

# **Law and Christianity in Latin America: The Work of Great Jurists**

Edited by M. C. Mirow and Rafael Domingo

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## **Tristán Narvaja (Argentina and Uruguay, 1819–1877)**

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### **Biographical Introduction**

Tristán Narvaja was a jurist, professor, theologian, and politician who was born in the present territory of the Argentine Republic and carried out all these activities in Argentina, Chile, and Uruguay. Although a productive scholar throughout his career, he is best known as the principal drafter of the Uruguayan Civil Code of 1868. He was born in the province of Córdoba on March 17, 1819, to Pedro Narvaja y Dávila and Mercedes Montelles.

Although he was given the name of José Patricio Tristán Narvaja y Montelles at birth, he was called Tristán at confirmation and later adopted this name.<sup>1</sup>

He learned Christian values at home and learned to read and write with his father.<sup>2</sup> At the age of eleven, he entered school at the Franciscans' Convent in Córdoba, where he began studies for the priesthood, subsequently receiving the tonsure and the minor orders.

Nonetheless, apparently suffering from a serious lung condition, he requested a dispensation because of health reasons. He may also have felt called to letters and the law rather than to the priesthood.<sup>3</sup>

In 1836 he completed his studies in theology, canon law, and jurisprudence. He did not receive the major orders and thus changed universities. In 1837 he traveled to Buenos Aires and enrolled in two degree courses at the university: theology and jurisprudence. He first obtained a doctorate in theology with a thesis titled *De misterio infallibile Sanctissimae Trinitatis* (The infallible mystery of the Holy Trinity).<sup>4</sup> On December 12, 1839, after

completing the three-year law-degree course, he submitted his doctoral thesis in law, titled *Abolición de la pena capital* (Abolition of the death penalty). According to Armando Pirotto, in his thesis Narvaja pursued a courageous and solid defense of the abolition of the death penalty, thus embracing the ideas advocated by Cesare Beccaria and Gaetano Filangieri.<sup>5</sup>

On completing the doctoral degree, Narvaja was required by university rules to take practice courses at the Theoretical-Practical Academy of Jurisprudence of Buenos Aires and work as an articulated clerk in a law firm. In March 1840, Narvaja joined the law firm of José Zorrilla and enrolled in the academy. However, his unitarian political ideas, contrary to those of the regime of Juan Manuel de Rosas in Buenos Aires, led to his arrest. On his release, like many other countrymen, he emigrated to Montevideo, where he settled in 1840.<sup>6</sup>

During his stay in Montevideo, Narvaja strengthened his ties with jurists Eduardo Acevedo, Dalmacio Vélez Sarsfield, and Joaquín Requena,<sup>7</sup> the last of these entrusted some years later with drafting the Uruguayan Code of Civil Procedure. On November 26, 1840, Narvaja requested permission to enroll in the Theoretical-Practical Academy of Jurisprudence in the city of Montevideo, to which he was introduced by Requena and Acevedo. He took the entrance exam in December of that year, then lived in Montevideo before returning to Buenos Aires in 1843. From there he traveled to Bolivia and then settled in Chile.

During his stay in Chile, he paid frequent visits to his relative, jurist Gabriel Ocampo, who was then to take part in the drafting of Chile's civil code. Narvaja settled in the city of Copiapó, where he built a successful law practice and gained extensive experience in mining legislation. In Chile, Narvaja wrote a highly praised study on mining law. Most important, though, he was close to the preparatory works of Andrés Bello's Chilean civil code, which he began to admire as a model of legislation. He focused his attention on the works and controversies revolving around the preparation of Chile's civil code. Narvaja lived in Chile until late 1853, then moved to Montevideo, where he lived until his death.

On his arrival in Montevideo, Narvaja revalidated his law degree and on February 3, 1854, took the oath to practice law. That same year, he married Joaquina Requena Sierra, Joaquín Requena's daughter, with whom he had a daughter, Mercedes. When Joaquina died in 1865, he married Umbelina Tapia y Sierra, with whom he had five sons: Manuel Tomás, Tristán Hilario, Alfredo, Ricardo, and Augusto.<sup>8</sup>

In 1868, in recognition of his contributions to Uruguayan legislation, in particular the drafting of the civil code, he obtained citizenship by means of a decree issued by Provisional Governor Venancio Flores.<sup>9</sup> Narvaja died in Montevideo on February 19, 1877, at the age of fifty-seven, leaving behind five children.<sup>10</sup>

### **Teaching**

Narvaja was a professor of civil law at the Law School of Montevideo between 1855 and 1873, a member of the Jurisprudence Commission of the University of the Republic in 1855, and a member of the University Council in 1864.<sup>11</sup> He began his teaching career

when he was appointed to the chair of civil and commercial law of the School of Jurisprudence on May 8, 1855. He held this chair for seventeen years, until 1872.<sup>12</sup> He taught civil, commercial, and criminal law. He taught the law of nations in the early years of this subject in law faculties, and he renewed the study methods of civil law. During his years as a professor, he fostered the study of political economics, theology, and criminal law.<sup>13</sup> While a professor, he prepared a seven-hundred-page work summarizing his lessons, but for financial reasons it was not published. Some of the students who received their legal education from him later became prominent figures in Uruguay.<sup>14</sup>

### **Judicial and Political Activity**

In 1872 Narvaja became a member of the Higher Court of Justice, where he actively worked for more than three years.<sup>15</sup> In 1875 he entered Parliament as a deputy for the Department of Durazno and held that position for three months. As a legislator, he was a person of few words and an enemy of long interventions. According to his contemporaries, he would be quiet for entire sessions and would engage in debates only when an important matter was at stake. Nevertheless, these traits did not prevent him from taking part in international-law issues. For example, he introduced for the first time in Uruguay the use of the reservation clause in favor of bordering states. He also spearheaded the enactment of the rural code and submitted numerous initiatives designed to amend or supplement Uruguayan legislation. These reforms addressed the subjects of judicial liability, the repeal of a law of 1874 regulating the legal profession, and the creation of a register of naval attachments and mortgages.<sup>16</sup>

His work as a deputy included the publication in 1875 of an article titled “La libertad de defensa y el ejercicio de la Abogacía” (Freedom of defense and the practice of law).<sup>17</sup> He also drafted a set of mortgage laws—which, according to Zachariae, were the best to that date—that established a radical separation between mortgages and privileges.<sup>18</sup> He left his legislative position in August 1875, when he was appointed minister of government by President Pedro José Varela Olivera. He was provisional minister of the treasury and of foreign relations until February 1876, when he retired to private life.<sup>19</sup>

### **Publications**

While he was a student at the Academy of Jurisprudence, Narvaja published in 1841 his first legal work, *Administración de justicia en la República Oriental del Uruguay* (Administration of justice in the Oriental Republic of Uruguay), which summarized all the judicial regulations and practices in force in Uruguay during that period.<sup>20</sup> With a perfect mastery of Latin, Narvaja also translated classical works that were published in *El Nacional* in 1842 and 1843 and that, according to Peirano, reveal the humanist education he received during his youth in his hometown, Córdoba.<sup>21</sup>

His work *Ley Hipotecaria y Graduación de Acreedores* (Mortgage law and the priority of creditors) appeared in 1864 and was published by the government together with Narvaja’s commentary the following year.<sup>22</sup> Some years later, in 1867, Narvaja published his article “Cuestión de oportunidad” (A question of opportunity), which consisted of an argument submitted by Narvaja before the Higher Court of Justice concerning an award of court costs in a probate proceeding.<sup>23</sup>

In 1871, after he had drafted and defended his civil code, Narvaja wrote *Sociedad conyugal y las dotes* (Marital partnership and dowries). According to Peirano, this work is the fruit of Narvaja's intellectual and legal maturity as he veered away from the interpretive methods to which the great European jurists were confined. The book reveals his general knowledge of legal history, comparative law, and sociology.<sup>24</sup> In spite of his well-known Christian thought, Narvaja departed from the religious tradition when he deemed it proper, and in this regard, in his work on marital partnership, he criticized the abuse of canon law in establishing ownership of the dowry. Moreover, he disapproved of the oath, as he thought it could be used to violate legal prohibitions made on public policy grounds.<sup>25</sup>

### **The Civil Code of the Oriental Republic of Uruguay**

Narvaja's most prominent work was the drafting of the Uruguayan Civil Code of 1868, through which the country gained entry into a new and modern legal world. His code was conceived in line with the codification movement that spread across Europe and the Americas.<sup>26</sup> When Narvaja drafted the code, the codes of Chile, Peru, and Bolivia had already been enacted, and Dalmacio Vélez Sarsfield was working on the code of the Argentine Republic.

In Uruguay, Eduardo Acevedo in 1852 had prepared a draft civil code. On March 20, 1866, Uruguayan President Venancio Flores issued a decree mandating that the same commission that had revised the commercial code—enlarged to include Uruguayan jurist Joaquín Requena—revise Acevedo's draft code for the purpose of enacting Uruguay's civil code. The commission began work on July 1, 1866, and finished twenty months later, in November 1867; however, it did not work directly on Acevedo's draft, as envisaged by

President Flores's decree, but on another draft prepared by Narvaja, which was nevertheless based on Acevedo's work. The preparation of the draft code demanded a great deal of energy and work from Narvaja: he had to close his law practice for almost two years and abandon all activities other than his university chair. Once concluded, his draft code was submitted for governmental approval. It was enacted on January 22, 1868, and came into effect on January 1, 1869.<sup>27</sup>

### **Plan, Method, and Sources of the Code**

As far as the language and style of the code are concerned, Narvaja adopted a technique similar to that of the Chilean code. This resulted in a clear, direct, and flexible code that allowed it to remain in effect in Uruguay for almost a century without the need for extensive reforms or substantial restructurings. With respect to the code's sources, Narvaja was well acquainted with studies and research into Roman law, all the previously enacted codes, and the work of the commentators on the codes of France, Austria, Louisiana, Holland, Prussia, Baden, Württemberg, Sardinia, Portugal, and Belgium, among others.<sup>28</sup> In this regard, Narvaja took into account the ideas of the greatest interpreters of the Code Napoleon, such as Raymond-Theodore Troplong, Charles Demolombe, Frédéric Taulier, Charles Aubry and Frédéric Charles Rau, among others, as well as the work of Andrés Bello, Eduardo Acevedo, and Florencio García Goyena.

Narvaja's code, however, was not a mere compilation of sources, as he took Uruguay's legislation, customs, usage, and the particular needs of the country into account.

Accordingly, he departed from the solutions adopted by other codes when they did not respond to Uruguayan reality. The result was an eminently eclectic civil code. Narvaja thus

removed from his civil code topics frequently found in other codes. These included, for example, civil death, fiduciary substitution, imprisonment for debt, betrothal, the vendor's right to rescind a sale on the grounds of extraordinary injury, grace periods, *restitutio in integrum*, the appointment of guardians for spendthrift persons, the legal mortgage, the reservation of property in case of second marriage, and preemptive rights and rights of first refusal.

Narvaja's code did not include footnotes to its articles, as did Vélez Sarsfield's code for Argentina. Indeed, Narvaja was not amenable to publishing the text of the annotated code. From his perspective, the code was not a scholarly work but rather a set of imperative or prohibitive formulas. Thus, it had to be confined to the naked text, devoid of any annotations, as that of any other law; this helped maintain the coercive force that compelled compliance with the law.<sup>29</sup>

Nevertheless, a publication was envisaged containing the annotations and commentaries that had served as sources of the Uruguayan civil code. Narvaja himself had included these materials in a copy of the code he had given to his friend Ponce and in another copy he had left to his sons Ricardo and Manuel.<sup>30</sup> However, this work was not published. An article published by his son Ricardo suggests that such publication might not have been forthcoming because, as Narvaja was a university professor, he could provide detailed and lengthy explanations of the code during his classes. According to Ricardo Narvaja, the codifier compared, reviewed, and studied ancient law, modern codes, a vast number of scholarly works, state law, and foreign law.<sup>31</sup>

## **Other Codes**

While Narvaja is widely known for the Uruguayan civil code, he drafted other codes and laws that helped to shape Uruguay's legal structure as an independent state. In 1865 Narvaja was appointed to a commission tasked with amending the commercial code. He participated substantially in the amendment and submitted the relevant report to the executive. This code, which came into effect on July 1, 1866, amended two hundred and fifty articles of Acevedo's code and contributed new doctrinal views. Narvaja's work updated older commercial legislation by abolishing imprisonment for debt and civil death, reinforcing respect for commercial transactions regarding interest and contracts, repealing the grace periods customarily granted by courts to debtors and usury laws, incorporating the provisions of the mortgage law, and, ultimately, aligning commercial law with the legal trends prevailing at the time.<sup>32</sup>

Narvaja also drafted a mining code enacted on February 5, 1868. This work called on all the experience he had gained in the field in Chile. Although replaced in 1884, this code incorporated basic mining-law principles, such as the eminent domain of the state over all of its mining fields.<sup>33</sup>

## **Christian Thought**

As a university student, Narvaja studied classical Spanish and Latin religious and theological works under his principal law teacher, Rafael Casagemas.<sup>34</sup> In this respect, his education was similar to that of other jurists, such as Vélez Sarsfield (with whom he always had a close friendship), Lisandro Segovia, Pedro Somellera, Gabriel Ocampo, and many others who had studied in Córdoba.<sup>35</sup>

Narvaja's Christian thought was reflected in the regulation of marriage in his civil code, an approach in line with the education he had received at home and deepened through his years in Córdoba and religious studies. Narvaja grounded the religious regulation of marriage in his conviction that it was not possible to sweep away religious beliefs so deeply rooted in society. His note to the title on marriage in his civil code had a similar approach to that taken by Vélez Sarsfield in Argentina.<sup>36</sup> Consequently, Narvaja closely linked ideas of family and marriage to religion and canon law, evincing in such code provisions his religious convictions and radically departing from the liberal ideas prevailing at the time.

Narvaja recognized the legal validity of religious marriage, did not accept civil divorce, and entrusted the record of marriages to parish registers, thus opposing the state's being in charge of civil registration. In this respect, the message issued by the members of the codes commission—Manuel Herrera y Obes, Antonio Rodríguez Caballero, Joaquín Requena, and Tristán Narvaja—to Governor Venancio Flores on December 31, 1867, commented that most states in Europe kept registers in the hands of the church. Even in those countries where Catholicism was no longer the state religion, legislators did not believe they would easily find more able and trustworthy persons to whom they could entrust the delicate functions of civil status officers.<sup>37</sup>

Narvaja's code established that marriage between Catholics could be contracted only in accordance with the canons of the Catholic Church, and that the power to determine the validity of a marriage between Catholics lay with the ecclesiastical authority.

Consequently, all questions relating to marriage impediments and their dispensation were

reserved to the ecclesiastical authorities.<sup>38</sup> In addition, mixed marriage, that is, a marriage between a Catholic and a non-Catholic Christian—which was authorized by the Catholic Church—was to take place in accordance with the practices established by the Catholic Church. Again, the power to make a determination as to the impediments to such marriages lay with Catholic Church officials, as was the case with marriage between Catholics.<sup>39</sup> Nonetheless, and unlike the Argentine codifier, Vélez Sarsfield, Narvaja provided for the case of marriage between non-Catholic Christians and between persons who did not profess Christianity. The civil effects of such marriages were addressed in a special section on the impediments to them and the corresponding civil certificates.<sup>40</sup>

With regard to divorce, Narvaja's civil code vested the ecclesiastical courts with the authority to grant the divorce or separation of spouses previously married by, or with the authorization of, the Catholic Church. Thus, his code did not admit absolute divorce, and it vested only civil courts with the power to regulate the civil effects of religious divorces, such as in matters of community property, alimony, and child custody.<sup>41</sup> Nevertheless, Narvaja provided for the situation of those having contracted marriage without the authorization of the Catholic Church. In these cases, he established a civil divorce proceeding with no dissolution of the bonds of marriage.<sup>42</sup> The Catholic Church was vested with the authority to declare the nullity of a marriage contracted in accordance with its canons.<sup>43</sup> A separate procedure was set forth for determining the nullity of civil marriages or marriages contracted without the authorization of the church.<sup>44</sup>

With respect to civil status, Narvaja entrusted parish registers with all the evidence of the civil status of persons, and the civil status of non-Catholic individuals could be

demonstrated by certificates issued by civil authorities.<sup>45</sup> In addition, these civil registers were to be used for documents relating to the birth of children of non-Catholic individuals, as entered by a competent justice of the peace.<sup>46</sup>

### **Controversies around the Civil Code**

The code was at the center of a number of controversies. One concerned the authenticity of the text and asserted that the text published in 1868 did not match the originals. In this respect, the reviewing commission reported through its chairman, Don Manuel Herrera y Obes, at the request of the Chamber of Representatives in August 1869, that the originals had been destroyed during the printing of the code. Nonetheless, the report confirmed that the printed text was, in the view of the codification commission that had approved it, the same as the text contained in the original manuscripts. It was thus confirmed that the text was authentic; the enemies of the code were discredited. It was also argued that the code was not only riddled with defects but also unconstitutional because it had a retrospective effect. Therefore, some asserted that the courts should refrain from applying it.

Narvaja had virtually no allies in his defense of the scientific merit of his work. However, through a number of articles published in *La Tribuna*, he defeated his detractors, among whom was the Argentine lawyer and politician Vicente Fidel López.<sup>47</sup> López criticized Narvaja for the lack of originality of the code, as it resembled the Chilean code; for his failure to include precedents of his own; and for substantive issues such as the definition of the contract. Narvaja defended the code's originality and pointed out that it was very difficult to create a work and too easy to criticize it.<sup>48</sup> This controversy ended in 1870, when, according to Peirano, López was unable to respond to Narvaja's reasons.<sup>49</sup> Finally,

Narvaja was also criticized, especially by liberals, for having left the regulation of marriage in the hands of religious authorities.<sup>50</sup>

### **Final Considerations**

Despite his recognition as an important historical figure in the mid-nineteenth-century River Plate region, Tristán Narvaja was not popular in his time. This could have been due to his conservative Christian thought, which did not fit with the liberal ideas prevailing in Uruguay at the time. Narvaja thought the scant esteem shown by his contemporaries could be explained by the fact that he was not Uruguayan.

Notwithstanding his Christian thought, Narvaja departed from his religious ideas when he considered them inappropriate in certain circumstances, respected the ideas of others, and excused himself from acting in those opportunities in which he thought his Christian position could prejudice his colleagues or disciples. An example of this restraint was when the essayist, politician, and lawyer Ángel Floro Costa submitted his doctoral thesis attacking the principles of the Christian dogma on marriage. On that occasion, Narvaja refrained from giving his opinion on the thesis in order not to prejudice his disciple, not even with involuntary bias, and explained in the University Council the reasons for his decision, which he had thought of disclosing in private to the rector of the university, Fermín Ferreira.<sup>51</sup>

Peirano, on the other hand, attributes the scarce esteem Narvaja received in life to his being an unlikable character with a serious and surly countenance, who kept away from social life at a time when a dilettante attitude was one of the basic features of Montevidean elegance.

Added to this were his political affiliation and his collaboration with, and sympathy for, the dictatorial governments of Venancio Flores and Pedro Varela. When Narvaja died, his enemies stated that he lacked the best virtue: that of being a liberal, a viewpoint to which he never adhered due to the lasting impact of his Christian education and settled beliefs.<sup>52</sup>

His death went unnoticed. The university in which he had been a professor for seventeen years, and whose council he had served as a member, hesitated before sending a letter of condolence to his family, alleging that his public actions did not warrant such a gesture. At the session of the University Council held on March 2, 1877, Rector Berinduague recalled Tristán Narvaja's death and proposed that a letter of condolence be sent to his family. Justino X. Jiménez de Arechaga argued that the proposition was not fair, as the public actions of Doctor Narvaja did not merit such deference. Antonio E. Vigil, successor to Narvaja in his chair, held that a letter should be sent, as that did not mean deifying him but simply lamenting his loss. Arechaga responded that Narvaja had had many defects and that every man should be excused for his defects, but defects had a limit—implying that Narvaja's had gone well beyond that limit. At that point, the rector proposed a vote on the issue. Carlos M. de Pena argued that a distinction had to be made between the politician, the University Council member, and the professor, and added that while he was an enemy, like no other, of the politician, he admired the professor, and therefore, he thought a letter of condolence should be sent to the family. Pedrales stated that Narvaja had served the university for a long time and that the letter did not need to make reference to the political problem. Finally, the issue was put to the vote, and it was resolved that a letter of condolence would be sent to the family of the codifier, two of the council members voting against such decision.<sup>53</sup>

Narvaja was a valuable figure with an active involvement in the legal profession, university teaching, the legislature, and the political world. At his death, he left behind an important yet understudied corpus of legal work, the best known of which is the Uruguayan Civil Code of 1868, which made it possible for Uruguay to enter the legal modernity of the time. This code, while it was a reflection of the ideas circulating in other latitudes, did not lose sight of Uruguayan customs and needs. This trait has allowed it, with certain amendments, to remain in force until today.

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- <sup>2</sup> Maiztegui Casas, “El Codificador Adusto.”
- <sup>3</sup> Pirotto, “El doctor Tristán Narvaja,” 62.
- <sup>4</sup> Peirano Facio, *Tristán Narvaja*, 26.
- <sup>5</sup> Pirotto, “El doctor Tristán Narvaja,” 63.
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- <sup>16</sup> Peirano Facio, *Tristán Narvaja*, 73–85.
- <sup>17</sup> Narvaja, “Libertad de defensa.”
- <sup>18</sup> Carve, “Apuntaciones biográficas,” 13.
- <sup>19</sup> Peirano Facio, “Semblanza de Tristán Narvaja,” 125.
- <sup>20</sup> Peirano Facio, *Tristán Narvaja*, 29.
- <sup>21</sup> Peirano Facio, “Semblanza de Tristán Narvaja.”
- <sup>22</sup> <http://liberalism-in-americas.org/258>, last accessed on January 17, 2019.
- <sup>23</sup> Narvaja, *Cuestión de oportunidad*.
- <sup>24</sup> Peirano Facio, “Semblanza de Tristán Narvaja,” 115.
- <sup>25</sup> Peirano Facio, *Tristán Narvaja*, Annex 6 and 169–70.
- <sup>26</sup> *Ibid.*, 9.
- <sup>27</sup> *Ibid.*, 58–69.
- <sup>28</sup> Tristán Narvaja, *Fuentes, notas y concordancias*, xvii.
- <sup>29</sup> *Ibid.*, xxviii–xxi, xiv.
- <sup>30</sup> Peirano Facio, “Semblanza de Tristán Narvaja,” 110–11.
- <sup>31</sup> Narvaja, *Fuentes, notas y concordancias*, xxiii, introduction, xvi.
- <sup>32</sup> Peirano Facio, “Semblanza de Tristán Narvaja,” 116.
- <sup>33</sup> *Ibid.*
- <sup>34</sup> Rafael Casagemas was appointed to the chairs of civil law and natural law and of law of the nations in 1832, both of which he held until 1857, with a brief interregnum in the latter chair by Valentín Alsina between 1834 and 1835. See Cutolo, *Nuevo diccionario biográfico argentino*, 28–29.
- <sup>35</sup> Peirano Facio, *Tristán Narvaja*, 31.
- <sup>36</sup> According to Pirotto, “El doctor Tristán Narvaja,” 83.
- <sup>37</sup> Civil Code for the Oriental State of Uruguay, signed into law by the Provisional Government on January 23, 1868, and enacted by the Honorable Assembly on July 20, 1868 (Montevideo, Imprenta de La Tribuna, 1868), III.
- <sup>38</sup> Art. 87.
- <sup>39</sup> Art. 88.
- <sup>40</sup> Arts. 90–100.
- <sup>41</sup> Arts. 145–46.
- <sup>42</sup> Arts. 148–71.
- <sup>43</sup> Art. 172.
- <sup>44</sup> Arts. 173–81.
- <sup>45</sup> Art. 41.
- <sup>46</sup> Art. 43.
- <sup>47</sup> Peirano Facio, “Semblanza de Tristán Narvaja,” 118–19.
- <sup>48</sup> Pirotto, “El doctor Tristán Narvaja,” 88.

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- <sup>49</sup> Peirano Facio, “Semblanza de Tristán Narvaja,” 118–19.  
<sup>50</sup> Piroto, “El doctor Tristán Narvaja,” 81.  
<sup>51</sup> Peirano Facio, “Semblanza de Tristán Narvaja,” 107–08.  
<sup>52</sup> *Ibid.*, 107.  
<sup>53</sup> Peirano Facio, “Semblanza de Tristán Narvaja,” 107.