectual milieu is through Ulpian's formulation of the institution: *ad eruendam veritatem* (to extract the truth)[6].

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[4] Pace, Leonardo, Santucci, Simone y Serges, Giuliano, *Momenti di storia della giustizia…,* 215.

[5] Pace, Leonardo, Santucci, Simone y Serges, Giuliano, *Momenti di storia della giustizia…,* 216.

[6] *D.* 47.10.15.41.I use the following editions: *Corpus Iuris Civiles*, vol. I, Theodore Mommsen y Paul Krüger (eds.), Berlin, 1973 (1872); vol. II, Paul Krüger (ed.), Berlin, 1967 (1877); vol. III, Rudolf Schöll y Wilhem Kroll (eds.), Berlin, 1963 (1895). Cfr. Fiorelli, *La tortura giudiziaria...*, 187-88. Serges (Pace, Leonardo, Santucci, Simone y Serges, Giuliano, *Momenti di storia della giustizia…,* 217) makes an splendid consideration about this issue. Also, Anna Bellodi Ansaloni, *Ad eruendam veritatem. Profili metodologici e processuali della quaestio per tormenta* (Bologna: Bologna University Press, 2011): 5, gives a thorough and exquisite analysis about this institute, its origins and development.

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This general definition was fundamental and elucidated the conception of *tormentum* during Roman times. Ulpian, along with Azzo, asserted that to comprehend the *Quaestionem*, «intelligere debemus tormenta et corporis dolorem **ad eruendam veritatem**; nuda ergo interrogatio, vel levis territio non pertinet ad hoc Edictuin. Quaestionis verbo etiam ea, quam malam mansionem dicunt, continebitur. Qum igitur per vim et tormenta habita quaestio est, tunc quaestio intelligitur». Therefore, *quaestio* emerges as a central term in this discourse. In that sense, «Quaestionem autem sic accipimus, non tormenta tantum, sed omnem inquisitionem»[7]. The core of the reflection concerning criminal procedure is the pursuit of truth and the means to achieve it. The procedure itself entails extracting truth from the body, revealing a mechanism employed for another purpose. This imperative for truth positioned the institution of torture as vital for establishing an *imperium* where politics harnessed law as a tool for persecution. The theoretical foundation was predicated on the notion of truth's inaccessibility in significant crimes[8].

In conclusion, I wish to clarify the intended meaning of this institution in the present context. Despite being declared illegal, torture persists in various Western nations. I contend that its presence does not signify a fundamentally different phenomenon from what I am analyzing here. However, the evolution of torture in modern times has engendered new social and political dynamics.

Whether conducted by police, clandestine groups, or sanctioned by the state, torture has consistently represented a totalitarian expression of power[9]. While there is ongoing debate regarding its justification —particularly in extreme criminal cases such as terrorism— I believe this discourse often neglects the lived experiences of victims[10]. To conclude, understanding the interplay between torture and *quaestio* within the judicial landscape of the medieval period is essential for comprehending its contemporary manifestations. I argue that an evolutionary process of the concept influences its application in Western legal thought[11]. Thus, my contribution to

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[7] *D.* 29.5.1.25.

[8] The Middle Ages created a whole image to help the *quaestio* in its task: *enormia*. Cfr. Julien Théry, «Judicial Inquiry as an Instrument of Centralized Government: The Papacy's Criminal Proceedings against Prelates in the Age of Theocracy (Mid-Twelfth to Mid-Fourteenth Century)», Joseph Goering, Stephan Dusil, and Andreas Thier (eds.), *Proceedings of the Fourteenth International Congress of Medieval Canon Law,* Monumenta Iuris Canonici Series C: Subsidia. Vol. 15 (Vaticano: Biblioteca Apostólica Vaticana, 2016), 875 and ss.

[9] That is Mario Ascheri's opinion: *Introduzione storica al diritto medievale* (Torino: G. Giappichelli Editore, 2007): 202. Chapter five includes a whole section with a very good analysis of the *processo inquisitorio*. Serges speaks about this on Pace, Leonardo, Santucci, Simone y Serges, Giuliano, *Momenti di storia della giustizia…,* 218.

[10] Cfr. Giovanni Tarello, *Storia della cultura giuridica moderna. Assolutismo e codificazione del diritto* (Bologna: Il Mulino, 1998); Alessandra Gianelli and Maria Pia Paternò, *Tortura di Stato. Le ferite della democrazia* (Roma: Carocci, 2004); Alec Mellor, *La torture. Son histoire, son abolition, sa réapparition au XX^e siècle* (Paris: Mame, 1961); and Michael Walzer, «Political Action: The Problem of Dirty Hands», *Philosophy & Public Affairs* vol. 2, n.º 2 (1973): 160-180. Also, about this last issue, please, read the wonderful analysis made by Leslie Griffin «The Problem of Dirty Hands», *Scholarly Works* 1132 (1989): 31-61, access May 15th 2024: https://scholars.law.unlv.edu/facpub/1132

[11] Alessandra Gianelli and Maria Pia Paternò, *Tortura di Stato*..., 171.

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Contemporary Critical Thought aims to elucidate how torture was reintroduced in Castile from the 13th century onward, enabling us to consider the political and discursive factors that have historically permitted —and continue to allow— the use of this horrific institution.

3. Roman background

In 43 BC, Praetor Quintus Gallius was tortured *servilem in modum* by order of Octavius due to an alleged conspiracy[12]. This incident, among many others, became commonplace from the late Republic onward. However, the administration of *quaestio* to noble individuals was not particularly common until that point. Indeed, during this time, the violation of the personal immunity of magistrates through *quaestio servil* was more often an individual decision than a standard practice. This isolated case exemplifies some of the significant changes occurring within the Roman penal system, which was evolving toward a framework focused on political control over individual bodies.

The distinction between these two eras is stark. During the Republican period, the inviolability of magistrates was grounded in their dignity. In contrast, during the Principate, immunity became more tenuous in the face of the *crimen laesae maiestatis*[13], a category of crimes that has historically functioned as a mechanism for persecution. This category operated negatively, defined by those who or what attacked it, thereby facilitating the functioning of the legal framework surrounding *crimen laesae maiestatis*. The structural indeterminacy of this crime allowed it to transcend the limits of the law itself, a process that persisted throughout Roman history. By the time of the Dominate, legal protections eroded, leaving citizens «naked» before imperial agents, completing the cycle of diminishing personal rights[14].

Concerning exceptions —a crucial aspect of legal discourse— both *cavalleros* and children under the age of fourteen could be subjected to torture when *crimen laesae maiestatis* was invoked. Language played a significant role in this context. In common usage, terms such as *inquisitio*, *interrogatio*, and *indagatio* were often used synonymously. The instruments of torture and the methods employed were nearly indistinguishable. Moreover, the terminology surrounding torture began to encompass the entirety of the process itself. As the scope of *crimen laesae maiestatis* expanded, it became a catch-all for various crimes, with treason remaining at its core.

The widespread practice of torture extended to witnesses as well. According to Yan Thomas, this transformation signaled a shift toward an unlimited *Imperium*

[12] This reference belongs to Suetonio (The Twelve Caesars, August 27). I took it fromYan Thomas, *Los artificios de las instituciones* (Buenos Aires: Eudeba, 1999), 237.

[13] Cfr. Mario Sbriccoli, *Crimen Laesae Maiestatis. Per la storia del pensiero giuridico moderno 2* (Milán: Giuffrè, 1974), and Jacques Chiffoleau, «Sur le crime de majesté médiéval», *Genése de l'État moderne en Méditerranée* (Paris: École Française de Rome, 1993) 183-213.

[14] Yan Thomas, «Crímenes contra la majestad. La tortura y la inquisición», 224.

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over all bodies. In this sense, torture became institutionalized within the political arena, enabling imperial control over societal elites. Thus, what lends meaning to the extraordinary is not its rarity but its potential for existence. The inquisitorial system emerged, superseding the accusatory system and establishing a new legal paradigm.

Nature received limited systematic attention from Roman jurists. Consequently, its functioning can only be understood through its application to other legal concerns[15]. Notably, nature occupied a prior position to *ius gentium* within the classification of law. The a posteriori introduction of the «common law of the people» did not align with natural law; rather, it often stood in opposition to it. For Gaius, *ius gentium* was established according to *naturalis ratio*. While *ius gentium* delineates rights, *ius naturale* posits a unity of common rights. This perspective was not merely an unintended consequence but rather reflective of how Roman jurists conceived of law as a sequence of often contradictory formulas[16]. The division between these fields laid the foundation for understanding history as cultural and human, existing outside the immanent. During the imperial era, war was pivotal in this division, as it led to the creation of cities —essentially, societies— as a collateral outcome. However, *ius civile* was not established as a distinct stage in the development of law; it was an integral part of universal law, with each city assuming a unique position based on specific rights. The functioning of law reflected a common legal framework adapted for each city. Thus, natural law was universal to all living beings but ceased to apply to humans, giving way to *ius gentium*. Civil law emerged as a particularized version of that universal law, constrained by the context of each city. For this reason, civil law was established rather than natural law. In this framework, nature served as a legitimizing device, leading to formulas such as *secundum naturam* and *contra naturam*. As Cicero noted, «vera lex, recta ratio, naturae congruens, [...] sempiterna.» This concept aligns with what Yan Thomas termed a fragmentary logic of argumentation[17].

Nature was constructed as a universal but undefined key meant to serve human, social, and institutional law. Its perceived universality conferred upon it a status of truth and permanence, as articulated by Papinian: «naturae veritas» (*D. 28.2.23*)[18]. However, none of these jurists claimed that the foundations of law were rooted in nature; rather, they were situated in the civil domain, where nature was defined in that context. Consequently, civil law articulated nature through its application to specific legal concerns.

Civil law was boundless. Jurists —whether lawmakers or legal practitioners— were constrained by positive laws only insofar as they enacted them. When nature

[15] For this part I will use Yan Thomas «Fictio legis. L'empire de la fiction romaine et ses limites medievales», *Droits* 1 (1995): 37.

[16] Yan Thomas, «Imago naturae. Note sur l'institutionnalité de la nature à Rome», *Théologie et droit dans la science politique de l'État moderne. Actes de la table ronde de Rome* (Roma: École Française de Rome, 1991): 202.

[17] Yan Thomas, «Imago naturae. Note sur l'institutionnalité de la nature à Rome», 203.

[18] There is the same reflection on Ulpian *D.* 50.1.6.

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appeared in legal texts, it manifested as a physical barrier, such as biology or age. However, nature did not establish norms; it merely provided a framework for extending them beyond the legal realm. Nature was not a principle but a pragmatic device, serving as a last resort for establishing norms. In this regard, jurists formulated their own understanding of law independently from philosophical doctrines. The *Instituta* positioned nature within the third stage of the *summa divisio* between public and private law. The tension between nature's universality and its subordinate role in law was resolved through the introduction of *fictio legis*, which permitted the incorporation of nature into legal discourse. This movement represented a discursive appropriation with tangible implications. Thus, nature exists outside both the individual and the cities, although the latter can regulate its application. Nature anticipated institutions while simultaneously being defined by them, functioning analogously without confusion. The truth of nature cannot be simulated through its representation, reflecting a fundamental opposition to the Neoplatonic conception of truth. Therefore, there is no nature beyond what jurists construct within the legal framework.

This dynamic shifted with the influence of the Church Fathers. Paulus posited that it was not nature itself but natural law that was inscribed in the hearts of men. This recontextualization of natural law introduced a new perspective, framing it within the broader context of Divine Law.

4. *Señor Natural* and *desnaturación*

During the Middle Ages, the concept of nature underwent significant transformation, becoming synonymous with God. This development created a fertile ground for medieval thinkers to incorporate Roman principles into the framework of Christian anthropology, thereby providing coherence to the medieval worldview. The limitations imposed on nature were analogous to those applied to legal fictions. The need to reconcile legal techniques with divine authority led to the emergence of *verba fictionis*. However, rather than merely restricting nature —considered a fiction by Roman jurists— the focus shifted toward the denaturalization of the world brought about by these fictions. A critical resolution was the acknowledgment that law simulates facts (*circa facto*); thus, while fiction was accepted, it was confined to a specific level. Due to space constraints, this article will not explore the entire evolution of this concept since the 12th century. Instead, it will analyze how Alfonso X, King of Castile from 1252 to 1284, integrated these elements to formulate his own theory of power and control over resistance.

In *Siete Partidas*, Alfonso X introduces two interrelated concepts to define nature: *natura* and *naturaleza*. The latter is characterized by three elements: lordship, obligation, and totality, the latter referring to cohesion within society. To fully grasp this understanding of nature, two dimensions must be considered. The first dimension involves the relationship between the king and society, which necessi-

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tates an obligation to work. The second dimension is horizontal, uniting all individuals through their shared residence in the same land (Martin, 2010: 146-47).

> «Diez manera pusieron los sabios antiguos de naturaleza. La primera, e la mejor, es la que han los omes a su señor natural, porque tan bien ellos, como aquellos de cuyo linaje descienden, nascieron e fueron raygados e son en la tierra onde es el señor (4.24.2)».

> «(Por quales razones se desata la amistad). Natural amistad de que fezimos [anteriormente] en las leyes de este titulo, se desata por algunas de aquellas razones que diximos en la sesta partida de este libro, porque puede ome deseredar a los que descienden de el. La otra, que han por naturaleza los que son de una tierra, desatasen quando algunos de ellos es manifiestamente enemigo de ella o del señor que la ha de gobernar e de mantener justicia. Ca pues es enemigo de la tierra non ha porque ser ninguno su amigo por razon de naturaleza que avia con el (4. 27.7)».

All inhabitants of the land were required to acknowledge the king as their highest (natural) lord, who occupies the political apex. Indeed, the obligation derived from nature is considered stronger than that arising from vassalage.

> «Naturaleza e vasallaje son los mayores debdos que ome puede aver con su señor. Ca, naturaleza le tiene siempre atado para amarlo e non yr contra él, e el vasallaje para sevirle lealmente (2.18.32)».

> «Semejança muy con razon pusieron los sabios en dos maneras al rey sobre su pueblo. La una a la cabeça del ome, onde nascen los sentidos. La otra, al coraçon, do es el anima de la vida. Ca, asi como por los sentidos de la cabeça se mandan todos los miembros del cuerpo, otrosi todos los del reyno se mandan e se guian por el seso del rey, e por eso es llamado cabeça del pueblo. Otrosi, como el coraçon esta en medio del cuerpo para dar vida, egualmente a todos los miembros del, asi puso Dios al rey en medio del pueblo para dar egualdad e justicia a todos comunalmente porque puedan vivir en paz. E por esta razon le pusieron este nombre los antiguos, anima e coraçon del pueblo, e bien asi como todos los miembros del cuerpo guardan e defienden a estos dos, otrosi el pueblo es tenudo de guardar e de defender al rey que es puesto a semejança dellos e demas que es señor natural. Ca, maguer los señores son de muchas maneras, el que viene por naturaleza es sobre todos para aver los omes mayor debdo de lo guardar. Onde, no conviene al pueblo de guardar al rey tan solamente del mismo, asi como diximos en la ley ante desta, mas aun son tenudos de guardarlo dellos mismos, de le non matar en ninguna manera. Ca, el que lo fiziese quitaria a Dios su vicario e al reyno su cabeça e al pueblo su vida [...], e por esto la pusieron por la mayor traycion que puede ser (2.14.26)»

> «De señorio e de vasalleaje son cinco manera. La primera e la mayor es aquella que [h]a el rey sobre todos [...]. (4.25.1)».

Alfonso's language is not entirely original; the concept of nature linked to loyalty by birth appears in various texts, such as the *Chronica Adefonsi Imperatoris* from the 12th century and the *Rebus Hispaniae*, where *dominus naturalis* defines political dominance based on land affiliation. In these examples, nature interlinks dominance and politics through birth, albeit without the legal grounding estab-

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lished in *Siete Partidas*. This is a pivotal aspect of my investigation: how these concepts operate within legal discourse to form a complex narrative where civil and penal law coexist. In essence, the political relationship is framed within a legal context.

The differentiation between *natura* and *naturaleza* reflects this framework. Thus, *natura* functions as it did in its classical medieval definition: the state of things as created by God, while *naturaleza* embodies a concept closer to *natura*, but shaped by human agency.

> «Uno de los grandes debdos que los omes pueden auer, unos con los otros, es naturaleza. Ca bien como la natura los ayunta por linaje, asi la naturaleza los faze ser como vnos por luengo vso de leal amor. Onde, pues que de suso fablamos del debdo que han por natura, e por derecho, los aforados con los señores que los aforan e de las otras cosas que pertenescen al estado de los omes en general; queremos aqui dezir del debdo que han los naturales con aquellos cuyos son por debdo de naturaleza. E mostraremos que quiere dezir naturaleza e que departimiento ha entre naturaleza e natura [...] (4.25. prologue)».

> «Naturaleza tanto quiere dezir como debdo que han los omes vnos con otros por alguna derecha razon en se amar e en se querer bien. E el departimiento que ha entre natura e naturaleza es este. Ca natura es una virtud que faze ser todas las cosas en aquel estados que Dios las ordenó. Naturaleza es cosa que semeja a la natura e que ayuda a ser e mantener todos lo que desciende della (4.24.1)».

Natura is preserved, in *Siete Partidas*, in Latin, and refers to the physical realm insofar as it refers to the Aristotelian *physis* rethought by Christian anthropology. The notions of obligation and fidelity are part of the «speakers' linguistic universe at hand», pragmatics disposed to the field of public cohesion bonds (Martin 2010: 149). In consequence, *naturaleza* is the rational expression that jurists gave to the world created by *natura*. If *natura id est Deus*, *Naturaleza* is equated to the King, where the maxim of juridification is expressed in the distinctions of nature and the way in which someone can acquire it (*criança, cavalleria, tornarlo christiano, morança de diez años*, etc.). Nature came not only by the fact of being born in some land, but also by living in it during a period of time. This reveals a jurisdictional principle to define *naturaleza*. Indeed, *natural* is someone who was born in the land, as Jimenez de Rada defined; but also, there was a secondary consideration to use this adjective that can only be revealed by the discursive analysis of the entire text: *natural* is someone who lived in the land of the natural lord. Consequently, an individual may not be part of the *natura* by birth, but be *natural* by *naturaleza* which is defined by the presence of the *Señor Natural* who secures the political bond. Finally, there is no territory itself, but people are defined by the lord and the lord is defined by the presence of the people. The place where the lord has power is defined by *natura*, but the relationship between people in that space is defined by *naturaleza*: a legal concept with social implications. This functioning works excluding the spiritual context insofar as the definitions made in *Siete Partidas* addressed the political bonds between men and lord. As Martin said: Nature

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is linked with the vernacular word *natural* —which derives from *naturalis*— to develop a civil quality in the noun *natural* (Martin, 2010: 159); *Siete Paridas* confused private and public in Roman terms, but was aware of the operation implied by this confusion. The discursive strategy that Alfonso's legal thought showed allowed a semantic split with consequences in its meaning: the composition of its negation, the *desnaturalización*.

The operation of negation is impossible within *natura* but becomes feasible in its political implications. Alfonso established a penal—and social—category derived from a civil —and also social— category. The implication is straightforward: the *desnaturado* is an individual who no longer belongs to the political and social body. However, this complex figure was instrumental in articulating the prerogative of *majestas*, the king's authority. Thus, the counterpart of the concept of *natura*, or its negation, refers back to the initial definition of the natural bond: the one that exists between the individual and the king, the most significant bond within the realm of natural relationships.

5. Torture in Castile

The *Siete Partidas* played a crucial role in reinstating the practice of judicial torture in the Iberian Peninsula following the decline of Roman power. It is important to note that customary law during the High Middle Ages did not incorporate torture[19]. This absence can be attributed to the disintegration of Visigothic legal unity, a situation not merely rooted in tradition but also in the loss of the *Liber*, a foundational legal text that once contained meaningful content now fragmented over time[20]. With the so called «Reconquista», this mutilated tradition was partially recovered[21]. As Marta Madero notes, the *fueros* reflect a distorted image of an original law, suggesting a singular understanding of legal principles. Alfonso X, therefore, sought to eliminate contradictions and clarify the fundamental rationale of the law.

Consequently, we can assert that torture re-emerged in the Iberian context under Alfonso X and his legal *compendium*. This reinstatement reflects the Romanist legal reception of the 12th century, which reached Spain by the mid-13th century[22].

Throughout *Siete Partidas*, Alfonso dedicates at least nine laws to the regulation of torture. In thirteen additional laws, he references the role of the judge and

[19] Gonzalo Martínez Díez, «La tortura judicial en la legislación histórica española», 249.

[20] This idea appears on Daniel Panateri,«El libro de derecho como bien indisponible. El discurso jurídico alfonsí y sus funciones», *La corónica: A Journal of Medieval HispanicLanguages, Literatures, and Cultures*, vol. 48, n.º 2 (2020): 103-127.

[21] Cfr. Marta Madero, *Las verdades de los hechos. Proceso, juez y testimonios en la Castilla del siglo XIII.* (Salamanca: Ediciones de la Universidad de Salamanca, 2004).

[22] Just as an example about the several works that focus on this issue: Ennio Cortese, *Il rinascimento giuridico medievale* (Roma: Bulzoni 1996).

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the potential application of torture. It is essential to clarify that, while the *Partidas* displays a critical engagement with most of its laws, those pertaining specifically to torture exhibit a striking simplicity. For example:

> «Ex quibus causis quaestio de servia adversus dominos haberi non debet, ex hia causis nec quidem interrogationem valere; et multo minus indicia servorum contra domines admittenda sunt».[23]

This can be further exemplified by the statement:

> «Si ouieren a algun ome acusado sobre algun yerro que le pusiesen que auia fecho, non puede el juez meter a tormento al siervo del acusado que diga testimonio contra su señor […]».[24]

However, the most substantial insights from the authors of the *Partidas* emerge in passages where Alfonso delineates the limitations surrounding the practice of torture. Here, the concept of *professio* serves as a focal point that informs the procedural rhythm of torture in the Castilian legal compilation.

A significant modification introduced by Alfonso is the application of torture not only in criminal cases but also in civil matters. Importantly, no individuals were exempt from torture except under specific circumstances, such as age or occupational considerations. When discussing the limits of torture application, the figure of the judge emerges as paramount. The judge's authority holds considerable weight throughout the judicial process, determining the appropriateness of torture in each case. Before ordering torture, the judge was required to consider the accused's reputation and the facts at hand, adhering to the principle: «Iudex non potest de facto supplere».

This underscores the judge's central role in the procedure. Both in the *Partidas* and in the *Espéculo*, the judge must evaluate a dual criterion before issuing an interlocutory sentence: the presence of evidence and the accused's bad reputation. Gregorio López's gloss reinforces this point: «Vides hic quod fama sola de per se sufficit ad torturam»[25]. However, following the perspectives of Baldus de Ubaldis and Bartolus de Saxoferrato, López posits that:

> [despite what has been said] «debemus tamen considerare illa indicia, illas praesumptiones, ex quibus fama traxit originem, qua litervrgeant, fecundum qualitatem earum fama sufficiet, […],Incipit qua eritur an per solam diffamationem, ubi dicit quod tunc ad tormenta venitur per publicam quando publica fama orta est ex probabilibus causis, ex quibus surgunt indicia ad toturam, dicit ur origo ex probabilibus causis, quae inducunt populum ad sic credendum, vel dicendum, alias non esset fama, sed magis vana vox populi quae non debet ex audi rilege decurioneum».

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[23] *Digestum novum*, 48.18.9. 1.
[24] *Partidas* 7.30. 6.
[25] López' gloss *ad verbum Fama*, *SP* 7.30.3.

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Moreover, a novel element introduced in this legal framework is the necessity for meticulous documentation of all procedural steps, alongside the potential for penalizing judges who demonstrate «bad faith» during the judicial process.

In summary, the reinstatement of judicial torture in Alfonso X's *Siete Partidas* signifies a significant shift in the legal landscape of the Iberian Peninsula. By delineating the conditions under which torture could be applied and emphasizing the judge's central role, Alfonso established a complex legal framework that intertwined civil and criminal law with social implications. This development marked a crucial moment in the evolution of legal practices in medieval Spain, reflecting broader trends in the reception of Roman law during the period.

6. Torture, nature, and *majestas* in Alfonso's legal work

The concepts of torture and *majestas* provide a framework for understanding the interrogation processes used in the exercise of extraordinary power. The application of torment under these conditions implies a notion of *enormia*, which blurs the distinctions between individual bodies and the political body[26]. This shift from negotiated justice to hegemonic justice has led to the creation of new criminal categories[27]. Here, we can observe how the concept of nature functions to sever the social bonds previously established.

Torture is legislated in title thirty of the *Partidas*. Instead of examining the specific provisions of these laws, I will focus on the relationship that Alfonso established between torture and nature. Notably, there is no direct reference to majesty or nature within this title. The language closely mirrors that found in the *Digestum* (48.18) and *Codex* (9.41). Additionally, an extensive list of exceptions to torture is provided, which includes children, professors, knights, and the king's magistrates.

The text states:

> «Otrosi dezimos que non deven meter a tormento a ninguno que sea menor de catorze años, nin cavallero, nin a maestro de las leyes o de otro saber, nin a ome que fuese consejero señaladamente del rey o del comun de alguna ciudad o villa del rey, nin a los fijos destos sobredichos, seyendo los fijos de buena fama, nin a muger que fuese preñada fasta que para, maguer que fallen señaladas sospechas contra ellos. Esto es por la honra de la ciencia e por la nobleza que ha en si, e a la muger por razon de la criatura que tiene en el vientre que non merece mal (7.30.2)».

[26] Cfr. Julien Théry, «Justice inquisitoire et construction de la souveraineté: le modèle ecclésial (XII^e^-XIV^e^ siècle). Normes, pratiques, diffusion», *Annuaire de l'EHESS* (2006): 593-594; and «Judicial Inquiry as an Instrument of Centralized Government: The Papacy's Criminal Proceedings against Prelates in the Age of Theocracy (Mid-Twelfth to Mid-Fourteenth Century)»

[27] Mario Sbriccoli, «Législation, justice et pouvoir politique dans les cités italiennes du XIII^e^ au XV^e^ siècle», Antonio Padoa-Schioppa (dir.), *Justice et législation* (Paris: Presses Universitaires de France, 2000): 73.

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The crime of *laesae maiestatis* is developed in the *Séptima Partida* (second title), where it is prioritized among a long list of offenses. This apparent homogeneity has led some historians to argue that the incorporation of the term *crimen laesae maiestatis* was merely a linguistic adjustment. However, I contend that this reflects a discursive effort to make Latin legal concepts more accessible to readers. The *Siete Partidas* establishes a framework where *majestas* is positioned at the forefront while acknowledging other forms of treason. Thus, Alfonso connects higher treason against the king with nature through the notion of *desnaturalización*. Rather than representing a failed integration of Roman law into the *Partidas*, this synthesis merges Roman legal principles with the Hispanic legal tradition.

The individual who commits a crime against majestas is regarded as having offended both God and Señor Natural; in this formulation, the law retains its connection to the concept of majestas. As articulated in the *Second Partida*: «vicarios de Dios son los reyes en sus reinos» and «el rey es puesto en la tierra en lugar de Dios» (2.1.5).

A pertinent question arises: why does the legal framework governing torture not explicitly include provisions for individuals committing crimes against *majestas*? Furthermore, what is the significance of the exceptions made for magistrates who are close to the king? The answer may lie in earlier titles, where Alfonso posits that anyone who commits a crime against *majestas* is automatically considered *desnaturado*. Consequently, such a felon is regarded as a non-person, losing all possessions and enduring *infamia* even posthumously. This *infamia* extends to their kin and descendants, barring them from holding any position within the monarchical system. Although the legislation on torture does not explicitly invoke *crimen laesae maiestatis*, the preceding *Partidas* provide crucial interpretative keys to understanding the overall system. The *desnaturado*, marginalized from the political and social body, forfeits all social conditions. Even exceptions must be interpreted through this lens, as crimes against *majestas* obliterate all social statuses, allowing the individual body to be subjected to the public justice system, irrespective of age, profession, or social standing. The felon becomes akin to «The Wanderer» without a lord; they are reduced to mere biological existence, spiritually tethered to God yet estranged from the political body governed by *Señor Natural*. The felon, detached from the political bond, is subject to punishment *servilem in modum*.

In Roman law, nature and torture were not intrinsically linked; such a connection was unnecessary. However, the shifts in legal and political thought during the Middle Ages compel us to reassess both the concepts and their functionalities. The *Siete Partidas*, conversely, constructs a complex narrative wherein the king occupies the central position within the jurisdictional system and society as a whole. Alfonso synthesized the concepts of torture and nature to create a framework that allowed the notion of Señor Natural and the institution of torture to function cohesively. In essence, the Wise King fused torture and nature to establish a penal system aligned with civil law patterns. He circumvented the constraints imposed by the doctrinal concept of nature, which proved inadequate in a society structured

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around estates where attacking one often meant attacking many. This indistinction of biological bodies subjected to torture necessitated an additional concept to facilitate a breach of the solidarity anchored in noble birth. In this context, the discourse of law emerged as an instrument of transformation for Alfonso. It can be interpreted as indicative of the transition from negotiated to hegemonic justice. To achieve this, the *Siete Partidas* constructed a legal category predicated on the idea that the enemy resides within. The objective was to establish a mechanism for social control over dissent through the exercise of *Imperium* over bodies. This formulation was not merely a matter of language but a foundational condition for legislating resistance. It is no coincidence that when the nobles revolted against Alfonso—who had stated, «por toller todos estos males que dicho avemos, fiziemos estas leyes que son escriptas en este libro a servicio de Dios et a pro comunal de todos los de nuestro señorio, por que conoscan et entiendan ciertamentre el derecho et sepan obrar por el et guardarse de fazer yerro porque no cayan en pena»—they claimed a just cause by arguing that the king had violated their rights. The nobles contended, «E estos ricos omnes non se movieron contra mi por razon de fuero nin por tuerto que les yo toviese, ca fuero nunca gelo yo tolli mas que gelo oviese tollido, pues que gelo otorgaua mas pensados devieran ser et guardar devieran con tanto, [...]. Ca, asi como los reyes que criaron a ellos, pugnaron ellos de los descriar et de toller los regnos a algunos dello seyendo niños»)[28]. Torture functioned as a mechanism for controlling the elite, with the king as the central figure within the social order. However, the scope of torture's application expanded as it became institutionalized within the political arena. The reception of *Partidas* played a role in dethroning, possibly not as the primary factor, but as a significant one.

This analysis reveals how the *Siete Partidas* transformed the entire penal system to preempt resistance, positioning the king at the heart of this system. Alfonso's limitations were evident as he struggled to implement his vision, which he intended to present as advice to the emperor: «segun natura el señorio no quiere compañero, nin lo ha menester, [...]. El poderio que ha es que pueda fazer leyes, [...], e para aver tal poder como este, ha menester que se enseñoree de las cavallerias e que las parta e encomiende a tales cabdillos que le amen e que las tengan por el e de su mano de manera conozcan a él por Señor» (2.1.3).

7. Final considerations: a theoretical critic

This study provisionally concludes with several key observations regarding the interplay between political necessity and juridical development. First, I have sought to demonstrate how the functioning of the concept of nature within legal discourse allowed the drafters of the *Siete Partidas* to integrate elements that did not necessar-

[28] 53: 38v on Villacañas, José Luis (ed.) *Crónica de Alfonso X de Fernán Sánchez de Valladolid*, Biblioteca Saavedra Fajardo de Pensamiento Político Hispánico, access September 5th 2023: http://www.saavedrafajardo.org/Archivos/LIBROS/Libro0153.pdf

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ily coexist within the Roman legal framework. This integration enhanced the capacity for violence inherent in torture as a means of gathering evidence in cases related to *majestas*. Second, I have elucidated the relationship between law and literature, suggesting that *Siete Partidas* presents the obscurity of knowledge as a sufficient justification for the reinstatement of torture. Behind the Christian anthropology that permits violence against individual bodies —given the identification of the flesh with sin— Alfonso's legislation constructs verifiable arguments that enable reasonable access to the juridical rationale behind this legal imposition. The aesthetic concern for argumentation renders medieval Castilian law a *rara avis* of its time. While the function and purpose of law remain intact, the presentation of these concepts indicates a cultural status that transcends their claim to obligation.

The preface to Title 30 of the *Séptima Partida* encapsulates this clearly:

> «Cometen los omes a fazer grandes yerros, e malos, encubiertamente, de manera que non pueden ser sabidos, nin prouados. E porende, touieron por bien los sabios antiguos que fiziessen tormentar alos omes, porque pudiesen saber la verdad ende dellos. Onde pues que en el título ante deste fablamos de los presos, queremos aquí dezir, de como deuen ser tormentados, e demostraremos, que quiere dezir tormento, e a que tiene pro, e quantas maneras son del, e quien lo puede fazer, e en que tiempo, e quales, e en que manera, e por quales sospechas e señales se deue dar, e ante quien, e que preguntas les deuen fazer, mientra que los tormentan. Otrossi, despues que los ouieren tormentado, quales conoscencias deuen valer de las que son fechas por razon de los tormentos, e quales non».

Alfonso begins his prologue with clarity and directness, establishing the primary rationale for introducing the institution of torture: «Men commit great errors and bad deeds covertly, such that they cannot be known or proven». This assertion highlights a timeless notion of human action in relation to error, framing the notion of error as a crime that is concealed. The emphasis on the hidden nature of these acts underscores a procedural issue: the necessity of revealing hidden truths to allow for public knowledge and proof.

In medieval procedural law, it is essential to obtain evidence that lends credibility to accusations. Therefore, the development of a judicial process that enables a judge to rule on ascertainable criteria is contingent upon the provision of evidence, which relies fundamentally on what can be seen and heard. In the face of a glaring lack of evidence, the hidden truth must be forcibly uncovered.

Alfonso clarifies the limitations of temporal power in judging that which is hidden[29] [30]. The solution to this problem lies in bringing the crime into the realm of

[29] For example: «E estas son las dos espadas, porque se mantiene el mundo. La primera, espiritual e la otra, temporal. La espiritual taja los males ascondidos, e la temporal los manifiestos»*SP* 2. Prologue.

[30] Regarding judging what is hidden: Alejandro Morin «Crímenes ocultos. La política de develamiento en las lógicas penitencial y jurídica medievales», *TemasMedievales* 14 (2006): 141-156; and Yan Thomas «Arracher la vérité, la Majesté et l'inquisition», Robert Jacob (ed.), *Le juge et le jugement dans le tradition juridiques européenes* (Paris: Librairie générale de droit et jurisprudence, 1996).

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visibility and verifiability, allowing the criminal act to be judged based on observable reality and enabling medieval legal procedures to function effectively.

Having presented the problem, Alfonso introduces a causal connection between the problematic premise and its solution. This method of connecting two discourse elements is significant, as it introduces an authoritative source that possesses temporal indeterminacy while referring to historical precedent: «E porende, touieron por bien los sabios antiguos que fiziessen tormentar a los omes». This invocation of ancient wisdom establishes an external justification for the introduction of torture, framing it as an evidentiary tool that lends plausibility to uncovering hidden truths.

Following this initial introduction, the text shifts direction. Alfonso presents himself as an authoritative figure pursuing a necessary logic to reinstate a judicial procedure rooted in tradition. From this point onward, the focus will center on the mechanics of the practice, utilizing etymology to establish its moral character based on practical necessity, as well as classifying the various forms of torture, defining those eligible for torture, and outlining the conditions under which it may be applied (suspicions, authority figures, etc.).

Returning to the principle of legitimacy, the first part of the text is constructed around a causal connection that marks those liable to torture as the space where truth can be found. The transition from the first part to the second maintains a causal link, but the legitimizing principle evolves. While the wisdom of the ancients justifies torture, its reinstatement in thirteenth-century Castile depends on Alfonso's own authority. This procedure is validated through his figure, both implicitly and explicitly, as he uses the first person plural to include himself in the legal narrative: «Onde pues que en el título ante deste fablamos de los presos, queremos aquí dezir». Consequently, Alfonso's presence and the nature of the text contribute to the internal legitimizing principle; he and the text become the sources of legitimacy—not only for the practice itself but also for its reestablishment in the kingdom.

Thus, the relationship between the 'second' legitimizing principle and the text merges. Alfonso embodies the work, and the work embodies Alfonso. As the king creates this text, it assumes an instituting value that emerges as a principle of legitimacy. The work is born from the king's legislative will and becomes the true principle legitimizing its content, a continuity marked by his wisdom.

The temporality of the text also shifts in favor of the punishable act, as shown through its actualization from the outset. The first verb appears in the present indicative, demonstrating timelessness concerning these covert errors[31]. It moves from historical references (the ancient sages) to an implicit hiatus, which it resolves through recovery and reinstatement for the present and future. The text predominantly uses verb phrases where the infinitive acts as the object, and the indicative serves as a modifier of obligatory nature (e.g., *deue*, *puede*). This choice emphasizes

[31] «**Cometen** los omes a fazer grandes yerros».

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a prescriptive logic of a transtemporal character, eschewing the future subjunctive typical of legal language; it simultaneously disrupts style while maintaining structure.

In terms of logical structure, the first part is causal and sequential, presenting seemingly objective facts. In causal union with the second part, once Alfonso's authority emerges as the legitimizing force, the text transitions to paratactic accumulation and adverbs of manner, amplifying and specifying the tasks to be performed. This generates an accumulation effect that lends weight to the truth. The verbal modality remains intact, yet it multiplies as each additional detail is added and explained, reinforcing the prescriptive character through the logic of actualization:

> «como deuen ser tormentados, e demostraremos, que quiere dezir tormento, e a que tiene pro, e quantas maneras son del, e quien lo puede fazer, e en que tiempo, e quales, e en que manera, e por quales sospechas e señales se deue dar, e ante quien, e que preguntas les deuen fazer, mientra que los tormentan. Otrossi, despues que los ouieren tormentado, quales conoscencias deuen valer de las que son fechas por razon de los tormentos, e quales non».

Alfonso's structure also evolves from a causal one—determined by the solidarity of its elements—toward a mirroring structure that decisively establishes and continuously updates the content. This could be viewed as a manual for inquisitors (in a non-modern sense) that will guide actions in judicial processes involving torture. Ultimately, the prologue is a sophisticated verbal construction that raises a series of topics, arguments, and resources, leading to a particular significance: the construction of political argumentation as a definitive source of veracity and objectivity. Through this lens, the king's knowledge drives the decision to adopt what is deemed good (as determined by factual objectivity) and to implement it moving forward. The king, as author and actor, is the central force behind this action. He and his textual outputs alone possess the necessary authority to establish themselves without the possibility of amendment or challenge.

In summary, the enunciative efficacy resides not in the content itself but in the enunciative framework. The framework will not suppress the content but will instead reorganize the importance, shifting focus from what is said to who is saying it.

The methods of constructing communicative efficacy when proposing a legislative code that seeks to institute a uniform order over a unified territory are paramount. In this context, it is not only the specific cases addressed that matter but also their connection from the discursive instance to the continuous legitimization of the king's fundamental political role. The representation of justice aligns coherently with the monarch's central position in societal affairs. Alfonso's attempts to institute modes of evidence and criminality —ultimately related to a representation of justice— are explicable by his position of enunciation and the nature of the text he produces. The coherence of discourse must be verified, demonstrating how the political space is shaped by the structure and principles of legitimacy, which are imposed subtly but with considerable force.

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In conclusion, the need to start from the text, rather than a pre-existing conception of Alfonso's universe, is essential. The starting point diverges from the doctrinal reading of common law as an immovable source from which medieval legislators drew without questioning its implications. This study has illuminated the relationship between literary constructions and political necessities within medieval law in Alfonso X's Castile. By broadening the disciplinary perspective to encompass the evolution of serious legal institutions such as torture, as well as law in general as a discourse, we gain a better understanding of how the West conceptualized its categories and constructed them over time[32]. This underscores how law constituted itself as a historical and cultural phenomenon, rather than merely serving as an archive of fixed definitions from ancient Rome to the present day.

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