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## The *Commentaria* of Lucas de Penna in the gloss of Gregory López

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### Abstract

Lucas de Penna was considered by von Savigny one of the most important, independent, and original jurists of the 14<sup>th</sup> Century. Lucas' *Commentaria* on the *Tres Libri Codicis* were included by the Spanish jurist Gregory López in his gloss to the *Siete Partidas* (1555). These references were a clear example of the prestige reached by Lucas de Penna, the jurist from Abruzzo, not limited only to the Italian peninsula, but also in France and Spain. The 16<sup>th</sup> Century was the golden age for Lucas de Penna's chef-d'oeuvre, but in the following centuries the *Commentaria* were gradually forgotten.

### Keywords

Lucas de Penna - *Commentaria* - *Siete Partidas* - Gregory López - gloss

**Summary:** 1. The *Siete Partidas*: a few remarks on redaction and enactment. 2. Lucas de Penna and his *Commentaria*. 3. The gloss of Gregory López. 4. Lucas de Penna in the gloss of Gregory López. 4.1. References in the seventh *Partida*. 5. A tribute to the scholar without a chair and without an academic public. Sources and bibliographical references

This article focuses on the utilization of Lucas de Penna's *Commentaria* by the eminent jurist Gregory López, the author of an impressive gloss to the *Siete Partidas*. References to Lucas were included in the gloss, as adopted in the edition of Salamanca of the Alfonsine text (1555), witnessing the prestige gained by the Southern Italian jurist. A short introduction to the Alfonsine code and Lucas de Penna's life and thought could be helpful. Hence, the reader should be patient before the main topic of this article will be dealt with.

### 1. The *Siete Partidas*: a few remarks on redaction and enactment

The *Siete Partidas* were edited between 1256 and 1265 by order of Alfonso X king of Castile and León. The debate about the authorship is still open, and some theories date the final accomplishment to the mid-14<sup>th</sup> century, when the legal code was officially enacted

in the Ordinance of Alcalá (1348), whereas other scholars estimate the enactment to be just after the redaction, thus during the reign of Alfonso X<sup>1</sup>.

The Alfonsine legal code was composed of seven parts, 182 titles<sup>2</sup>, encompassing many branches of law, including civil, penal and public law, judicial procedure and ecclesiastic law. The main sources were the *Corpus Iuris Civilis*, glosses and comments<sup>3</sup>; several excerpts of the *decretales* were also included<sup>4</sup>. Although some contradictions are present and it lacks some important features of modern codifications, the body of law is coherently arranged, and I tend to consider it a sort of codification *avant la lettre*, because of its structure, dimension, and completeness<sup>5</sup>. The Castilian ruler made an impressive effort in order to establish a new legal system, which should have unified the various legal systems adopted in the territories subject to his authority<sup>6</sup>. The new law books were applied in practice to replace the old legal system based on a number of divergent sources of law, such as the legal documents and charters, the sentences and enactments of the *cortes*<sup>7</sup>. In the 14<sup>th</sup> century Alfonso XI officially declared the *Partidas* to have force of law, albeit as a subsidiary source.

As mentioned above, Roman law, glosses, and commentaries to the *Corpus Iuris Civilis* were utilized for compiling the *Partidas*<sup>8</sup>. In conjunction with canon law<sup>9</sup>, some Islamic influences can be noticed, as well as the presence of excerpts from the Bible, the texts of the fathers of the church, and of classical philosophers; Castilian laws and customs found a place in the text as well. At least 115 manuscript witnesses, redacted in various languages, survive and three main printed editions exist<sup>10</sup>: Seville 1491, Salamanca 1555 and Madrid 1807. I will focus my attention on the second edition which is accompanied by an impressive gloss published in Salamanca by Gregory López, which is clearly superior to the previous one of Alonso Díaz de Montalvo (Seville 1491).

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<sup>1</sup> Pérez Martín, A., “La obra legislativa alfonsina y puesto que en ella ocupan las Siete Partidas”, *Glossae. Revista de historia del derecho europeo* 3 (1992), pp. 9-63; O’Callaghan, J. F., *Alfonso X, the Justinian of His Age: Law and Justice in Thirteenth-Century Castile*, Ithaca and London: Cornell University Press, 2019.

<sup>2</sup> First *Partida*, 24 titles, 518 laws; second *Partida*, 31 titles, 359 laws; third *Partida*, 32 titles, 543 laws; fourth *Partida*, 27 titles, 256 laws; fifth *Partida*, 15 titles, 374 laws; sixth *Partida*, 19 titles, 272 laws; seventh *Partida*, 34 titles, 363 laws.

<sup>3</sup> A complete study is still missing. O’Callaghan, *Alfonso X, the Justinian of His Age*, p. 15.

<sup>4</sup> Pérez Martín, “La obra legislativa alfonsina y puesto que en ella ocupan las Siete Partidas”, pp. 37-41.

<sup>5</sup> Compare with the criteria mentioned in: Ankum, H., “La codification de Justinien était-elle une véritable codification?”, *Extravagantes. Scritti sparsi sul diritto romano*, Napoli: Jovene, 1982/2008, pp. 55–71.

<sup>6</sup> Cora, E. Á., “El derecho penal de Alfonso X”, *Initium: Revista catalana d’historia del dret* 16 (2011), pp. 283-285.

<sup>7</sup> On the influence of feudal law see: Riaza, R., “Las Partidas y los “Libri Feudorum””, *AHDE* 10 (1933), pp. 7-8; O’Callaghan, *Alfonso X, the Justinian of His Age*, pp. 8 ff.

<sup>8</sup> Pérez Martín, A., “Fuentes Romanas en las Partidas”, *Glossae. Revista de historia del derecho europeo* 4 (1992), pp. 215-246; Madden, M. R., *Political Theory and Law in Medieval Spain*, New York: Fordham University Press, 1930, p. 69.

<sup>9</sup> García García, A., “Fuentes canónicas de las Partidas”, *Glossae. Revista de historia del derecho europeo* 3 (1992), pp. 93-116.

<sup>10</sup> O’Callaghan, *Alfonso X, the Justinian of His Age*, p. 13.

## 2. Lucas de Penna and his *Commentaria*

Lucas was born in the city of Penne, located in the Abruzzo region, in the first part of the 14<sup>th</sup> century (1325 ca. - † 1390) and spent the greater part of his life for in Naples and Avignon. In his younger years, he moved to Naples where he studied law. He likely became *Doctor* around 1345 but never started an academic career as a professor. He worked in the chancery of the crown in Naples and in the *curia* of Avignon<sup>11</sup>, as the *secretarius apostolicae sedis*<sup>12</sup>. Lucas is considered to belong to the school of the Neapolitan jurists and his legal work must be contextualized in the general framework of the epoch of the post-glossators. On one hand influences of the Neapolitan school are evident, on the other hand significant discrepancies both in the legal and political thought of Lucas are clear.

Lucas' theory of the two separate powers has been thoroughly examined by Ullmann<sup>13</sup>. The idea of the universality of Roman law, which was considered by Lucas the common law of the civilized world, is one of the keystones of his legal thought, as well as the concept of the rule of the eternal divine universal and immutable law. It is well known that Savigny had no great consideration for the Neapolitan juridical school, which in his opinion lacked originality and independence, but Lucas was considered an exception and was identified by Savigny among the most relevant jurists of the 14<sup>th</sup> century<sup>14</sup>. Even though Lucas was very modest and never aspired to become the head of a juridical school, great consideration was given to him, first by some of the Southern Italian jurists of his epoch, then outside the Kingdom of Sicily, in France and even *ultra Pyraeneos*.

F. Ullmann and F. Calasso<sup>15</sup> supported Savigny's view<sup>16</sup>, focusing on the various aspects of Lucas' chef d'oeuvre<sup>17</sup>, namely the commentaries on the *Tres Libri Codicis* (C. X-XII)<sup>18, 19</sup>, which contributed significantly to the legal scholarship of his epoch and gained greater authority in the following centuries<sup>20</sup>. Not too many jurists had worked on the last three books of the *Codex*, which were considered extraneous in relation to the first nine

<sup>11</sup> He is sometimes called *doctor gallicus* or *doctor Tholosanus*.

<sup>12</sup> About the life of Lucas: von Savigny, F. C., *Geschichte des römischen Rechts im Mittelalter*, v. 6, Heidelberg: J. C. B. Mohr, 1831, pp. 177-184; Di Giovanni, F., *Saggio storico-giuridico sopra Luca da Penne*, Chieti: Ricci, 1892; Wronowski, M. M., *Luca da Penne e l'opera sua*, Pisa: Arti Grafiche Nistri, 1925; Calasso, F., "Studi sul commento ai Tres libri di Luca da Penne", *Rivista di storia del diritto italiano* 5 (1932), pp. 395-459; Conte, E., "Luca da Penne", *Dizionario Biografico degli Italiani*, v. 66, Roma: Istituto della Enciclopedia italiana, 2006, pp. 251-254.

<sup>13</sup> Ullmann compared Lucas' theory with the theories of Bartholomaeus de Capua and Bartolus. Ullmann, W., *The Medieval Idea of Law as Represented by Lucas de Penna. A Study in Fourteenth-Century Legal Scholarship*, London: Routledge, 2010, p. 8, fn. 2.

<sup>14</sup> von Savigny, *Geschichte des römischen Rechts*, p. 22.

<sup>15</sup> "La sua figura giganteggia proprio nel cuore del Trecento: ma isolata e, almeno nella opinione dei più, quasi anomala". Calasso, "Studi sul commento ai Tres libri di Luca da Penne", p. 398.

<sup>16</sup> W. Ullmann "with a certain amount of exaggeration, describes Lucas' text as 'the first humanistic commentary of law'." Fedele, D., "The status of ambassadors in Lucas de Penna's Commentary on the Tres Libri", *Tijdschrift voor rechtsgeschiedenis* 84 (2016), p. 170, fn. 17.

<sup>17</sup> Other juridical writings: *De juris interpretatione* and *De praesumptionibus juris*.

<sup>18</sup> 1050 folios.

<sup>19</sup> After having obtained his doctorate (around 1345), Lucas met Paulus de Perusia in Naples. Paulus encouraged him to work on the *Tres Libri* and after a deep reflection he started around 1350.

<sup>20</sup> Fedele, "The status of ambassadors in Lucas de Penna's Commentary on the Tres Libri", p. 169, fn. 13.

books<sup>21</sup>, dealing with administrative and tributary law. The *Tres Libri Codicis* required lexical expertise and strong historical knowledge with the terms of Roman administrative law, which were closely connected with the bureaucratic structure of the Roman Empire. Therefore, a robust education in the liberal arts was fundamental to understanding the extremely technical terminology<sup>22</sup>.

Glosses had been limited to some parts of the last three books of the *Codex*<sup>23</sup> and lectures were often not very deep, also because the *Tres Libri* were not included in the most important part of the teaching method, which was focused on the *Digest* and the first nine books of the *Codex*<sup>24</sup>. Azo had abandoned the attempt of compiling a complete gloss and Rogerius, Placentinus and Pillus failed in that project as well. The judge Rolandus de Lucca was the first one who succeeded in creating a full commentary (*Summa trium librorum*)<sup>25</sup>; Ugolinus dei Presbiteri's apparatus is worth mentioning for its importance related to the exegesis<sup>26</sup>. Accursius included in his *Magna glossa* the *Tres Libri Codicis*, which had become part of the fifth *volumen* of the *Corpus Iuris Civilis*<sup>27</sup>. When Bartolus decided to abandon private law for a while, he lectured Roman public law as a sort of divertissement and in consequence of that his *lectura* was incomplete. The commentary of Baldus, with some exceptions, for instance the commentary to title *De jure fisci*, does not possess the same structure and complexity of Lucas' *Commentaria*<sup>28</sup>.

Lucas' *Commentaria* focused on principles rather than on the text of the law and were utilized to develop new interpretations. Furthermore, the *Commentaria* included interesting passages based on the concept of the law of reason, stating the importance of its principles and the need to apply more liberal notions, when interpreting the law. In Lucas' view, equity was one of the main principles and the most important criterion of legal interpretation; moreover, human law had to conform to divine or natural law. Roman civil law was considered by Lucas to be the law of reason. Lucas utilised a historical, philological and juridical approach, mastering both the sources of civil and canon law. His thought was completely autonomous, and he criticized the lack of independence of many jurists, who were generally focused on following the *communis opinio*<sup>29</sup>. He even dared to disagree with Bartolus, sometimes in very provocative, if not offensive, terms:

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<sup>21</sup> Conte, E., *Tres Libri codicis: La ricomparsa del testo e l'esegesi scolastica prima di Accursio*, Frankfurt am Main: V. Klostermann, 1990, pp. 11, 119.

<sup>22</sup> Witt, R. G., *The Two Latin Cultures and the Foundation of Renaissance Humanism in Medieval Italy*, Cambridge: Cambridge University Press & Assessment, 2012, pp. 426-427.

<sup>23</sup> In the first half of the 12<sup>th</sup> Century glosses were limited to some parts of the *Tres Libri*. E. Conte, *Tres Libri codicis: La ricomparsa del testo*, pp. 7-8.

<sup>24</sup> The *Tres Libri* were generally read *extraordinarie*. Calasso, "Studi sul commento ai Tres libri di Luca da Penne", pp. 413-415.

<sup>25</sup> Conte E. / Menzinger S., *La Summa trium librorum di Rolando da Lucca (1195–1234)*, Fisco, politica, scientia iuris, Roma: Viella, 2012.

<sup>26</sup> Conte, *Tres Libri codicis: La ricomparsa del testo*, pp. 55-70.

<sup>27</sup> Calasso compared the short gloss of Accursius dedicated to the title *De decurionibus* with the vast commentary of Lucas de Penna. Calasso, "Studi sul commento ai Tres libri di Luca da Penne", pp. 414-415, and fn. 48.

<sup>28</sup> *Ibid.*, pp. 413-415.

<sup>29</sup> As it has been stressed by F. Calasso, Lucas often criticized the *communis opinio* and the levelling of many jurists on it. Calasso, "Studi sul commento ai Tres libri di Luca da Penne", pp. 424-425.

*et hoc tenuit Bartolus de Saxoferrato et quidam alii sequentes eum. Ego autem reputo hanc maximam falsitatem;*

or:

*Scriptis dominus Bartolus [...] puto melius distingui*<sup>30</sup>.

Appreciation for Lucas de Penna outside of the Sicilian Kingdom occurred only after his death, in particular during the 16<sup>th</sup> century<sup>31</sup>. The printed editions of the *Commentaria* made all the difference and gave Lucas his well-deserved recognition. The *editio princeps* was printed in Paris (1509) and because Lucas had served in the *curia* of Avignon, his work became known in France. The Venetian edition followed a few years later (1512). Seven further editions were printed in Lyon, 1529, 1538, 1544, 1545, 1557, 1582, 1586. The number of editions and reprints confirms the international reputation gained by Lucas.

As mentioned above, Lucas never became a professor and consequently awareness of his thoughts and work was initially limited to Southern Italian jurists or judges. The apogee of his prestige was reached in the 16<sup>th</sup> century, when his work became available to a larger specialized audience. The *Tractatus Aureus. De Fide, Tregua, et Pace* of Nicolaus Morone was inspired by Lucas' views and other French and Northern Italian jurists started to look to the commentary to the *Tres Libri* as the most - if not the only - authoritative source on the last three books of the *Codex*. In the last part of the century, Rolandus de Valle, Nicolaus Boer, Julius Clarus and Stephanus Aufreerius often quoted Lucas' *Commentaria*<sup>32</sup>. Lucas was also quoted by Jean Montaigne (*De parlamentis*), Petrus Rebuffus (*Tractatus varii*), Jean Bodin (*De republica*).

The French editions probably contributed to spreading his work across the Pyrenees. Ullmann has mentioned how Antonio Gómez (*Commentariorum variarumque resolutionum juris civilis, communis et regii tomi tres*) and Francisco de Vargas (*De episcoporum jurisdictione et de Pontificis maximi auctoritate responsum*) made numerous references to Lucas in their writings<sup>33</sup>. Gregory López, who also lived and wrote in the same period as Antonio Gómez and Francisco de Vargas, was familiar with Lucas' *Commentaria*, which are quoted in his gloss to the *Siete Partidas*<sup>34</sup>.

### 3. The gloss of Gregory López

Born to a notable family in 1490, Gregory López de Valenzuela studied law at the prestigious university of Salamanca. He was appointed as *Alcalde mayor de Puebla de Guadalupe* in 1515-1519 and in 1521-1524. He became a famous and respected jurist and was appointed as *Oidor de la Real cancellería de Valladolid* (1535), working as a civil servant for the rest of his life. He was promoted to *fiscal del Consejo de Castilla* in Madrid (1541-

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<sup>30</sup> Ullmann, *The Medieval Idea of Law*, p. 23.

<sup>31</sup> Ullmann, *The Medieval Idea of Law*, p. 12.

<sup>32</sup> *Ibid.*, pp. 13-14.

<sup>33</sup> *Ibid.*

<sup>34</sup> Francisco de Vargas y Mejía (1500 ca. - † 1566); Antonio Gómez (born after 1500 - † before 1572).

1543) and *Consejero de Indias* (1543-1558)<sup>35</sup>, which was the acme of his career. He died in 1560<sup>36</sup>.

Gregory's edition of the *Siete Partidas* was published in Salamanca in 1555. He had started to work on this edition in the previous decade, probably around 1544 (or 1535<sup>37</sup>)<sup>38</sup>. Gregory selected some manuscripts of the Alfonsine text; in this way the text was reconstructed, and a Latin summary was added to each law, together with references to other jurists<sup>39</sup>. The gloss to the *Siete Partidas* is impressive<sup>40</sup>: it encompasses almost two thirds of the text of the Salamanca edition of 1555. A huge number of great jurists are quoted, such as Martinus, Bulgarus, Baldus, Azo, Accursius, Angelus Aretinus, Cinus de Pistoia, Paulus de Castro, as well as less known jurists, Marinus de Caramanico and Ioannes de Anania<sup>41</sup>. The publication of Gregory's new edition of the *Siete Partidas* would have contributed to restoring its pureness, to bring order among the sources of law and to improve the administration of the justice in the Spanish empire: the royal decree of September 1555<sup>42</sup> sanctioned that this goal had been reached by Gregory, who had finished his work in 1553<sup>43</sup>.

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<sup>35</sup> He was a member of the Junta de Valladolid, which redacted the *Leyes Nuevas*.

<sup>36</sup> Martínez Cardós, J., "Gregorio López, consejero de Indias, glosador de las Partidas (1496-1560)", *Revista de Indias* 81-82 (1960), pp. 64-176; Aguilera Barchet, B., "Gregorio López", *Juristas Universales. 2. Juristas Modernos*, R. Domingo (ed.), Madrid: Marcial Pons, 2004, pp. 142-147; Pérez Martín, A., "El aparato de Glosas a las Siete Partidas de Gregorio López de Valenzuela", *Glossae. Revista de historia del derecho europeo* 13 (2016), pp. 486-534.

<sup>37</sup> Rumeo de Armas, A., "El jurista Gregorio López, Alcalde Mayor de Guadalupe, Consejero de Indias y Editor de Las Partidas", *Anuario de Historia del Derecho Español* 63-64 (1993-94), pp. 345-450.

<sup>38</sup> Pérez Martín, "El aparato de Glosas a las Siete Partidas de Gregorio López de Valenzuela", p. 493.

<sup>39</sup> Gibert R., "La glosa de Gregorio López", *Historia de la literatura jurídica en la España del Antiguo Régimen*, J. Alvarado (ed.), Madrid: Marcial Pons, 2000, pp. 423-472; Pérez Martín, "El aparato de Glosas a las Siete Partidas de Gregorio López de Valenzuela", pp. 486-489.

<sup>40</sup> Gregorio López is considered the Spanish Accursius. Gibert, "La glosa de Gregorio López", p. 450.

<sup>41</sup> Pérez Martín, "El aparato de Glosas a las Siete Partidas de Gregorio López de Valenzuela", pp. 491 ff. .

<sup>42</sup> The text of the royal decree (Real Cédula - 7th September 1555) was included after the end of the seventh *Partida*: "y con gran deliberacion y acuerdo examinaron la dicha letra y enmiendas por él hechas, y determinaron como quedassen: y mandaron que de nuevo se imprimiesse en estos reinos la dicha obra, y que della se imprimiesse un libro en pergamino, y se pusiesse y quedasse en el nuestro archivo: para que si de aqui adelante en algun tiempo los moldes se errassen, ó sucediesse otro vicio en la dicha impression, se pudiesse corregir por él; y cuando alguna duda se ofreciesse sobre la letra de las leyes de las dichas Siete Partidas, se ocurriessse al dicho libro como á verdadera letra dellas. Conforme á lo cual, con licencia y privilegio nuestro, la dicha obra se imprimió este presente año de la hecha desta nuestra cédula, en la cibdad de Salamanca, en la impression de Andrea de Portonaris, impressor de libros. Y mandamos poner y fué puesto el dicho libro en nuestro archivo, en la fortaleza de Simancas, para los efetos su sodichos. [...] por la presente queremos y mandamos que cada y cuando en algun tiempo ocurriere alguna duda sobre la letra de las dichas Siete Partidas, que para saber la verdadera letra se ocurra al dicho libro que assí mandamos poner impresso en pergamino en el dicho nuestro archivo, como dicho es".

<sup>43</sup> The edition of 1555 has been reprinted fifteen times (1565, 1576, 1587, 1610, 1758, 1759, 1765, 1789, 1828, two times in 1843, 1848, 1865, 1872 and 1885. Anastatic reproduction (1974): *Las Siete Partidas del rey don Alfonso nono. Nuevamente glosado por el licenciado Gregorio López del Consejo Real de Indias de su Majestad. Salamanca, 1555*. [Edición de Gregorio López en reproducción anastática del Boletín Oficial de Estado, 1974].

Concerning Lucas de Penna's commentaries, the Lyonnaise printed edition of 1529<sup>44</sup> was probably utilized by Gregory López, because he worked on his great gloss between 1535/1544 and 1553<sup>45</sup>. Three further editions (1538, 1544, 1545) were printed between 1535 and 1553<sup>46</sup>.

#### 4. Lucas de Penna in the gloss of Gregory López

References to Lucas de Penna are spread throughout the gloss of Gregory, starting from the very beginning. As a case in point, the second law of the first title of the first *Partida*, *Que fabla de las leyes*, stated the difference between the *ius naturale* and the *ius gentium*, imposing the duty of obedience to God, to parents and to the fatherland:

P. 1, 1, 2, *Onde fueron tomadas et sacadas estas leyes.*

“Et otrosi son los homes todos tenudos de loar á Dios et obedecer á sus padres et á sus madres et á su tierra que dicen en latin *patria*”<sup>47</sup>.

In the gloss to “*obedecer á sus padres et á sus madres et á su tierra*”, Gregory made references to Lucas, when he examined the case of a discrepancy in what is ordered by the *princeps* and by his own father, thus *Pater et princeps si diversa iubent, cui parendum*:

Gloss of Gregory López to “*patria*”, P. 1,1,2

*et si concurrunt in idem civitas alicujus, et res publica Imperii, sive Regni, plus et prius civis tenetur suae Civitati, quam Imperio, sive Regno, secundum Lucam de Pen. per textum ibi.*

Lucas de Penna, *Commentaria* ad. C. 12,57,5, *De cohortalibus, principibus, curriculariis ac primipilariis, lex Quicumque*<sup>48</sup>

*ubi concurrunt in idem civitas alicuius, et res publica imperij siue regni, plus et prius civis tenetur suae civitati quam imperio siue regno.*

In this passage quoted by Gregory, Lucas mentioned that, as everybody was obligated to his father, the citizen was obligated to his *civitas* rather than to the empire or to the kingdom, whose it was part of.

Dozens of additional references are spread throughout the gloss to the *Siete Partidas*. I shall limit the selection, focusing on the last *Partida*, which was dedicated to criminal law.

<sup>44</sup> *Commentaria D. Lucae de Penna iuriscons. clarissimi in tres posteriores lib. Codicis Iustiniani*, Lugduni, 1529.

<sup>45</sup> Rumeu de Armas, “El jurista Gregorio López, Alcalde y Editor de Las Partidas”, p. 422.

<sup>46</sup> Reference edition: Lucas de Penna, *Commentaria in tres posteriores libros Codicis*, Lugduni: apud Ioannam Iacobi Iuntae F., 1582.

<sup>47</sup> “And by it also men are required to praise God and to obey their fathers and mothers and the government of their country, which in Latin is called *patria*”. *Las Siete Partidas, Volume 1: The Medieval Church: The World of Clerics and Laymen (Partida I)*, Translated by Samuel Parsons Scott. Edited by Robert I. Burns, Philadelphia: University of Pennsylvania Press, 2001, p. 2.

<sup>48</sup> Lucas de Penna, *Commentaria*, pp. 963B-964A.

#### 4.1. References in the seventh *Partida*

The seventh *Partida* was rubricated as *De todas las acusaciones e Maleficios, que los omen fazen; e que pena meresce auer porende*. It was composed of 34 titles, which contained 363 laws<sup>49</sup>, dealing with treason, rape, incest, adultery, sodomy, falsification, forgery, theft, heresy apostasy, homicide, robbery, damages, libellous writings<sup>50</sup>. Crimes were considered an offense against the community and God. The penal system of the Alfonsine code was based on the jurisdiction of the royal tribunals over crimes: the private vengeance system had been weakened and justice was administered by judges in the king's name<sup>51</sup>. References to Lucas were spread throughout the 34 titles of the seventh *Partida*.

The first one was included in the *summa* of the incipit of the last *Partida*, where Gregory refers to Lucas, commenting on the consequences of erring for men:

P. 7, *summa*

“e desta guise, usan el mal de manera, que se les torna como en natura, recibiendo en ello plazer”<sup>52</sup>.

The word *natura* was commented by Gregory referring to an extensive passage of the law *Missi opinatores*, in order to explain the difference with the *consuetudo*, which, according to Lucas' commentary had to be preserved in the different branches of the juridical system:

Gloss of Gregory López to “*como en natura*”, P. 7, *summa*

*Adde late per Lucam de Penna in L. missi opinatores, C. de exactor. tribut. lib. 10. ubi in specie de multis, in quibus operatur, et attenditur consuetudo.*

Lucas de Penna, *Commentaria ad C. 10,19,7, De exactoribus tributorum, lex Missi opinatores*<sup>53</sup>

*officiales debent consuetudine regionis in qua gerere debent officia [...] et servanda est consuetudo in tributis exigendis [...] In criminibus puniendis [...].*

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<sup>49</sup> *Las Siete Partidas, Volume 5: Underworlds: The Dead, the Criminal, and the Marginalized (Partidas VI and VII)*, Translated by Samuel Parsons Scott. Edited by Robert I. Burns, S.J., Philadelphia: University of Pennsylvania Press, 2001, pp. xix-xlvi.

<sup>50</sup> See: Cora, “El derecho penal de Alfonso X”, pp. 223-296; Martín Martín, F., “El regicidio en las Partidas”, *Clio & Crimen* 14 (2017), pp. 59-84.

<sup>51</sup> O'Callaghan, *Alfonso X, the Justinian of His Age*, pp. 210-212.

<sup>52</sup> “In this way they practice evil so that it becomes natural to them, and they receive pleasure from it”. *Las Siete Partidas, Volume 5: Underworlds*, p. 1303.

<sup>53</sup> Lucas de Penna, *Commentaria*, pp. 92B-93A.

In P. 7,1,24 the Alfonsine legislation imposed the *bonorum publicatio*; in case the person under trial committed suicide, his goods would have to be confiscated<sup>54</sup>:

P. 7,1,24

“Desesperado seyendo algun ome en su vida por yerro que ouiesse fecho, de manera, que se matase el mesmo despues que fuesse acusado. [...] si el yerro era atal que si le fuesse prouado, deue morir porende, e perder sus bienes, e seyendo el pleyto començado por demanda, e por respuesta se mató, estonce deuen tomar todo lo suyo para el Rey”<sup>55</sup>.

Gregory referred to Lucas’ commentary:

Gloss of Gregory López to  
“para el Rey”, P. 7,1,24

*et voluit etiam Gloss. in L. fin. in  
gloss. fin. in fin. ubi notant Lucas de Penn.  
et Joan. de Plat. C. de jur. fisc. lib. 10.*

Lucas de Penna, *Commentaria*  
ad C. 10,1,10, *De jure fiscali, lex Eorum  
patrimonia*<sup>56</sup>

*Si committens crimen propter  
quod condemnatus deberet perdere bona,  
moriatur ante condemnationem, et sic  
extincto crimine, bona non sunt heredibus  
auferenda.*

In *Commentaria* ad C. 10,1,10 Lucas stated that, due to the fact that the crime was extinguished, confiscation did not have to be imposed, whereas the law of the seventh

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<sup>54</sup> Pino Abad, M., *La pena de confiscación de bienes en el derecho histórico español*, Madrid, 2014, p. 242.

<sup>55</sup> “When a man, on account of some offense which he has committed, despairs of his life to such an extent that he kills himself after he has been accused of the same [...] and the offense was of such a character that if he had been convicted of it he must, for that reason, have been put to death and have lost his property, the case having been brought before court by complaint and answer when he committed suicide; all his property should be seized for the benefit of the king”. *Las Siete Partidas, Volume 5: Underworlds*, p. 1134.

<sup>56</sup> Lucas de Penna, *Commentaria*, p. 18B.

*Partida* imposed the confiscation of goods<sup>57</sup>. Gregory emphasized the different approach of Lucas<sup>58</sup>, which was similar to the one utilized by Ioannes De Plata in his *lectura* to *De jure fisci*<sup>59</sup>. In that sense, the commentaries of the two jurists must be appreciated for the complexity of their theoretical elaboration and they were probably quoted by Gregory in order to balance the rigidity of the seventh *Partida*.

Several references to Lucas were included in the gloss to the second title, dealing with the crime of treason, *De las trayciones*. The definition of treason<sup>60</sup> was given at the beginning of the title:

P. 7,2, incipit

“Traycion es uno de los mayores yerros, e denuestos, en que los omes pueden caer”<sup>61</sup>.

Gregory commented the word *traycion* in the incipit *De las trayciones*, referring to Lucas:

Gloss of Gregory López to “traycion”, P. 7,2, incipit

*Trayzion. In isto titulo sumitur proprie pro crimine laesae majestatis, ut infra L. 1 in fin. large tamen loquendo multipliciter dicitur quis proditor, ut tradit Gloss. in cap. nolite, 11. quaest. 3. Luc. de Penn. in L. fin. C. de delator.*

Lucas de Penna, *Commentaria* ad C. 10,11,6, *De delatoribus, lex Seruum domini*<sup>62</sup>

*Proditor dictus quod detegit. Item proditor, supplantator, et traditor, propalator ad interitum tradens.*

Treason was defined as the greatest crime of all and any attempt to kill the king was considered the worst case of treason:

P. 7,2,1

“Laesae Majestatis crimen, tanto quiere dezir en romance, como yerro de traycion que faze ome contra la persona del Rey. E traycion es la más vil cosa, e la peor, que puede caer en coraçon de

<sup>57</sup> Cora, “El derecho penal de Alfonso X”, p. 285.

<sup>58</sup> *Sed an procedat hoc hodie, dubium facit.*

<sup>59</sup> Joannes de Platea, *Super tribus ultimis libris Codicis commentaria: noviter castigata et emendata*, Lugduni: F. Fradin, 1550.

<sup>60</sup> Iglesia Ferreirós, A., *Historia de la traición. La traición regia en León y Castilla*, Santiago de Compostela: Secretariado de Publicaciones de la Universidad, 1971.

<sup>61</sup> “Treason is one of the most serious and odious crimes which a person can commit”. *Las Siete Partidas, Volume 5: Underworlds*, p. 1318.

<sup>62</sup> Lucas de Penna, *Commentaria*, p. 60A.

ome [...] La primera, e la mayor e la que mas fuertemente deue ser escarmentada, es, si se trabaja algun ome de muerte de su Rey [...]"<sup>63</sup>.

Treason against the king was equal to treason against God, as well as against the whole of mankind:

P. 7,2,1

"[...] E nascen della tres cosas, que son contrarias a la lealtad, e son estas: Tuerto, mentira, e vileza. E estas tres cosas fazen al coraçon del ome tan flaco, que yerra contra Dios, e contra su Señor natural, e contra todos los omes"<sup>64</sup>.

Gregory made a short reference to the commentary to C. 10,11,6, *De delatoribus*, in which the definition of *proditor* was given:

Gloss of Gregory López to "contra Dios", P. 7,2,1

*Sic et dicit And. de Iser. [...] quod proditor Regis censetur proditor Dei [...] tradit etiam Lucas de Penna in L. fin. C. de delator. lib. 10 col. fin.*<sup>65</sup>.

Lucas de Penna, *Commentaria ad C. 10,11,6, De delatoribus, lex Seruum domini*<sup>66</sup>

*Item proditor Dei est, qui societatem fraternitatis aliqua discordiae peste commaculat. Deus enim charitas est, qui ergo charitatis et Veritatis iussa spernunt, Deum qui charitas et veritas, produunt [...] Item proditor est qui deducit aliquem in insidias, vel hostibus prodit [...] Item qui prodit patriam.*

Treason was perpetrated through deception:

P. 7,2,1

"ca tan grande es la vileza, e la maldad de los omes de mala ventura, que tal yerro fazen, que non se atreuen a tomar vengança de otra guise de los que mal quieren, si non encubiertamente, e con engaño"<sup>67</sup>.

The gloss of Gregory López to "engaño" quoted the passage of Lucas (*De delatoribus*), which does not include juridical contents:

Gloss of Gregory López to "engaño", P. 7,2,1

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<sup>63</sup> "*Laesae Majestatis Crimen*, mean, in Castilian, the crime of treason which a man commits against the person of the king. Treason is the vilest and worst offence which can arise in the heart of man [...] The first and principal one and that which should be the most severely punished, is where anyone wishes to bring about the death of his king.". *Las Siete Partidas, Volume 5: Underworlds*, p. 1318.

<sup>64</sup> "Three things opposed to loyalty arise from it, and they are the following, to-wit: wrong, falsehood, and violence. These render the earth of man so weak that he sins against God and against the natural lord, and against all persons". *Ibid.*, p. 1318.

<sup>65</sup> Lucas de Penna, *Commentaria*, p. 60A.

<sup>66</sup> *Ibid.*, p. 60B.

<sup>67</sup> "For so great is the turpitude and wickedness of evil-disposed men who commit a crime of this kind, that they do not venture to take vengeance upon those whom they hate in any other way, except secretly and by treachery". *Las Siete Partidas, Volume 5: Underworlds*, p. 1318.

*Nota mores proditoris; nam signa fidelitatis ostendit, suavia et dulcia verba profert, amplexatur, applaudit, blande ridet, maxima pollicentur, obtestatur Deum, sub pacis foedere osculatur, ad jurandum est pronus, libenter adulatur [...] Lucas de Penna in L. fin col. fin. C. de delator. lib. 10.*

Among the fourteen different cases of treason the author included plotting against the king's life, joining the enemy, instigating a revolt against the king, sharing intelligence with the enemy, delivery of a stronghold, desertion, forgery or falsification of royal seals<sup>68</sup>. Many of these criminal matters derived from the Roman *crimen laesae maiestatis*. The seventh *Partida* stressed the fact that the same repression for treason against the king was imposed for some crimes committed against his representatives, thus the judges of his court, his personal councillors and the *adelantados mayores*<sup>69</sup>. High-ranked officials could have been accused of treason in case they had refused to abandon their position or leave a fortress after the king had decided to appoint someone else at their place:

P. 7,2,1

“La dozena es, si el Rey tira el oficio a algun Adelantado, o a otro Oficial de los mayores, e establece a otro en su lugar, e el primero es tan rebelde, que non dexa el oficio, o las Fortalezas”<sup>70</sup>.

Gregory glossed as follows:

Gloss of Gregory López to “*dexa el oficio*”, P. 7,2,1

*Quid si iudex dimittat officium, seu imperium sine permissione Principis, an incidat in hoc crimen? L. 3. §. fin. ff. eod. dicit, quod sic; quod intelligit ac limitat Luc. De Penn. in L. si quos, col 3. C. de Decurion. lib. 10. in officiis magnis & arduis, quorum desertio praejudicium reipublicae ingerebat; secus in parvis, ubi non esset hoc periculum, & iudici immineret necessitas recedendi; vide ibi per eum.*

According to the commentary to the thirty-first title of the tenth book of the *Codex*, only leaving of the office by high-ranked officers would have created great prejudice and a real danger for the *res publica*, so that in this case they had to be punished for high treason.

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<sup>68</sup> Martín Martín, “El regicidio en las Partidas”, pp. 79-81.

<sup>69</sup> Gregory Lopez quotes Angelus Aretinus’ *Tractatus de maleficiis: Ibi Angelus notat sumi optimum argumentum, quod ex solo consilio et tractatu de occidendo potestatem Bononiae, inciditur in majestatem quantum ad poenam mortis; oppugnare enim patriam aut magistratum ejus, non distat a crimine laesae majestatis*.

<sup>70</sup> “The twelfth is, where the king removes an adelantado, or any other dignitary of high rank from office, and appoints other in his stead, and the first one is so obstinate that he will not relinquish his office or the fortified place”. *Las Siete Partidas, Volume 5: Underworlds*, p. 1319.

For lower officers, or in the case of leaving the office for necessity, the crime of treason should not be charged<sup>71</sup>.

The same title, namely *De decurionibus*, was quoted by Gregory in the gloss to the law *Que pena meresce aquel enfama a otro a tuerto*:

P. 7,6,8

“Desfamando tortizeramente un ome a otro de tal yerro, que si la fuesse prouado deuria morir, o ser desterrado para siempre porende, dezimos, que deue recibir essa mesma pena aquel que lo enfamo”<sup>72</sup>.

Gloss of Gregory López to “*mesma pena*”, P. 7, 6, 8

*Nota bene, quia non memini legis juris communis in hoc ita aperte disponentis; facit tamen L. unic. C. de famos. libel. & L. si quis injuriam, ff. de injur. & quod notat Lucas de Penna in L. infamia, C. de Decurion. lib. 10*<sup>73</sup>.

Lucas de Penna, *Commentaria ad C. 10,31,8, De decurionibus, lex Infamia*<sup>74</sup>

*Infamia dicta est quasi non fama: quia non bona [...] Vel infamia est laesae dignitatis status, moribus, & legibus reprobatis [...] Hoc autem notandum est quod infamia non de facili debet credi, sed probate citius ulcisci [...] Consurgente autem infamia est ad consentiam recurrendum, & si non inuenitur malum quod dicitur, debemus in laetitiam prosilire [...]. Infamatores autem hominum peiores sunt quam raptores rerum [...] Sunt etiam taliter corporaliter affligendi [...] & excommunicandi.*

Gregory López cited a passage of the *Commentaria*, in which the definition of *infamia* was proposed by Lucas, according to the *Decretum Gratiani*. Due to the juridical consequences entailed by *infamia*, the one wrongfully rendering another man infamous had to be condemned to the same penalty. Canon law imposed corporal punishments and excommunication: “*infamatores autem hominum peiores sunt quam raptores rerum [...] Sunt etiam taliter corporaliter affligendi [...] et excommunicandi*”. The text of the *Commentaria* was extracted from the *Decretum Gratiani*, as for instance C. 5 q. 1 cc. 1-2, C. 5 q. 6 cc. 1-3, 5-6, C. 6 q. 1 c.17, which had been quoted in Lucas’ *Commentaria* and included by Gregory as well.

<sup>71</sup> Lucas de Penna, *Commentaria*, pp. 125B ff.

<sup>72</sup> “Where one man wrongfully renders another infamous on account of a crime, for which if he were convicted, he must be put to death or suffer perpetual banishment; we decree that the party who render him infamous shall undergo the same penalty”. *Las Siete Partidas, Volume 5: Underworlds*, p. 1336.

<sup>73</sup> Lucas de Penna, *Commentaria*, pp. 125B ff.

<sup>74</sup> *Ibid.*, p. 131B.

Falsifications were regulated in the seventh title of the seventh *Partida*, *De las falsedades*<sup>75</sup>:

P. 7,7,1

“Falsedad es mudamiento de la verdad. E puedes fazer la falsedad en muchas manera; assi como si algun Escriuano del Rey, o otro que fuesse Notario publico de algun Concejo, fiziesse priuilegio, o carta falsa a sabiendas”<sup>76</sup>.

Falsification of privileges or documents, made by a public notary or a royal scribe, was included among the cases of falsification. Gregory’s gloss included the words “fiziesse priuilegio, o carta falsa”<sup>77</sup> quoting an excerpt from a long passage of Lucas’ *Commentaria*:

Gloss of Gregory López, to “fiziesse priuilegio, o carta falsa”, P. 7,7,1

*Concludit Bartolus, quod si instrumentum est nullum ex defectu ipsius instrumenti, et ita quod ex eo nullum praejudicium potest alteri parari, tunc de falso non punitur, per textum in dict. L. si quis legatum, sed si hoc posset aliquod praejudicium parari ut quia licet non esset publicum, potest peti quod publicetur, vel si prodesset ad comparationem, vel ad aliud, tunc notarius punietur de falso [...] et latissime per Luc. De Penn. In L. 1 C. ut nemo ad suum patrocini. Suscip. Rust. Etc. lib. 11. Ubi quid si instrumentum nondum erat perfectum, ut quia indigebat subscriptione iudicis vel testium, qui per multa fundamenta decidit, quod puniatur poena falsi ordinaria.*

Lucas de Penna, *Commentaria ad C. 11,53,1, Ut nemo ad suum patrociniuum suscipiat vicos vel rusticanos eorum (alias rusticanos vel vicos eorum), lex Si quis*<sup>78</sup>

*Et quia ista materia satis est utilis, videlicet utrum ad infligendam poenam quae ponitur pro huiusmodi falsitatibus, sit necessaria perfectio instrumenti, an sufficiat esse tantummodo caeptum et qualiter, ideo quaeritur hic de quaestione quae fuit de facto in ciuitate, unde mihi origo est. Notarius quidam confecit falsum instrumentum syndicus pro parte uniuersitatis per quod de quodam iudice qui tunc gerebat officium ferebatur principi seu regi testimonium magnae laudis, quod priusquam subscriptione iudicis et testimonium muniretur, iuxta regni constitutionem quae incipit, Instrumentorum robur interceptum est, et propterea impeditum subscriptione ipsa perfectum non fuit, quaeritur qua poena venit ipse notarius puniendus? an scilicet poena falsi quae imponitur conficienti falsum instrumentum, puta capitis, vel manus, an alia, puta arbitrio iudicantis. Primo arguitur quod non poena falsi. nam instrumentum non dicitur perfectum, nisi subjectionibus cum signis ipsius notarii scribentis illud, ac iudicis et testium, qui interfuerunt contractui roboratum. secundum dictam constitutionem, instrumentorum robur. de instru. confi. At in crimine falsi exigitur, quod id quo falso*

<sup>75</sup> Alejandro García, J. A., “Estudio histórico del delito de falsedad documental”, *AHDE* 42 (1972), pp. 117-187; Cora, “El derecho penal de Alfonso X”, p. 286; O’Callaghan, *Alfonso X, the Justinian of His Age*, pp. 213-214.

<sup>76</sup> “Deception is the alteration of the truth, and it can be committed in many ways; as, for instance, where the notary of the king, or any other notary public of a council knowingly draws up a false privilege or document”. *Las Siete Partidas, Volume 5: Underworlds*, p. 1337.

<sup>77</sup> Alejandro García, “Estudio histórico del delito de falsedad documental”, pp. 159-160.

<sup>78</sup> Lucas de Penna, *Commentaria*, p. 532A.

*conficitur ad perfectam sui formam et essentiam perducatur. [...] Paulus respondit. forma enim dat esse rei, et conseruat eam in esse. Unde producens falsum instrumentum non punitur de usu*

*poena falsi, si non usque ad sententiam perseueret [...] Requiritur enim, quod effectum determinatum habuerit instrumentum, alias vere falsum propterea non dicitur.*

According to Lucas' *Commentaria*, if a document was void because of the lack of essential elements, it did not produce juridical consequences; the scribe or the notary could not be punished with the same penalty provided for the *crimen falsi*, because inflicting this punishment required the document to be valid in the sense of having a perfect form and hence resulting in some kind of prejudice<sup>79</sup>.

The eight title of the seventh *Partida* was dedicated to homicides, *De los Omezillos*. The law *Que pena meresce el padre que matare al fijo, o el fijo que matare a su padre, o alguno de los otros parientes*, repressed the homicide of ascendants, descendants, and close relatives, imposing the death penalty in conformity with Roman law, and providing the same penalty for the accomplice. The *poena cullei* (penalty of the sack)<sup>80</sup>, provided under Roman law for parricide and later also for the murdering of a parent, or son, or other near relatives, was not used in practice and the supreme penalty was imposed through a different modality<sup>81</sup>:

P. 7,8,12

“Si el padre matare al fijo, o el fijo al padre, o el auuelo al nieto, o el nieto al auuelo o a su visauuelo, o alguno dellos a el; o el hermano al hermano, o el tio a su sobrino, o el sobrino al tio, o el marido a su muger, o la muger a su marido [...] mandaron los Emperadores e los sabios antiguos que este atal que fizo esta enemiga, que sea açotado publicamente ente todos; e de si, que lo metan en un saco de cuero, e que encierren con el un can, e un gallo, e una culebra, e un ximio; e despues que fuere en el saco con estas quatro bestias, cosan la boca del saco, e lancenlos en el mar, o en el rio que fuere mas cerca de aquel lugar do acaesciere”<sup>82</sup>.

Gregory glossed as follows:

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<sup>79</sup> A different interpretation: “Una interpretación distinta ofrece A. de la Peña, para quien la falsedad cometida por un escribano sobre un testamento nulo, según el supuesto previsto en el Digesto, siempre es sancionable aunque con penas distintas de las ordinarias”. Alejandro García, “Estudio histórico del delito de falsedad documental”, p. 160.

<sup>80</sup>The penalty of the sack consisted in sewing the beaten convict up in a sack, with live animals, and throwing him in the water. See D. 48.9.9: *Poena parricidii more maiorum haec instituta est, ut parricida virgis sanguineis verberatus deinde culleo insuatur cum cane, gallo gallinaceo et vipera et simia: deinde in mare profundum culleus iactatur. hoc ita, si mare proximum sit: alioquin bestiis obicitur secundum divi Hadriani constitutionem.*

<sup>81</sup> *Las Siete Partidas, Volume 5: Underworlds*, p. xxiii.

<sup>82</sup> “Where a father kills his child, or a child his father; or a grandfather his grandson, or a grandson his grandfather, or his great-grandfather, or any of them kills him; or where one brother kills another; or a uncle kills his nephew, or a nephew his uncle; or a husband his wife, or a wife her husband [...] the emperors and the learned men of the ancients directed that anyone who was guilty of such wickedness should be publicly scourged in the presence of all, and besides should be enclosed in a leather sac, along with a dog, a cock, a serpent, and an ape; and after he had been placed in it with these four animals the mouth of the sack should be sewed up, and they should all be thrown into the sea or into the river nearest to the place where this occurred”. *Ibid.*, p. 1349.

Gloss of Gregory López to “*padre*”, P. 7,8,12:

*Lex ista loquitur de crimine parricidii, et negat Tullius Solonem apud Athenienses scripsisse de parricidarum suppliciis, ne non tam prohibere, quam admonere videretur, tradit Lucas de Penna in L. quoniam Augerio, C. de conveniend. fisc. debitor. lib. 10.*

This short literal excerpt about the *crimen parricidii* was extracted from Lucas de Penna’s commentary to the law *Quoniam Augerio* (ad C. 10,2,3)<sup>83</sup>.

P. 7,8,15 imposed divergent penalties for homicide according to the social status of the murderer. The graduation of the penalty was a principle of the *Corpus Iuris Civilis*, which was based on the difference<sup>84</sup> between *humiliores* and *honestiores*. For homicide, the Castilian code imposed a mild penalty for those belonging to the high ranks of the society<sup>85</sup>:

P. 7,8,15

“A tuerto matando un ome a otro, si el matador fuere Cauallero, o otro fidalgo, deue ser desterrado para siempre en alguna Isla [...] Mas si el matador fuesse de vil lugar, deue morir, porende”<sup>86</sup>.

Gloss of Gregory López to “*morir*”, P. 7,8,15

*Vide quae dixi in gloss. praecedenti. Et quid si antequam percussus moriatur, actum est de vulnere, et imposita poena abscissionis manus, val alia, demum mortuo percusso agitur de occiso, an tunc punietur poena mortis? Vide Lucam de Penna in L. si quis decurio, col. fin. L. de decurion. lib 10. qui sub verbo forte dicit, quod tunc mitius debeat puniri*<sup>87</sup>.

Lucas de Penna, *Commentaria* ad C. 10,31,16, *De decurionibus, lex Si quis decurio*<sup>88</sup>

*Ecce percutiens cum armis in regno punitur amputatione manu cum qua percussit, occidens autem poena capitali. Pone percutientem fore punitum manu, deinde percussus mortuus est, an punietur poena capitis? Sed si manus inciditur propter vulnus et peratur suspendi tanquam occisor, quomodo ei restituatur manus incisa? unde forte mitius punitur [...] et sic vulneratio in homicidium intelligatur esse transfuse [...] Absurdus enim esset si ageretur de vulnerato et de occiso.*

An excerpt, extracted from *De decurionibus*, was included in the gloss to the seventh *Partida* to state that, in case of death caused by injury, even if the culprit had been prosecuted for injury, he had to be convicted for homicide. Lucas suggested that, in order to avoid a

<sup>83</sup> Lucas de Penna, *Commentaria*, p. 20B.

<sup>84</sup> Rilinger, R., *Humiliores-Honestiores. Zu einer sozialen Dichotomie im Strafrecht der römischen Kaiserzeit*, München: R. Oldenbourg, 1988.

<sup>85</sup> Cora, “El derecho penal de Alfonso X”, pp. 286-287.

<sup>86</sup> “Where one man kills another wrongfully, and the murderer is a knight or other person of noble descent, he shall be banished forever to some island [...] But if the murderer is of low degree, he must be put to death for his offense, and those of his relatives who have the right to inherit from him shall be entitled to his property”. *Las Siete Partidas, Volume 5: Underworlds*, p. 1350.

<sup>87</sup> Cora, “El derecho penal de Alfonso X”, pp. 286-287.

<sup>88</sup> Lucas de Penna, *Commentaria*, p. 139B.

double trial for the same case, the imposition of a double penalty (*ne bis in idem*) or the conviction for the minor crime, the judge should have postponed the sentence and wait for the consequences of the major crime:

Lucas de Penna, *Commentaria* ad C. 10,31,16, *De decurionibus, lex Si quis decurio*

*Melius est ergo ut accusatio de vulnerato procedeat, sed iudex retardet sententiam quousque constet ipsum percussum non mori [...] Melius enim est ut dicamus hanc retardationem fieri, quam ut puniatur de vulnere: et sic postea morietur non puniatur, vel punitur bis: et sic de duobus absurdus minus absurdum est eligendum*<sup>89</sup>.

The ninth title of the seventh *Partida* gave a definition of slander and stated that in cases where the offensive words were proven to be true, no penalty would be imposed:

P. 7,9,1

“Iniurja en latin tanto quiere dezir en romance, como deshorra, que es fecha, o dicha a otro, a tuerto, o a despreciamiento del [...] Pero si aquel que deshonrasse a otro por tales palabras, o por otra semejantes dellas, las otorgasse, e quisiesse demonstrar que es verdad aquel mal que le dixo del, non cae en pena niguna, si lo prouasse”<sup>90</sup>.

A long gloss to this text of the *Partidas* quoted three times Lucas’ commentary to *De castrensi peculio militum et praefecti annonae, lex Errat qui tibi*”:

Gloss of Gregory López to “*Que es verdad*”, P. 7,9,1

*Detractatorem dicit etiam eum, qui vera crimina prodit [...] et hoc etiam in terminis vult Lucas de Penna in L. errat, C. de castrens. pecul. milit. vers. 9. quaeritur: sed ut dixi, in foro contentioso ista lex Gratitarum videtur velle, quod non puniatur, etsi per injuriam verum dicat [...] Et quid si mulierem jam nuptam, quae antequam contraheret matrimonium fuit meretrix, vocet quis meretricem, an teneatur iniuriarum et puniatur poena legis Ordinamentorum, ut debeat se dedicere? Vide quae dicit Lucas de Penna in dict. L. errat, vers 7. quaeritur, ubi*

*tradit, quod non [...] et ibidem vide per eundem quaest. 8. et quid si quis vocet eum qui natus fuit ex legitimo matrimonio, filium meretricis, ex eo quod mater vidua sit meretrix?*

Lucas de Penna, *Commentaria* ad C. 12,36,3<sup>91</sup>

*De castrensi peculio militum et praefecti annonae, lex Errat qui Octauo quaeritur quid si natus de legitimo matrimonio patre mortuo, cum eius mater nunc vidua sit, et mala meretrix, vocetur filius meretricis? Respon. vocans tenetur iniuriarum. nam licet mater nunc fornicetur, filius tamen patrem legitimum habuit.*

According to Lucas’ commentary, in the case where a widow had been a prostitute and her legitimate son received an insult by being called a child of a prostitute, the offender had to be convicted for the offence because the son did have a legitimate father.

<sup>89</sup> Lucas de Penna, *Commentaria*, p. 140A.

<sup>90</sup> “*Injuria*, in Latin, means in Castilian, dishonor done or said to another person wrongfully, or by way of contempt for him [...] Where, however, the party who dishonors the other by words of this kind or by others similar to them admits he said them, and desires to prove that the evil which he stated of the other is true, he shall not be liable to any penalty if he proves it”. *Las Siete Partidas, Volume 5: Underworlds*, p. 1351.

<sup>91</sup> Lucas de Penna, *Commentaria*, p. 858A.

I limit my analysis to the last couple of references to Lucas in the seventh *Partida*.

P. 7,14,18 *Que pena merescen los Furtadores, e los Robadores* dealt with the punishments which had to be imposed on thieves and robbers<sup>92</sup>. First of all, the difference between *furtum manifestum* and *non manifestum* was established by the law, imposing the pecuniary penalty of *quadruplum* for the *furtum manifestum* and the payment of the *duplum* for the *furtum non manifestum*:

P. 7,14,18

“si el furto es manifesto [...] deue pechar quatro tanto, como aquello que valia. E si el furto fuere fecho encubiertamente [...] e pechar de mas dos tanto que valia la cosa [...] deue morir porende el, a quantos dieren ayuda, e consejo e tales ladrones, para fazer el furto, o los encubrieren en sus casas, o en otros lugares, deuen auer aquella mesma pena”<sup>93</sup>.

In P. 7,14,18 a thief could have had been flagellated by the authority, whereas the death penalty and physical mutilations were imposed only for brigands and pirates. The ones hiding in their homes or elsewhere, were considered brigands and condemned to the death penalty. In his gloss to “*encubrieren*”, Gregory referred to laws 1 and 3, of *De desertoribus et occultatoribus eorum* and *De Colonis Illyricianis*:

Gloss of Gregory López to “*encubrieren*”, P. 7,14,18

*et adde in hic quae late tradit Lucas de Penna in L. 1 col. a et 3. C. de desertor. lib 12. et quod dicit in L. unic, de colon. thracens. lib 11.*

Lucas de Penna, *Commentaria ad C. 12,45,1, De desertoribus et occultatoribus eorum, lex Si quis*

*Casus. Qui desertorem in agro aut domo suscepit, et diu passus fuerit apud se latere: actor quidem seu procurator loci in quo latitat sciens capitali poena punitur. Dominus quoque si hoc sciverit, praedium in quo receptatus est, perdet [...] Sed pone hic, aliquis semel tantum recepit in sua domo, vel praedio: vel apud se, desertore, haereticum, latronem, foriudicatum, aut bannitum, quos omnes, prohibitum est receptari: quaero an poenis receptationis punietur? [...] Distingue aut quis personas huiusmodi receptati prohibitas scienter abscondit causa refugij: vel conferuat aut*

*celat [...] Debet enim dolo malo recipere: quia non omnis etiam qui recipit, statim delinquit, sed qui dolo malo recepit. Quid enim si ignarus recipit, aut ut custodiar vel humanitate, vel misericordia ductus, vel alia, probate atque iusta ratione? Certe non tenebitur [...] Oportet enim ut talia quae poenam capitalem inducunt, non per casum aut ignorantiam, sed per dolum et nequitiam committantur [...] Magis enim attendendum est in eo quod in animo ipsius praeponderat, quam ipsa receptio [...] Et generaliter voluntas et propositum distingunt maleficia*<sup>94</sup>.

Lucas de Penna, *Commentaria ad C. 11,52, De Colonis Illyricianis, lex Colonos inquilinosque*

<sup>92</sup> Cora, “El derecho penal de Alfonso X”, p. 290.

<sup>93</sup> “Where the larceny is open [...] he must also pay four times as much as the said property was worth. And where the larceny was committed secretly [...] and pay, in addition, twice as much as said property was worth [...] he must be put to death on account of it; and all others who have given aid or counsel to thieves of this kind in order to enable them to steal, or who conceal them in their houses or in other places, must suffer the same penalty”. *Las Siete Partidas, Volume 5: Underworlds*, p. 1387.

<sup>94</sup> Lucas de Penna, *Commentaria*, pp. 904A-905B.

*Et sic patet aliquem non teneri de receptatione latronis, quem solum unica vice recepit in domo sua [...] Quid enim si repentinum quis viatorem recepit in domo, aut commeauerit transeuntem? Certe non tenetur [...] quod scit eum esse latronem,*

*debet eum expellere nec secum retinere [...] nam aliud est ipsum quem recepit expellere, aliud eum pro unica receptatione puniri*<sup>95</sup>.

The first part of the long commentary of Lucas to *De desertoribus et occultatoribus eorum* focused on the one intentionally giving refuge to a brigand (“*dolo malo recipere*”). The main element was the *animus*: who intentionally, thus *per dolum et nequitiam*, gave refuge to a brigand, was condemned to the death penalty. In case refuge was unintentionally given, thus “*per casum et ignorantiam*”, the death penalty was not to be imposed, because will and intention were the distinguishing elements. This was a very important passage, which Gregory probably utilized to mitigate the law of the seventh *Partida*, which did not state any difference based on the *animus*, in order to impose a different punishment or acquit the person charged with this crime.

### 5. A tribute to the scholar without a chair and without an academic public

Three centuries after the redaction, Gregory’s approach to the 13<sup>th</sup> century Castilian legislation was articulate. His gloss sometimes diverged from traditional Roman law’s interpretation and the influence of the Augustinian-Platonic interpretation is evident: law had to “follow the prescription of justice and show the way by principles rather than by rules”<sup>96</sup>. But in some cases, like other Spanish jurists trained in Roman law, he did try to merge the Spanish and Roman legal thought<sup>97</sup>. When the *Partidas* had been compiled, all attention was fixed on Roman law and in the 16<sup>th</sup> century Gregory himself explained “the Castilian law in terms of Roman and canon law”<sup>98</sup>. In some cases, the references to various jurists made the interpretation of the laws more difficult, if not unclear; furthermore, the gloss of Gregory included antithetical interpretations, which were pointed out by the author himself, who also stated, in some cases, if he agreed or not with a particular interpretation<sup>99</sup>.

As Roman law was considered by Lucas to be the law of reason, the *Commentaria* contributed to the development of a different interpretation of the *Siete Partidas*, which were then more contextualized in the 16th century. The gloss to the seventh *Partida* led to an in-depth reading of law and quotations of Lucas’ *Commentaria*, as well as all other references, were fundamental to the realization of the legislation, especially in such a critical field as criminal law, which was, in some cases, mitigated.

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<sup>95</sup> *Ibid.*, p. 527A.

<sup>96</sup> Madden, *Political Theory and Law*, p. 79.

<sup>97</sup> *Ibid.*, pp. 76, 78-80.

<sup>98</sup> See for instance the gloss to “*que gela Dio*”, P. 1,6,57: *In causa reconuentionis clericus respondet coram iudice seculari. Et ista est communis opinio etiam inter Doctores iuris canonici, et ciuilis, ut tradit Decius.*

<sup>99</sup> P. 2,15,2: *Cuius dictum in hoc, ut ibi dixit, mihi non placet, et contrarium, ut ibi retuli consuluit detius.*

Ullmann has defined Lucas de Penna as “the Neapolitan scholar without an academic chair and without an academic public”<sup>100</sup>. The political circumstances of the Sicilian Kingdom and the interest in public law<sup>101</sup> made a fertile ground for the study of the *Tres Libri Codicis*<sup>102</sup>. Lucas possessed an extraordinarily strong knowledge of Latin literature, grammar and philology, which made the edition of a complete commentary possible, proving his mastery. From the very beginning he was fully conscious of the hard task of commenting a part of the *Codex* of Justinian which presented many difficult elements: the institutions and the terminology of Roman administrative law were considered lost in a remote past and of little use for the present. A strong philological, grammatical, and historical background was essential and therefore readings had always been extremely limited. In few words, the sacrifice was not considered worth it because Roman public and administrative law were considered obsolete. Lucas has complained about the superficiality of readings and commentaries to the *Tres Libri Codicis*, which was the consequence of the lack of historical, philosophical, and juridical preparation of many jurists. His approach was based on all these elements: he considered philosophy, history and philology as fundamental means to understanding the spirit of the *Tres Libri* and of the institutes of Roman law in general. In that sense Lucas must be considered an exception of his epoch<sup>103</sup>.

Indeed, Lucas deserved greater fame for his work, but the fact that he did not develop an academic career strongly affected the dissemination of his work and thought, which was not spread by students and did not become accessible to a larger audience. His work started to circulate after it was printed in France, where he had worked and spent an important part of his life, only after his death, and reached the Iberian Peninsula in the following centuries. In the 16<sup>th</sup> century illustrious French and Spanish jurists utilized the *Commentaria* giving Lucas serious recognition, as is also witnessed by the numerous French editions. The references included in the gloss of Gregory López contributed to paying due tribute to a jurist who had spent several years working on the most difficult part of the *Codex* to give a complete commentary, an attempt failed by many of the most famous jurists, beginning with Bartolus and Baldus.

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<sup>100</sup> Ullmann, *The Medieval Idea of Law*, p. 199. See also: von Savigny, *Geschichte des römischen Rechts*, p. 22.

<sup>101</sup> Calasso, “Studi sul commento ai Tres libri di Luca da Penne”, pp. 417 ff. .

<sup>102</sup> Andreas de Barulo, *Commentaria super tribus postremis libris Codicis*, Venetiis: Apud Sessas, 1601; *Opera iuridica rariora*, D. Maffei / E. Cortese / G. Rossi (eds.), Sala Bolognese: Forni, 1975.

<sup>103</sup> F. Calasso, “Studi sul commento ai Tres libri di Luca da Penne”, p. 449.

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