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## The ideal judge in the 17<sup>th</sup> century: the example of Gabriel Álvarez de Velasco's *Iudex Perfectus*

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### Abstract

The aim of this contribution is to introduce *Iudex Perfectus* (1662), a little-known treatise on the qualities of the judge, and its writer, Gabriel Álvarez de Velasco, who had been a judge himself. It elaborates on the structure of the work and on the matter treated in relation to its subject, being the qualities of the good judge, with a focus on corruptibility. As this contribution is part of an ongoing research project, it hopes to yield a provisional image of Álvarez de Velasco's definition of the good judge.

### Keywords

*Gabriel Álvarez de Velasco, Iudex Perfectus, judge, Spanish Empire, corruption*

### 1. Introduction

This contribution concerns *Iudex Perfectus, seu de iudice perfecto*, a treatise on the morality and qualities of 'the good judge' which was published by Gabriel Álvarez de Velasco in Lyon in 1662. *Iudex perfectus* seems to be one of a kind within the body of 17<sup>th</sup> century Spanish legal writing. It is a work dedicated to the qualities of the judge solely, and addresses an audience of judges too. Moreover, it was written by a secular writer who enjoyed a career as a jurist and judge himself. These qualities set it apart from other treatises on the judge, such as *Iudex, magistratus, senator* (1633), a treatise that also addresses the office of the judge from the angle of state organization which was written by Franciscus Zypaeus, a canonist affiliated to the university of Leuven, or from works of the *de iustitia et iure* genre, such as those by Leonardus Lessius, Luis de Molina and Johan de Lugo, which were all published in the early 17<sup>th</sup> century. These were written by Jesuits from the perspective of moral theology and thus focus on the realm of conscience, and on settling cases in the court of conscience (*forum conscientiae*) or internal forum (*forum internum*).

### 2. Gabriel Álvarez de Velasco

We do not know much about the life of the author of *Iudex perfectus*, but what we do know is the following. Gabriel Álvarez de Velasco was a judge (*oidor*) in Santa Fe de Bogota at the Real audiencia del Nuevo Reino de Granada, the highest tribunal of the Spanish Viceroyalty of the Republic of New Granada, which was located in the very north of present-day South America.<sup>1</sup> Before that he may have been a *patronus* or lawyer at the chancellery of

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\* This contribution is part of an ongoing PhD research project at the department of Roman law and Legal History of KU Leuven, Belgium. Parts of its contents have been presented previously during the Belgisch-Nederlands Rechtshistorisch colloquium which was held on 16-17 December 2016 in Maastricht, and during a seminar I gave on the *Iudex Perfectus* treatise on June 7<sup>th</sup> 2017 in Leuven. I would like to thank the attendants of these events for their valuable remarks, and I would like to thank prof. W. Decock especially for his contributions.

Valladolid, and at the royal court of Madrid.<sup>2</sup> It is also known that Álvarez de Velasco resigned from his judicial duties when his wife died in 1649, to dedicate himself entirely to writing and charity. His son Francisco, who was a poet, described him as a devout, charitable and learned man, who assisted the poor on a daily basis.<sup>3</sup> The works that Álvarez de Velasco published, next to a hagiographical account of his wife, are the following: *De privilegiis pauperum*, Madrid 1630-1636, on the special legal regime applicable to the poor and miserable, including poor debtors<sup>4</sup>; *Axiomata et loca communia iuris*, Lyon 1631, a compendium of principles and definitions in positive law; *Epitoma de legis humanae mundique fictione*, Lyon 1662, about the discrepancy between divine truth and the contrived nature of human legal systems<sup>5</sup>, and *Iudex Perfectus*, which was published in Lyon 1662.

*Iudex perfectus* was written in a period within the *ius commune* tradition, the mid-16th till mid-18th century, when all kinds of treatises were published, both theological and legal, that studied the connections between law and moral theology, and with that, between the *forum internum* and *forum externum*.<sup>6</sup>

### 3. *Forum internum* and *forum externum*

Let us take a closer look here at the phenomenon of the *forum internum* and *forum externum*. It should be understood that this notion of *forum internum* and *externum* was related to a distinct image of duality within human beings: the realm of the soul and that of the body were regarded as separate, each being assigned its own jurisdiction or *forum*: the body was given that of the *forum externum*, the soul that of the *forum internum* or *forum conscientiae*. The *forum internum* was where the cases of conscience were settled, and it was thus concerned with the salvation of the soul. The rights and obligations of persons in this realm were guarded and explained by the moral theologians.<sup>7</sup> The judge as Álvarez de Velasco describes him can be seen as one uniting the *forum internum* and *externum* in his acting. He depicts the judge as ‘*iustitia animata*’, or the embodiment of justice.

Before we delve deeper into this, it should first be noted that, quite literally, no justice existed without the presence of the judge: the office of the judge concerned not only the

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<sup>1</sup> Decock, W., “Poor and Broke. Debtor Relief in Alvarez de Velasco's *De privilegiis pauperum* (1630)”, *Rights at the Margins: Historical, Philosophical and Legal Perspectives* (V. Mäkinen, J. Robinson, P. Slotte, H. Haara, eds.), forthcoming, p. 2, referring to Buxó, J.P., *El poeta colombiano enamorado de sor Juana*, Santafé de Bogotá 1999, p. 33. See also: Garriga, C. “*Iudex Perfectus*. Ordre Traditionnel et Justice de Juges Dans l’Europe Du *Ius Commune*. (Couronne de Castille, XVe-XVIIIe Siècle)”, *Valeurs, Représentations, Symboles (2014-2015)* (DIKÈ Groupe de recherche sur les cultures juridiques en Europe, ed.), Toulouse 2016, p. 85.

<sup>2</sup> This is implied by the title page of Álvarez de Velasco’s *Axiomata* (1631) and Moréri, L., *El Gran Diccionario Historico*, Paris 1753, p. 456, but demands further research.

<sup>3</sup> Decock, “Poor and Broke. Debtor Relief in Alvarez de Velasco's *De privilegiis pauperum* (1630)”, p. 2, referring to Buxó, *El poeta colombiano enamorado de sor Juana*, p. 34.

<sup>4</sup> On this treatise see also Duve, T., *Sonderrecht in Der Frühen Neuzeit: Studien Zum Ius Singulare Und Den Privilegia Miserabilium Personarum, Senum Und Indorum in Alter Und Neuer Welt*, Studien Zur Europäischen Rechtsgeschichte: Veröffentlichungen Des Max-Planck-Instituts Für Europäische Rechtsgeschichte Frankfurt Am Main 231, Frankfurt am Main 2008, p. 38.

<sup>5</sup> Decock, “Poor and Broke. Debtor Relief in Alvarez de Velasco's *De privilegiis pauperum* (1630)”, p. 3.

<sup>6</sup> Turrini, M., “Recht und Theologie in der Neuzeit - einige Untersuchungsansätze”, *Das Konzil von Trient und die Moderne* (P. Prodi and W. Reinhard, eds.), Schriften des Italienisch-Deutschen Historischen Instituts in Trient 16. Berlin 2001, p. 201.

<sup>7</sup> Decock, W., *Theologians and Contract Law the Moral Transformation of the “Ius Commune”*, Ca. 1500-1650. Leiden; Boston 2013, p. 27.

administration of justice, but the very determination of what justice was.<sup>8</sup> The judge therefore combined his *scientia*, his knowledge, with his *conscientia*, his conscience, in order to determine what was just and right.<sup>9</sup> Case by case, mediating between abstract legal principles and the particularities of cases, the judge had to decide what justice demanded. In doing this, judges were granted a lot more discretionary power and flexibility than we would allow for today.<sup>10</sup>

Secondly, it has been remarked by Turrini that Álvarez de Velasco, a secular author, assigned a ‘*sacral aura*’ to the judge. For he considered him a minister of God, and united in him the two offices of the *iudex* (judge) and the *sacerdos* (priest), whereas theological sources strove to emphasize the differences between the two in order to preserve the duties of the *sacerdos* as exclusively religious. It is interesting to note that the analogy of the judge and the priest is still used quite frequently today for expressing that modern judges, especially constitutional ones, are those designated exclusively to reveal to us the truth of what the law holds for us, and that they are in this sense endowed with an almost divine task.<sup>11</sup>

Álvarez de Velasco also stated that the judge’s decisions have a moral connotation. After all, the judge administers God and thus the quality of his morality and of his fear of God, from which this morality springs, are of vital importance for the quality of his judgements.<sup>12</sup>

#### 4. Alvarez de Velasco’s *Iudex perfectus*

We will now take a look at the structure and wordings of the treatise. After the title page, which tells us that this work is in the first place dedicated to God, and secondly to all living and dead judges,<sup>13</sup> follows another more explicit dedication to Jesus, who is in the end the ‘Almighty Judge of the living and the dead’, and the ‘Lord of Justice’. Then comes the preface by means of a letter to the reader, in which the opening formula of the work is given. This address to the reader and, it can be argued, the basic premise of this work, is expressed by a five-and-a-half-page sequence of quotes of mainly Western and Eastern church fathers, such

<sup>8</sup> See also Czeguhn, I., “Richterbilder und Richterkulturen in Spanien und Lateinamerika”, on this.

<sup>9</sup> Garriga, “Iudex Perfectus. Ordre Traditionnel et Justice de Juges Dans l’Europe Du Ius Commune. (Couronne de Castille, XVe-XVIIIe Siècle)”, p. 79-80. See also Turrini, M., “Il giudice della coscienza e la coscienza del giudice”, *Disciplina dell’anima, disciplina del corpo e disciplina della società tra medioevo ed età moderna* (P. Prodi and C. Penuti, eds.), Bologna 1994, p. 280.

<sup>10</sup> Decock, “Poor and Broke. Debtor Relief in Alvarez de Velasco’s *De privilegiis pauperum* (1630)”, referring to Meccarelli, M. “Arbitrium iudicis und officialis im ius commune: Ein Instrument für die Vermittlung zwischen einem allgemeinen Recht und der örtlichen Realität”, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 115 (1998), pp. 553-565, and: Mohnhaupt, H., “Untersuchungen zum Verhältnis Privileg und Kodifikation im 18. und 19. Jahrhundert”, *Historische Vergleichung im Bereich von Staat und Recht: Gesammelte Aufsätze*, Ius commune: Veröffentlichungen des Max-Planck-Instituts für europäische Rechtsgeschichte. Sonderhefte: Studien zur europäischen Rechtsgeschichte 134, Frankfurt am Main 2000, pp. 295-348.

<sup>11</sup> Dworkin, R. “The Judge’s New Role: Should Personal Convictions Count?”, *Journal of International Criminal Justice* 1 (2003), p. 11; Legendre, P., *L’empire de la vérité*, Paris 1983, p. 51-52; Rigaux, F., *La loi des juges*, Paris 1997, p. 260; Jacob, R., *La grâce des juges: l’institution judiciaire et le sacré en Occident*. Paris 2014, p. 498; Foqué, R., *De ruimte van het recht*, Arnhem 1992. I would like to thank Bart Nelissen (KU Leuven) here for his valuable suggestions, some of which can also be found in: Nelissen, B., “Deontologische Codes of Deugden Voor (te) Openhartige Magistraten?” *Rechtskundig Weekblad* 75, 18 (December 31, 2011), pp. 806–23.

<sup>12</sup> Turrini, “Il giudice della coscienza e la coscienza del giudice”, p. 284, and Garriga, “Iudex perfectus. Ordre traditionnel et justice de juges dans l’Europe du ius commune. (Couronne de Castille, XVe-XVIIIe siècle)”, p. 82.

<sup>13</sup> *Vivorum et mortuorum iudici dicatus*’

as Gregory the Great, Ambrose, Gregory Nazianzus, Gregory of Nyssa, Hildebert of Tours, John Chrysostom, Bernard of Clairvaux and Thomas a Kempis. Classical works are also quoted, such as Aristotle's *Nicomachean ethics*, Ovid's *Epistulae ex ponto*, Pliny's *Naturalis Historia* and his letters, Albius Tibullus, Quintilian and several works by Seneca. Álvarez de Velasco here refers to the Old Testament as well.

The basic premise expressed in this preface holds that a judge need always strive for perfection, despite his fallible human nature. He writes that 'the judge is the servant and executor of justice, and he is indeed the embodiment of justice itself.'<sup>14</sup> Since the virtue of justice is perfect, so should be the judge. Thomas Aquinas statement, that '*the best is he, who is least plagued by flaws*', is quoted here.<sup>15</sup> But Álvarez de Velasco also makes it very clear that judges, as humans, will never be able to reach perfection, and that challenge and merit lie in an incessant striving for the goal of perfection itself.<sup>16</sup> For it is with this striving that one may come closer to God, who is indeed the very embodiment of perfection. This aiming for perfection is also explained as the ambition to always go forward and never hesitate or stand still, as this could mean regression and falling into the trap of human weaknesses.<sup>17</sup> In this sense, the aiming for the sublime seems to serve as a reminder or even support for the judge to use in times of temptation. In the treatise we find many examples of such temptations and challenges of judges' rightness, as well as examples of desirable behaviour, which will make the somewhat abstract goal of reaching for 'perfection' more accessible and practically applicable.

Before we delve deeper into the structure and contents of this work, this may be a good place to elaborate a little on how the role of the judge was perceived in Álvarez de Velasco's time. For it might have become clear that the judge's task was perceived wholly differently from the one he is understood to have today. In modern legal systems, the body of judges is often categorized along the lines of hierarchy (this concerns roughly judges of first instance, appellate judges and supreme court judges, next to those legal professionals involved in arbitration, mediation and alternative dispute regulation) and legal specialisms (public law, criminal law, private law, and within these, special chambers and judges treating cases in the field of intellectual property, real estate, economic crimes, immigration, and cases involving children etc.) But despite these finely distinguished legal fields of practice, the judge's comportment today is regulated by general legal instruments that concern all judges within the jurisdiction, such as disciplinary rules and constitutional provisions stating the judge's independence and impartiality.

Though Álvarez de Velasco mentions canon, civil, and royal Spanish law next to the Old and New Testament as sources for his work, no disciplinary or legal rules for judges to prescribe how judges were to behave seem to have been provided for in his time, and what is more, the body of judges in the Spanish empire was extremely fragmented and functioned in a

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<sup>14</sup> '... quia cum iustitiae minister et executor, ipsa imo quidem iustitia animata, iudex ipse sit: perfectus esse debet.'

<sup>15</sup> 'Optimus ille est, qui minimis urgetur', Horace, *Satires*, lib. 1, 3.

<sup>16</sup> 'Nusquam ergo et nunquam perfectio (hic)', Bernardus of Clairvaux, Soliloq. C.7.

<sup>17</sup> 'Licet lubricum sit iter per quod incedis, tamen de Domini auxilio confidens, desere ima quantum vales, et summa pete. Non deficias, neque tepescas, ut gradum Perfectionis possis ascendere,' Bernardus of Clairvaux, *Tractatus de ordine vitae*, c. VI, r. 21; 'animus ad ima relabatur, nisi ad summa conetur,' Gregory the Great, *Liber Regulae Pastoralis*, lib. 3, 34; and 'aut ascendas necesse est, aut descendas. Si attendas stare, ruas necesse est. Minime, pro certo, est bonus, qui melior esse non vult. Et ubi incipis nolle fieri melior, ibi etiam defines esse bonus', Bernardus of Clairvaux, letter 91, third paragraph.

legal order that was far from unified. Of course, these circumstances had their effect on a possible definition of the judge at the time.

What did unify judges, though they might have worked under very different circumstances and spheres, are the following characteristics given by Garriga: regardless whether they worked within local, feudal or royal legal territories, all judges were ‘conveyors of a juridical structure that was essentially uniform, and that was guaranteed by ad hoc trials. It was by the virtue of these trials that the judges were integrated into one legal apparatus with one hierarchy based on the different stages of legal procedure.’<sup>18</sup> This emphasizes once more that in a legal order as pluralistic as this, a lot of the credibility and authority of the judge’s decisions depended on judges’ professional and personal behaviour. Garriga has described this justice system as a ‘*justice of judges*’.<sup>19</sup> Hence it is not remarkable that Álvarez de Velasco directed his attention to all aspects of the judge’s persona, as the judge would indeed have needed to stand out from the flock, possessing extraordinary control over his passions and feelings to guarantee that he put his duty before personal interest.<sup>20</sup>

This lack of legal or disciplinary rules on judges’ professional behaviour also means that scholarly works like that of Álvarez de Velasco must have carried quite some weight, as it is one of the few sources that dealt with this subject, and seems to have been the only one dedicated to this subject exclusively to have appeared within the 17<sup>th</sup> century Spanish empire.

## 5. Citations of classical sources as organizing principle

Now let us go back to the treatise. After the table of contents, which we will mention below, comes what we would call today an acknowledgment of sources: Álvarez de Velasco dedicates this page to a number of passages from classical sources that are of seminal importance for his work. He calls these citations the two descriptions of justice that show all aspects of justice excellently, as well as what the office of the judge entails and what makes a perfect judge.<sup>21</sup> This validation of the cited works shows once more how tightly connected Álvarez de Velasco’s understandings of justice and of the role of the judge are, as we will see that these quotations in fact put the characteristics of the judge centre stage.

The first citation is from *Attic Nights* (178-192) by Roman author Aulus Gellius (2<sup>nd</sup> century AD). This work is a miscellany that was written in the second century AD. It covered many subjects such as history, geography, philosophy and law, and gives special attention to linguistics and the relation between Greek and Roman culture.<sup>22</sup> The citation here concerns

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<sup>18</sup> Garriga, “Iudex Perfectus. Ordre Traditionnel et Justice de Juges Dans l’Europe Du Ius Commune. (Couronne de Castille, XVe-XVIIIe Siècle)”, p. 81, translation my own.

<sup>19</sup> Garriga, “Iudex Perfectus. Ordre Traditionnel et Justice de Juges Dans l’Europe Du Ius Commune. (Couronne de Castille, XVe-XVIIIe Siècle)”, p. 79.

<sup>20</sup> Garriga, “Iudex Perfectus. Ordre Traditionnel et Justice de Juges Dans l’Europe Du Ius Commune. (Couronne de Castille, XVe-XVIIIe Siècle)”, p. 81.

<sup>21</sup> ‘*qua pulchre omnibus suis partibus constans ipsa depingitur, magistratus officium demonstrator et perfectus iudex constituitur.*’ Of course these are not the only other classical writers who paid attention to the figure of the judge: the image of the ‘good’ (bonus) and the ‘bad’ (malus) judge, for example were both elaborated on by both Seneca, in *De beneficiis*, and Ulpian, in the Digest of the Corpus Iuris Civilis (D. 1,1,10). Glass, X., “Das Gleichnis vom guten und schlechten Richter in Senecas de beneficiis und Ulpian’s Definition von Gerechtigkeit (D. 1, 1, 10),” *forum historiae iuris*, December 8, 2010, <http://fhi.rg.mpg.de/media/zeitschrift/1012glass.pdf>.

<sup>22</sup> Biographical information on Aulus Gellius from the Oxford Classics Dictionary, <http://www.oxfordbibliographies.com/view/document/obo-9780195389661/obo-9780195389661-0200.xml>.

another citation in itself on the depiction of justice, as given in a work called *On beauty and pleasure* by Chrysippus, a Greek member of the Stoa and a prolific writer:<sup>23</sup>

‘That Chrysippus skilfully and vividly represented the likeness of Justice in melodious and picturesque language.

‘Most worthily, by Heaven! and most elegantly did Chrysippus, in the first book of his work entitled *On Beauty and Pleasure*, depict the face and eyes of Justice, and her aspect, with austere and noble word-painting. For he ‘represents the figure of justice, and says that it was usually represented by the painters and orators of old in about the following manner: “Of maidenly form and bearing, with a stern and fearsome countenance, a keen glance of the eye, and a dignity and solemnity which was neither mean nor cruel, but awe-inspiring.” From the spirit of this representation he wished it to be understood that the judge, who is the priest of Justice, ought to be dignified, holy, austere, incorruptible, not susceptible to flattery, pitiless and inexorable towards the wicked and guilty, vigorous, lofty, and powerful, terrible by reason of the force and majesty of equity and truth.’<sup>24</sup>

This quote is of importance here as the collection of characteristics of the judge it gives serves to provide the very structure of Álvarez de Velasco’s treatise: Álvarez de Velasco divided his treatise into fifteen *rubricae*, each of them dedicated to (a part of) one of the characteristics mentioned by Aulus Gellius, in the same order given in the quotation. His choice to use Gellius’ text as an organizing principle could be understood in the light of Gellius’ own career: though he was in fact a scholar, trained in grammar, rhetorics, and philosophy, he had also been a judge. Gellius had acted as a ‘*unus iudex*’, that is to say a lay judge appointed to adjudicate cases concerning money loans, and was known for this in the literature, for he had mentioned it in his *Noctes Atticae*.<sup>25</sup>

Then comes a citation from the *Bibliotheca Historica*, a voluminous world history written by Diodorus Siculus, who lived in Sicily in the first century BC.<sup>26</sup> It gives the following description of a hall in Egypt where justice was administered:

‘In this hall there are many wooden statues representing parties in litigation, whose eyes are fixed upon the judges who decide their cases; and these, in turn, are shown in relief on one of the walls, to the number of thirty and without any hands, and in their midst the chief justice, with a figure of Truth hanging from his neck and holding his eyes closed, and at his side a great number of books. And these figures show by their attitude that the judges shall receive no gift and that the chief justice shall have his eyes upon the truth alone.’<sup>27</sup>

This passage also mentions a number of the characteristics of the judge that Álvarez de Velasco will pay attention to in his work, and which might even be considered the most important (they will be elaborated on below): for they show that the judges as incorruptible, as they do not have hands to receive gifts with, and their chief has his eyes closed so he will not be distracted by any flattery and can direct his attention at serving justice only, led by truth. He

<sup>23</sup> Gould, J.B., *The Philosophy of Chrysippus*, Leiden 1970, p. 7-14.

<sup>24</sup> Aulus Gellius, *Noctium Aticarum libri XX*, 4.4.1-5. Translation: *The Attic Nights of Aulus Gellius*. With An English Translation. John C. Rolfe. Cambridge, Mass. 1927.

<sup>25</sup> For Despite a lack of legal training, the praetores could appoint Roman men above the age of 25 and of substantial wealth, to act as *unus iudex*. Spruit, J.E., “Aulus Gellius als rechter. Een beschouwing over Gellius, *Noctes Atticae* xiv, 2”, *Historische wortels van het recht* (L. van den Berge, M. Neekilappillai, R. Kindt, and J. Valk, eds.), Nijmegen 2014, esp. p. 164.

<sup>26</sup> Biographical information on Diodorus Siculus from <https://www.britannica.com/biography/Diodorus-Siculus>.

<sup>27</sup> Siculus, Diodorus, *Bibliotheca Historica*, 1.48.6. Translation: Diodorus Siculus, *Bibliotheca Historica*. Translated by Charles Henry Oldfather, Loeb Classical Library 303, Cambridge, Mass. 1935.

is also ‘surrounded by books’, implying that the judge is obedient to the prescribed rules, and aware of the fact that he does not reign alone in the kingdom of justice. Álvarez de Velasco dedicates the last rubrica to this being ‘surrounded by books.’

Álvarez de Velasco writes that the citations show us the desired characteristics of the judge, and the rules that justice prescribes, but that most of them have remained hidden and deserve publication and discussion – which will be done with this work, thus enlightening man on earth.

Then come the rubricae. Álvarez de Velasco thus treats each of the qualities of the judge individually, following Aulus Gellius’ list. This is not the only example known to us of a jurist using a very well-known, and in that sense classical work, as an organizing principle for his text: Gratian used one of St. Paul’s letters, the first one to Timothy (1. Tim. 3), for shaping part of the *Distinctiones* of his *Decretum Gratiani*.<sup>28</sup>

Let us take a quick look at these rubrics, and what they teach us about the necessary qualities of the judge:<sup>29</sup>

- *Forma virginali: of maidenly form and bearing*: this should be understood as the statement that the virtue of justice is the purest one of all and unites all other virtues.<sup>30</sup> It is thus regarded the most important virtue of all, which means that the judge, as its embodiment, ought to be ‘chaste’, which consists here in traits such as modesty, being a good keeper of secrets, and not having a desire for power or monetary gain.
- *Aspectu vehementi et formidabili: with a stern and fearsome countenance*: this rubrica concerns the statement that the judge should always act from wisdom, keep a certain distance to others, that he should know that he cannot please all with his judgements, and that he should not be tempted by rumours or bribes to judge a certain way.
- *Luminibus oculorum acribus: with a keen glance of the eye*: the judge should look inside himself first before he looks at the subjected, which is to mean that he should be aware of his own flaws when he observes and judges those of others.<sup>31</sup>
- *neque humilis neque atrocis ... sed reverendae cuiusdam tristitiae dignitate: with a dignity and solemnity which is neither humble nor cruel, but fits someone who is awe-inspiring*: this is about the right amount of dignity for a judge; he should not be too submissive or humble, nor should he become arrogant (*superbus*)
- *Gravem: dignified*: the judge should bear dignity with kindness and without arrogance

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<sup>28</sup> Lenherr, T. “Die ‘Glossa Ordinaria’ Zur Bibel Als Quelle von Gratians Dekret. Ein (neuer) Anfang”, *Bulletin of Medieval Canon Law* 24 (2000), p. 110, with many thanks to prof. S. Dusil for pointing this parallelism out to me.

<sup>29</sup> On the requirements and restrictions for judges in this period, see also the *Recopilación de leyes de los reinos de las Indias* (Madrid, 1681), as noted by Czeguhn, I. “Richterbilder und Richterulturen in Spanien und Lateinamerika”, *forum historiae iuris*, March 22 2011, <http://fhi.rg.mpg.de/media/zeitschrift/1103czeguhn.pdf>, fifth paragraph. The *Recopilación de leyes de los reinos de las Indias* sought to regulate the great power judges had in Peru by putting restrictions on their personal lives, for example forbidding them to own land or real estate or take part in funerals. Czeguhn describes how in response to incidents of power abuse judges, also in the overseas areas, were often kept quite isolated from the communities they worked in, see paragraph 12 and 13.

<sup>30</sup> ‘*iustitia est virtutum praeclarissima, caeterarum mater, et nutrix, et ipsa est omnis virtus, seu omnes virtutes complectitur*’, Rub. 1, summarium with adn.1, 5.

<sup>31</sup> ‘*Iudex se prius lynceos oculos convertat; in subditos inde. Quia iustus prior est accusator sui. Nec aliorum bene corrigit errata, qui non se prius iustitia censura castigat.*’ Rub. III, summarium, 2.



- *Sanctum: holy, venerable*: judges are ministers of God and have to shape and unite themselves according to Him, whose place they take on earth.<sup>32</sup> In this rubrica judges are called priests.<sup>33</sup>
- *Severum: austere, strict*: without strictness, justice could not be upheld,<sup>34</sup> but it is possible, though difficult to combine strictness with mildness.
- *Incorruptum: incorruptible*: on the receiving of gifts, on being insensitive to bribes, on cases of extortion and perjury.
- *Inadulabilem: not susceptible to flattery*; on the extent to which a judge should avoid becoming subject to flattery.
- *Contraque improbos, nocentesque immisericordem: pitiless and inexorable towards the wicked and guilty*: discusses the discretion for judges to apply stricter or more lenient punishments than the law prescribes, and how to justify such deviant punishments.
- *inexorabilem, erectum et arduum: vigorous, lofty, and powerful*: whether a judge should be sensitive to supplications.
- *Potentem vi et maiestate ... aequitatis, veritatisque terrificum: terrible by reason of the force and majesty of equity and truth*: on deciding what equity demands, and how far a judge should go in finding the truth – could he find out the truth by tricks or ruses? Should he follow his own conscience in this?
- *Librorum cumulo circumstante: surrounded by books*: on studying books to find what the law is, and on discussing laws extensively to decide what is just.

We do not have space to discuss each quality more extensively here, but let us take a closer look at the way this part of the treatise was structured, as it tells us something about the intentions of the work.

Álvarez de Velasco treats his subject matter the following way: each rubrica is comprised of different *adnotationes*, with every *adnotatio*, quite practically, answering a question related to the rubrica. The answers are comprised of orderly lists of citations from all kinds of works by church fathers and classical writers, just as we have seen in the letter to the reader. So, what Álvarez de Velasco merely does here is provide us with a collection of all the relevant passages from authoritative sources that answer the questions that he brings up. These questions must have been realistic in the exercising of the judge's task at the time. There are for example questions about receiving payment by means of gifts from litigants,<sup>35</sup> or if it is allowed for the judge to apply more lenient punishment to a friend brought before him in court.<sup>36</sup>

## 6. Corruptibility

What springs to the eye when studying the contents of this work is the amount of attention paid to questions concerning the corruptibility of judges. The rubrica dedicated to incorruptibility is by far the largest, and addresses questions such as: may judges accept gifts from friends involved in lawsuits that the judge will decide on? What if the gifts are very small?

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<sup>32</sup> '*Iudices Dei ministri sunt, debentque ad similitudinem eius, cuius ministri sunt, vicesque gerunt, se formare et componere.*' Rub. VII, summarium with adn. 1, 1.

<sup>33</sup> '*Iudices sacerdotes appellantur*', Rub. VII, summarium with adn. 1, 9.

<sup>34</sup> '*Absque severitate iustitia stare non potest*', Rub. VIII, summarium, 2.

<sup>35</sup> Rub. X, adn. VII.

<sup>36</sup> Rub XI., adn. II.

Or from relatives? May they exchange gifts with members from other courts?<sup>37</sup> The answer to most of these questions is negative. It is understandable that these questions came up quite frequently in real life, and thus had to be dealt with in this work. For the office of the judge was one that could be bought. As a side note, let us explain how this practice worked: in the Spanish Empire of Álvarez de Velasco's time, there was a system of selling *beneficio*, or the sale of revocable appointments to non-inheritable offices. This system was beneficial for the monarchy, as it enabled the monarch to weaken the influence on patronage by the aristocracy and the jurists of the great councils that were connected to municipal oligarchies.<sup>38</sup> It also meant that one could buy his way into power, which harmed Aquinas' then-prevalent principle of distributive justice. Such buying of an appointment was thus seen, by the elite that upheld this notion, as innately corrupt: nothing good could come out of this, as the appointed officials had not proven their necessary merit, which in their eyes sprang naturally from the proper social origins that provided the qualities needed for the necessary virtuousness.<sup>39</sup> This understanding of corruption, which was closely tied to the practice of being judicial offices, clashed with yet another notion of corruption that rose in this time, as has been identified by Rosenmüller: it is the then-novel idea of corruption as divergence of royal laws for self-benefit, and it was favoured by the crown and social newcomers who benefitted from the appointment system.<sup>40</sup>

So it becomes clear from this background that less than noble interests might have sparked some to become interested in the office of the judge – the desire to obtain societal power and fulfil nepotistic interests must have felt within reach. It is this dynamic that Álvarez de Velasco addresses here, by reminding judges to never forget the common good and to be aware that eventually, they themselves will be tried by God.

## 7. Conclusion

We have seen what qualities Álvarez de Velasco assigned to the good judge and how he perceived the tasks that were part of the judge's office. We would like to remark here that this treatise is not thought to have stood on its own, in the sense that the image of the justice system as a *justice of judges* was indeed a shared one, and it was after this work that Marcus Antonius Sabelli, a prestigious jurist at the grand duchy of Tuscany, wrote his *Compendium de qualitatibus iudicis perfecti ex non minus eleganti, quam obstruso tratatu D. Gabriel Aluarez. De Velasc. de iud. perfect. per tot.* (Venice, 1697)<sup>41</sup>

We will conclude with the remark that this work, in being a '*mirror for judges*', had two intentions: it was meant to provide the audience with an ideal type or theoretical model of the judge's deontology, and to show judges an exemplary image of good behaviour and perfect

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<sup>37</sup> Rub. IX, adn. I-X.

<sup>38</sup> Rosenmüller, C., "'Corrupted by Ambition': Justice and Patronage in Imperial New Spain and Spain, 1650–1755", *Hispanic American Historical Review* 96, 1 (2016), p. 2.

<sup>39</sup> This principle prescribed that one's worthiness as a person decided one's societal rewards – appointments being part of these rewards: the worthier or nobler of character a person, the more societal rewards he deserved. Rosenmüller, C., "'Corrupted by Ambition': Justice and Patronage in Imperial New Spain and Spain, 1650–1755", p. 5.

<sup>40</sup> Interestingly, they also favoured performance and education as selection criteria over the social origins of a candidate. Rosenmüller, "'Corrupted by Ambition': Justice and Patronage in Imperial New Spain and Spain, 1650–1755", p. 28.

<sup>41</sup> Garriga, "Iudex Perfectus. Ordre Traditionnel et Justice de Juges Dans l'Europe Du Ius Commune. (Couronne de Castille, XVe-XVIIIe Siècle)", p. 85.

control over desires.<sup>42</sup> Secondly, it was intended as an image of judges as they were, a reflection of the real comportment of judges and the questions and difficulties they could meet in exercising their tasks (though it mostly concerned the higher placed judges who served as an example for the lower ones, and who were meant to correct mistakes committed by inferiors).<sup>43</sup> This two-sidedness makes the treatise particularly interesting for studying the understood responsibilities of the judge in this time. On a final note, it should be said that the conclusions drawn above should be understood as provisional, as this is still a work in progress.

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- <sup>42</sup> Garriga, “Iudex Perfectus. Ordre Traditionnel et Justice de Juges Dans l’Europe Du Ius Commune. (Couronne de Castille, XVe-XVIIIe Siècle)”, p. 84 and p. 89-90.
- <sup>43</sup> Garriga, “Iudex Perfectus. Ordre Traditionnel et Justice de Juges Dans l’Europe Du Ius Commune. (Couronne de Castille, XVe-XVIIIe Siècle)”, p. 86.

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