JOURNAL OF CATALAN INTELLECTUAL HISTORY

NUM. 12

2019-2020

SPECIAL ISSUE ON CATALAN MEDIEVAL LAW

EDITORIAL ADVISORY BOARD

TABLE OF CONTENTS

EDITORIAL

ARTICLES

BOOK REVIEWS

RESEARCH NOTES

Journal of Catalan Intellectual History (JOCIH)
Online ISSN 2014-1564 DOI: 10.2478/jocih-2019-0001

Received 28/12/2020. Accepted 28/12/2020. Published 28/12/2020

EDITORIAL: DIALOGUE AS A SOURCE OF LAW VOLUME 12. SPECIAL ISSUE

Wendy R. Simon
(UAB Institute of Law and Technology, Universitat Autnònoma de Barcelona; Universitat Abat Oliba CEU, Barcelona)
wsimon@uao.es

Acknowledgements: Project IEC PRO2018-S05. *Models del dret i la filosofia política catalanes: semàntica de les doctrines jurídicopolítiques del pactisme en les seves diferents fases* [Models of Catalan political philosophy and law: Semantics of pact-model driven political and legal doctrines at their different stages].
Disclosure statement: No potential conflict of interest was reported by the authors.

Suggested citation: Simon, W. R. (2019-2020). "Editorial: Dialogue as a Source of Law. Volume 12. Special Issue", *Journal of Catalan Intellectual History*, 12: 1-3 DOI: 10.2478/jocih-2019-0001

This Special Issue of the *Journal of Catalan Intellectual History* on "Dialogue as a source of law" is the second volume of the journal to be published exclusively online and exclusively in English. As was presented in the editorial from the previous issue, the journal was conceived from the very beginning as being a proposal for thinkers across the board to delve into intellectual history as a valid, independent discipline for the studying of human thought. In order for it to be accomplished successfully in the 21st century world, we highlighted the importance of relying on interdisciplinarity as a necessary methodological requirement as well as stressing the importance of factoring technology and artificial intelligence into these studies. Technology can be developed (and *is being* developed) as a powerful intellectual resource for analysis; but in this day and age, technology and all that it brings with it (AI, but also the internet, Big Data…) is an element that should also itself be analyzed as a component of the Intellectual History. This duplicity brings us to the issue at hand. Aware that the intellectual historian must work with ideas in two contexts (i) as abstract—albeit applicable—propositions and (ii) in specific historical, cultural instances, we curated a collection of articles which offer a sample of this complementary analytical attempt.

The overarching topic this Special Issue addresses fundamentally is that of the generalized culture of agreement (*pactisme*) which, as will be argued, took over the political scene of medieval Catalonia. In the Introduction to the special issue by guest editors Mario Macías and Pere Ripoll, the authors offer us an overview of how *pactisme* came to be, what implications it had,

the way in which it shaped the politics, society and culture of its time. This introduction also mentions how *pactisme* is susceptible of being analyzed from different angles, all of which contribute to clarify not only the specific dynamics of *pactisme* in its original context, but also its deeper underlying meaning beyond its political and legal development within medieval Catalan institutions.

In the article by Tomàs de Montagut and Pere Ripoll the authors go deep into the history, structure, dynamics, and overall impact of legal *pactisme* in what is, probably, the most comprehensive description of the legal pact-based model of medieval Catalonia to date. Nevertheless, the multifaceted complexity of this model is also approached from other positions. We find the insights into the Jewish perspective in the article about the same time period in the discussion on the *Shevirath Ha-Kelim* by Mario Macías, Pompeu Casanovas and John Zeleznikow who address not only the origins and institutionalization of Late Medieval anti-Jewish violence, but also its relation to the general political, legal and cultural situation in Catalonia. Still from the Jewish perspective of the time, we find Macías' analysis presenting the *Haskamot* of Barcelona in their political and legal context. Despite them being unsuccessful the author contends they should be the starting point for research on the legal and jurisdictional relations between Christians and Jews.

Still discussing medieval legal and religious coexistence, Mustafa Hashmi, on his part, offers in his article a very different approach by attempting to map Shari'ah normative reasoning concepts with the goal of gaining a better understanding of the Islamic normative concepts compared to the Western normative concepts.

We also include in this issue an article by Joan Tello in which he gives the reader a succinct introduction to relevant works by Joan Lluis Vives, Rennaissance humanist, and pays special attention to his *Aedes Legum*. While identifying some of the key concepts and describing their meaning carefully, the author provides some tools for better understanding this 16th century work on legal philosophy.

There can be found in this issue two research notes as well. One by Pompeu Casanovas discussing the concept of legal realism as a possibility within the Catalan medieval pact-based model. The other one by Josep Monserrat focusing on Alexandre Galí and the history of the institutions and the cultural movement in Catalonia.

This volume also offers a series of reviews that the reader might consider. In keeping with the theme of the issue, Mario Macías reviews *The Talmud in Dispute During the High Middle Ages* by Alexander Fidora, Görge Hasselhoff (Eds.); Joan Cuscó covers Jordi Sales' *Escrits sobre filosofia catalana* [Writings on Catalan Philosophy]; and finally, Bernat Torres writes about *Subjectivitat i Creativitat. Temps, memòria i creació* [Subjectivity and Creativity. Time, memory and Creation] by Joan Cuscó.

Finally, we should also add a few words about the publication time. This Special Issue was going to come up last year, at the beginning of 2020, stemming from the ongoing research on dialogue as a source of law carried out and presented in several Scientific Workshop at *Institut d'Estudis Catalans* (IEC).We had to adapt to the new circumstances that emerged from the gen-

eral disruption that unexpectedly took place. After a slow recovery, we decided to maintain the year of publication.

Although this volume must come to a close, the lines of research it pursues have still a lot more to offer. For our next issue, we hope to be able to put together another complete series of related articles on the same topic reflecting the fruits of yet another year of research progress.

Journal of Catalan Intellectual History (JOCIH)
Online ISSN 2014-1564 DOI: 10.2478/jocih-2019-0002

Received 26/09/2020 / Accepted 20/10/2020 / Published 12/12/2020

INTRODUCTION TO THE SPECIAL ISSUE: CATALAN PHILOSOPHY IN THE MIDDLE AGES

Mario Macías
(Institute of Law and Technology, Universitat Autònoma de Barcelona)
mario.macias@uab.cat

Pere Ripoll
(Universitat Pompeu Fabra)
pere.ripoll@upf.edu

Acknowledgements: Project IEC PRO2018-S05. *Models del dret i la filosofia política catalanes: semàntica de les doctrines juridicopolítiques del pactisme en les seves diferents fases* [Models of Catalan political philosophy and law: Semantics of pact-model driven political and legal doctrines at their different stages].
Disclosure statement: No potential conflict of interest was reported by the authors.

Suggested citation: Macías, M., Ripoll, P. (2019-2020). "Introduction to the Special Issue: Catalan Philosophy in the Middle Ages", *Journal of Catalan Intellectual History*, 12: 4-7 DOI: 10.2478/jocih-2019-0011

This Special Issue can hardly be considered a monography, at least in the classical sense. The contributions that inform this volume cover a wide range of topics from a wide range of perspectives, methodologies and backgrounds. Although they all are linked by the temporal scope of the Middle Ages, there is only one overarching notion which underpins all of them: *agreement*. This concept is an old friend to political and legal philosophy. It has been discussed and interpreted in many different apparently disconnected ways, periods and traditions. It can be found as an elemental instrument for doctrinal legitimation at the bases of an endless number of theories and models of authority.

Catalan legal and political history owes much to the idea of *agreement*. From the earlier *convenientiae* and *assemblies of peace and truce* in the tenth century to the refinement of Catalan parliamentarism at the dawn of the modern period, *pactisme* molded the foundations of public and private relations. But *pactisme*, the tendency towards negotiation and pact making, did not emerge as a reasoned and conscious ideology—it came much later. It originally appeared as the only instinctive solution to overcome the mayhem the first feudalism had brought about. Since the thirteenth century—once the bases of statehood had been set—, the weakness of the Catalan-Aragonese monarchy, the influence of the nobility and ecclesiastical lords, and the economic

weight of the new-born urban bourgeoisie hampered the monopolization of power. Political actors were almost compelled to reach agreements to ensure the functioning of the realm. In other words, *pactisme* set a balance between the social powers. Beyond formal hierarchies, political mysticism and the prompt development of positive rules (the *Usatges*), Catalonia was a clear example of medieval legal realism. The divine right of the king to rule over his subjects was virtually a mere theoretical fiction if he could not count on their consent.

The *Corts*, the representative assembly of the three orders, became the highest expression of the pact-based nature of the Catalan legal system. The monarchs themselves remained subordinated to it, whereas the principle of the empire of law (*imperium*) became a fundamental pillar of the medieval and modern political architecture of Catalonia. This constitutional design means that Catalonia was structured through a dualistic monarchy: on one hand, the general community was represented at its highest level by the prince; on the other hand, by the representative bodies of the Principality. These bodies were composed of the estates (nobility, church and royal municipalities) within the said *Corts* and its executive arm, the *Generalitat*. This second institution became the greatest guarantor of the autonomy of the estates and played a fundamental role in the defense of political dualism and legal *pactisme*.

This dimension led to the formation of a permanent political space impossible to dismantle. The early compilations of Corts' sessions and decisions—such as the *Llibre de Vuit Senyals (LVS)*—contributed to ensure this continuity. They became an instrument for reaffirming the institutional autonomy of the estates before the monarchy. The legal terminology of these texts is illustrative of the synallagmatic relationship between the king and the estates. Certain prerogatives and powers of the estates can be considered anti-absolutist measures, limiting the *plenitudo potestatis*. They also gave access to the estates to privileges traditionally reserved to the monarch, a characteristic attribute of *pactisme*.

However, *pactisme* was not limited to the institutional and legal domain. It irradiated to all aspects of social and private life. Catalonia, especially the urban areas, was a territory open to the cultural diversity of the Mediterranean, to its peoples, trade and conflicts. There were also important native clusters of Jews and Muslims, who were grouped in autonomous and self-managed communities. Though marginalized from the Christian body (*Corpus Mysticum*), they were not isolated, and interactions with their neighbors were constant. Thus, the pact was the social driver that ensured coexistence. A coexistence which, nevertheless, progressively deteriorated in the last centuries of the Middle Ages.

This forced balance was not harmonious. It was not a utopia of mutual understanding and democracy. The specter of violence haunted Catalan society in every corner. In fact, violence laid down the foundations for *pactisme* and was integrated into this system. Its institutionalization via vindictive law and private wars, for example, turned it into a purifying instrument to relieve social tensions. As historians like Johan Huizinga have evinced, the medieval mind was not a restrained one. Despite passions belonged to strict and immovable social codes, they were expressed with total fervor. Anger, happiness, sorrow and piety were hyperbolically and *violently* manifested. Thus, violence needed to be channeled somehow. But the system was imperfect, and the equilibrium was often broken: disorders, uprisings and civil conflicts arose when *pactisme* failed.

Pactisme was, therefore, present in political institutions, in legal procedures, in the relationships between feudal orders, in the family sphere, in the marketplace and eventually wherever social interactions took place. It was not—particularly in its legal and political dimension—a monolithic construction. Indeed, there were many *pactismes* in Medieval Catalonia. Jewish communities (*qehillot*, "קהילות") for example, built on pact-based self- government systems to replace the absence of legitimated central authorities. Simultaneously, the *qehillot* were influenced by the surrounding institutional models—cultural blending and acculturation were inescapable phenomena. Complementing this inner panorama, the Catalan-Aragonese Crown developed an active foreign policy and kept close contacts with other political systems. In addition, the Church played a leading configurative role via its rules, canonists, and universities—which were attended by a large number of Catalan legal experts (the case of Ramon of Penyafort is paradigmatic).

While the *pactisme* was *instinctively* born, it soon became a subject of doctrinal discussion and development. Already in the fourteenth century, authors like Ramon Saera (d. 1357) and Francesc Eximenis (1330-1409) reflected on the nature and ins-and-outs of this system. They were followed by a rich concatenation of authors who evince the complex and progressive evolution of the different dimensions of *pactisme*, agreement and dialogue, and their later contacts with humanism—Pere Belluga (1392-1468), Tomàs Mieres (1400-1474), Joan Lluís Vives (1492-1540), Lluís de Peguera (1540-1610), etc. Each one of them of diverse origins, condition, and territory. We should underline the plural and composite nature of the individual polities, cultures and languages of the Crown of Aragon—Catalonia, Valence, Majorca…

Christian theology largely contributed to this process of political construction. It provided legal instruments *(ius commune),* but also a spiritual ethos. The Catalan system emerged and evolved as a result of contextual requirements. Nevertheless, its legitimation was intrinsically bound to the Christian ideal of political community. The earthly kingdom must reflect the Kingdom of Heaven—the Augustinian *Civitas Dei*. Accomplishing this holy symmetry was the ultimate target of medieval political theology, from Augustine of Hippo (d. 430) to Dante Alighieri (d. 1321). Francesc Eximenis linked both realities—*agreements* and *eschatology*—in the twelfth book of *Lo Crestià*:

> (…) *Nostre senyor Déu* (…) *sí li ha dada natural inclinació [to man] de viure en companyia bé arreglada e bé endreçada segons l'esperit e lo cos, que sia apellada ciutat material, e per tal que, atenent a aquesta material ciutat, conegués la ciutat espiritual que porta ab si* (…)[1].

Even the apologetic works of thirteenth-century Catalan theologians (especially Ramon Llull and Ramon Martí) addressed the idea of agreement as a missionizing instrument. The infidel can be defeated in battle (Crusade), but he must be converted with love and wisdom. The dialectic approach to conversion that flourished in the period implied that Christianism could be logi-

[1] "God our Lord has bestowed upon [man] a natural inclination to live in good and organized company according to the soul and body. This is the so-called earthly city. Taking care of his earthly city he thereby will know the heavenly city that his soul bears (…)". Our translation from Eiximenis, F. 2009. *Lo regiment de la cosa pública en el Dotzè del Crestià*. Madrid: Centro de Lingüística Aplicada Atenea, p. 70.

cally demonstrated—and, therefore, Judaism and Islam could be logically refuted. The organization of theological disputations between Christian and non-Christian men of faith opened the door to a new dimension of dialogue. These debates enabled an unprecedented degree of cross- cultural interaction and bolstered a wave of Latin translations of Jewish and Muslim sources. It is even possible to speak of a certain cultural blending—Arnau de Vilanova's *Allocutio super Tetragrammaton* is a clear example. However, the new apologetics also traced a thin and blurred border between coexistence and violence: if the enemy knows the (Christian) truth and he does not accept it because of his perfidy, he must be eliminated.

This eclecticism and potential diversity of scopes turns this Special Issue into a monographic volume. In it, the authors explore and offer different perspectives on the construction of *pactisme* beyond its mere political and legal development in Catalan institutions. The insights into the Jewish and Islamic counterparts, as well as into the cultural interactions, provide an overall picture of its multifaceted complexity.

The current volume is a result of the meetings and academic discussions held in the context of the project *El diàleg com a font de dret. Modelització dels fonaments de la filosofia política i jurídica* catalana (s. XII-XXI), funded by the Institut d'Estudis Catalans (IEC). The purpose of this project is to analyze the process of construction of legal *pactisme* through the use of techniques that range from Natural Language processing (NLP), corpus linguistics, statistical clustering, automatic content analysis, and ontologies to Catalan philosophical, political and legal texts. The multidisciplinary character of the research team—which is composedby philosophers, legal historians, computational scientists, experts on discourse analysis, etc.—aims to ensure a comprehensive approach to this process.

Journal of Catalan Intellectual History (JOCIH)
Online ISSN 2014-1564 DOI: 10.2478/jocih-2019-0012

Received 26/09/2020 / Accepted 20/10/2020 / Published 12/12/2020

PACTISM IN CATALONIA: A DUAL CONCEPTION OF THE POLITICAL COMMUNITY

Tomàs de Montagut
(Universitat Pompeu Fabra)
tomas.montagut@upf.edu

Pere Ripoll
(Universitat Pompeu Fabra)
pere.ripoll@upf.edu

ABSTRACT

This article offers a historiographic definition of '*pactism'*, i.e. the pact-based model institutional doctrine and practice held in Europe from the High-Middle Ages onwards, until the emergence of the modern concept of sovereignty in the absolutist state of the 16th and 17th centuries. As institutional doctrine, *pactism* found in Catalonia one of its most elaborate formulations. This article defines the constitutive elements of Catalan legal *pactism*, stemming from the Romanist concept of ius commune and the conceptual work on interpretation and early public law carried out by legal scholars. It distinguishes different kinds and degrees of *jurisdictio* (*senyoria*, in Catalan language)—*universals*, *generals* and *speciales*—and it defines *populus*, *constitutio populi*, *imperium* and *contrafaccions*. Catalan legal instruments related to the enactment of laws by the General Courts—*Constitucions*, *Capítols* i *Actes de Cort*—and the limited power of the King, the composition of Generalitat (the *General* of Catalonia), and the role of the three Catalan branches (*braços*, *estaments*) are also elucidated. It also delves into the procedure for establishing constitutions which was followed by the *Cort General* of Montsó of 1585. The 15th c. legal compilation called *Llibre dels Quatre Senyals* and the recent discovery of the *Llibre dels Vuit Senyals* allow a more accurate dating of origins (1289, 1291, 1359, 1376), and a better understanding of its financial objectives, procedures and protections. Finally, this article introduces the notion of a dual conception of the political community as a suitable interpretative thesis to make sense of the whole process of the development of public law in Medieval Catalonia.

Keywords: Pactisme, legal pactism, pact-model, jurisdictio, senyoria, Medieval Monarchies, Corts Generals, Generalitat, Cort General de Montsó (1585), finances, legislative power, dual conception of political Community

Acknowledgements: Project IEC PRO2018-S05. *Models del dret i la filosofia política catalanes: semàntica de les doctrines juridicopolítiques del pactisme en les seves diferents fases* [Models of Catalanpolitical philosophy and law: Semantics of pact-model driven political and legal doctrines at their differentstages].
Disclosure statement: No potential conflict of interest was reported by the authors.

Suggested citation: Montagut, T. de, Ripoll, P. (2019-2020). "*Pactism* in Catalonia: A Dual Conception of thePolitical Community", *Journal of Catalan Intellectual History* 12: 8-24, DOI: 10.2478/jocih-2019-0012.

In the year 1954 the father of the new and modernized Catalan historiography, Jaume Vicens Vives published a historical essay called *Notícia de Catalunya* whose 5th chapter was on the topic of *pactisme*[1] (a Catalan pact-based model) (Vicens Vives 1954). Vicens's book became a classic, a work of reference for those who wished to learn about Catalonia's social spirit and the mentality that shaped its identity as a people. As a matter of fact, the book changed its originally conceived title *Nosaltres els Catalans* (*We the Catalonians*) due to the active Francoist censorship at the time and it would only appear as a subtitle to the second edition.

In this second augmented and corrected edition[2], the chapter on *pactism* was found in the section *les il·lusions* (the hopes/dreams), following Vicens Vives's new tripartite division between: (i) "The elements": the Catalan language, the land, tools and toils, leading social classes and the Catholic Church; (ii) "hopes": *pactism*, empire and freedom, Hispania; and (iii) "difficulties": the State, revolutions and collective psychology.

This general view on *pactism* as a mentality was construed as a hopeful and collective choice of the Catalans which would help explain in part their communal or national history from the Medieval times up until now. *Pactism* acquired political transcendence when it gave historical and legal significance to Catalonia's position within the whole of Spain. Nevertheless, it is not this updated version of *pactism* as a generic category that we are primarily interested in as a research group focused on discovering the significance of *pactism* within European legal culture. We are after the one Professor Víctor Ferro called *specific pactism*, i.e., "the institutional doctrine and practice, characteristic in varying degrees of all the Medieval, and part of the Modern West, which, as has precisely been said, found for centuries in Catalonia its most consistent consecration and its most elaborate formulation, or at least one of the most elaborate" (Ferro Poma 1987: 137-138 and 1989).

As is well known, in the High European Middle Ages the increasing ruralization of society which had been occurring since the latter period of the Western Roman Empire (which disappeared in 476), produced a crisis of the general public power of the Germanic monarchies and the explosion of feudalism based on the polyarchy of noble and ecclesiastic barons.

It is in this context, beginning in the 8th century, that a subjective conception of the law will become hegemonic (Orestano 1987: 323ff). The Christians and their totalitarian experience of the faith produce theocentric societies. God is all powerful—of natural and supernatural forces—he is *Pantocrator*, creator of all things and thus, also of the law.

On the other hand, we find a blurring in those times between natural law and positive law. The law is located within the individuals, who are empowered to discover, declare and affirm their own law for themselves, as is seen on the motto of the United Kingdom of Great Britain and some of its coins, "*Dieu et mon droit".* When one is unable to affirm one's own right directly, be-

[1] *N. from the T.* From the Catalan word "*pacte*", meaning "pact". Referring to the way of politics specific to the Catalan pact-based model. Customarily kept in the original form by Catalan scholars in their English writings. On the historiographic precedents and consequences of the concept of *pactism* elaborated by Vicens Vives, see Baydal Sala (2016).

[2] In the second edition in Catalan, the author incorporates three new chapters (Catholic Church and clergy, Hispanic attitude and the Catalan people and the minotaur) and others are reformed (Vicens Vives 2010 [1960]).

ing there a litigation or a conflict of pretensions with other subjects who affirm opposite rights, high medieval men have three possible alternatives to solve the controversy: (i) applying direct force in order to impose his will as a right in a private war o with a blood revenge, all these manifestations of either a self-tutelage regime or vindicatory justice (Terradas Saborit 2019: 10-12); (ii) bringing the cause to the attention of the elderly or the best in the community (noblemen, ecclesiastics and/or notables) so they can evaluate the ordinary proofs or, in case they lack, the ordeal evidence, given that they are the ones who are most familiar with the uses and popular customs of the territory; and (iii) negotiating an agreement with the opposing party and formalizing the result in some *communie* o *convenientie,* i.e., in certain pacts that are a product of a given negotiation which will be sealed with a swearing to mutual allegiance (Montagut Estragués 2005; see also Kosto 2001:19-26).

It is in these feudal pacts based on the faith that peace is restored; that wars take place, spoils of war and territorial conquests are shared out; that there is an end to violence and conflicts between feudal lords and their groups of vassals, of loyalist, of men, of relatives bond by affinity kinship or of cognates forced by ties of blood or of land; it is in all of these conventional legal concepts where we are able to find the origins or most immediate precedents of medieval European *pactism*. It is the view of *pactism* as the political institution of certain ascendent social powers based on negotiation and consensus[3], true, but also based on reicentrism[4] and on the linking of people in the order of things. It consists in an intersubjective agreement among the parties which act *bona fide* and commit themselves to observe the agreements reached as rights. They oblige themselves freely and voluntarily. In other words, this agreed law is an *elet* (election) of their particular will, free and subjective, that can be annulled if the pact's good will reciprocity is broken by an offense committed or a wrongdoing, by not observing the usages and customs of the community.[5]

With the Gregorian reformation of the Catholic Church promoted by Pope Gregory VII, laid out in his *Dictatus Papae* (1075) (Berman 1998: 99-102), and with the birth of the University of Bologna at the end of the 11th century, there takes place a renovation of the legal science by legal scholars who will study and interpret a rediscovered Roman civil law. A law which the emperor Justinian had had compiled in the 6th century and which had been forgotten and not been used—or rarely—up to that point. It is a new civil law (Feenstra 1994: 179-210) which will be supplemented with canon law (Pergiovani 1994: 211-237) and which will soon be called *ius commune* due to its jurisprudential *interpretation*. This new civil law happens to be ideal for urban societies that are reviving and emerge strongly in a Christian Europe, kindled by a strong economic and

[3] Cfr. Grossi (1996: 246): "Nevertheless, we must clarify: *consesualism* is still far in the horizon and it will take an important anthropological revolution—the Humanist one—for it to find the necessary soil to grow in; it will then become the soil of a new legal experience separated from the one that precedes it thanks to a new view of the relationship between subject and cosmos and the role of the former within the latter." A different view, criticized by Grossi, which locates the roots of *consensualism* in Medieval times in Calasso (1959: 147).

[4] Cfr. Grossi (1996: 89-92). With this concept, the author, Professor Paolo Grossi, wants to point out that the high medieval societies revolve around things (*res*), that it is not men who create the roots of the land and consider it their property, it is the land and the bloof that attract and tie people over time and subordinates them to the larger familiar ties, to their lineage and also to their material patrimony.

[5] Later on the very Francesc Eiximenis (1330-1409) will evoke this old practice when he advises that *"princes and peoples have to be loyal to each other"*. For more on this see Eiximenis (2009: 146). It is an updated version as far as language goes but a very free interpretation from a legal standpoint. In this sense it is best to consult the 1499 edition (Eiximenis 1499).

demographic growth that began towards the end of the 11th century and coincides with the first Crusades of feudal knights aiming at recovering the Holy Land.

The Crusades will open up again for marine merchant traffic the Mediterranean routes once blocked by the Muslims, at the same time that there begins a process of transitioning from feudal, local or regional polyarchies to Christian monarchies, which organize general communities based off recovering the notion and practice of public power. The new schools of Aristotelian-like thought will foster the conviction that nature, created by God, presents a rational configuration of things and their universals, which allows human reason to know or apprehend them through concepts.

This new ideology would entail the first legal scholars of Bologna (the glossators) overcoming the subjective and particular conception of law and the establishment of a doctrine that implies an objective conception of the law according to which the law is immersed within the things, cases and causes. This rationalist conception will legitimize the rebirth of the public power in three significant dimensions: (i) the universal one (the Papacy, the Empire, the Unification of some kingdoms); (ii) the general one (Christian monarchies); and (iii) the special ones (municipalities and local or district manors, schools and personal corporations or guilds).

The new school of legal thought, which will gain renowned success starting in the 12lf century and will become hegemonic during Modernity, will distinguish between the natural Christian law established by God in nature and positive human law established by the monarchs and, if need be, by the *populus* and their representatives within society or in the institutions. From this standpoint, man regains the ability to create law that had once been denied to him on the grounds that only God could legislate.

Nevertheless, human positive law is subordinated to the Christian natural law, in a similar way in which a jurist is subordinated to a theologian or in which the laws of the monarch or of the Courts would be subordinated to the precepts of Christian moral theology. The political model of the emperor Justinian (527-565), which conveys the Roman law, is that of a monist monarchy (the king is the exclusive representative of the kingdom, by the grace of God), an absolute one (the king is excused from following of the law) and *Caesaropapism* (the king is the head of the Church in his kingdom).

On another note, the doctrinal and dogmatic construction regarding public power, which are elaborated by the *ius commune* jurists, rests on the political-legal concept of *iurisdictio*[6], which was the equivalent in the times' vulgar Catalan language to the term *senyoria*[7] which Francesc d'Eiximenis used in his work *Regiment de la Cosa Pública (1383)* (López-Amo y Marín 1946: 85ff). We find in *Digest* (the work by the emperor Justinian which compiles and organizes the ju-

[6] Regarding this legal concept, see the structuralist and semantic analysis by Pietro Costa (2002 [1969]).

[7] Cfr. Eixemenis (2009: 77): "The first proposition is that *cosa pública* (*res publica)* is a community of gathered people who live under one same law, one same *lord* and one and the same customs, regardless of whether it is a kingdom, city, town, castle or any similar community which as more than a single *house*." Nevertheless, the version from the incunable edition is better and his reading of the words in bold (which is my doing) is particularly good. See Eiximenis (1499: f.13): "The first, being that *res publica* is some community of gathered people who all live under one same law and lord and customs regardless of if this gathering is in the form of a kingdom or a city or a town or a castle or any similar community which is not one single *cosa* (thing)". It can be found at: http://www.antiblavers.org/galeria/albums/userpics/10223/Regiment_de_la_Cosa_P%C3%BAblica_1.pdf

risprudence of the Roman jurists from the classical period- from the 3rd century b.C. to the 3rd century a.D.) the *glossa potest* by Accursius (c. 1185- c. 1263). From this we learn that *iurisdictio* refers to public power, one with competences to act on positive right in legislative, judicial, governmental and gracious matters, in accordance with the Christian natural law (Zeller 1966, I: 123). In spite of this, as we have already hinted at before, *iurisdictio*, we find, can have varying degrees and levels which are not clearly structured in a hierarchy and are not always subordinated from the top down; they maintain some symbiotic or coordinate[8] relationship between them. Thus, as we have mentioned before, we can distinguish between:

(i) ***iurisdictiones universales.*** These belong to the Church and to its institutions as well as to the Christian empire. They are represented legally by the official and/or effective *ius commune*. After the wars of investiture between the Pope and the Empire (during the 11th and 12th centuries), the imperial project fails. The final defeat can be seen in the treaty or concordat of Worms of 1122 which will end it. The Union of kingdoms and lands of the royal Crown of Aragon will also invoke the *iurisdictio universalis*[9];

(ii) ***iurisdictiones generales.*** These belong to the lords and monarchs who have no superior temporal power; they are at the vertex of the feudal pyramid of their territory. As a matter of fact, these Christian monarchies will soon demand a supreme *iurisdictio* and will de facto seal their territorial competences by receiving the *ius commune* and developing the *iura propria*, the legal concepts from the various *regalies*[10]. The interactive duality between King-Kingdom, Prince-Princedom, Duke-Dukedom, Count-County or similar, and their concrete historical experience, will allow for the conformity and validation of two quite diverse models of political organization: (i) monists (cases like France and Castille); or (ii) dualists (such as the case of the territories of the Crown of Aragon or in England) depending on the exclusiveness or sharedness, respectively, when it comes to the titularity of the *iurisdictio generalis*. The *iurisdictio generalis* will represent the political expression of a general community with a differentiated cultural national core, that is, a *populus,* which in Catalonia is expressed as an organic unity[11] and in its legal formulation, as the *Universitas Cathaloniae* in the Courts of Barcelona of 1283[12];

(iii) ***iurisdictiones speciales.*** These were the local or regional areas (municipalities and baronies) or the personal one (guilds, brotherhoods, commercial consulates, corporations, etc.). All of these were also structured as organic unities or *universitates*.

In all these political European societies, the legal dimension is above the political one. The

[8] Cfr. Eiximenis (2009: 81). Based on St Paul's organicist view on the human body, the *Res publicha* is conceived as the putting together of its members in a similar way to the members of the human body are put together: "So he says: See where a member is naturally found alive in a body, observe its shape and you will see, firstly, that the bond between them is such that one serves the other diligently, and all it does is useful for the others".

[9] About this extreme case, see: Vicens i Vives (2010 [1960]: 141-144); Montagut Estragués (2013: 104); Palomo (2019).

[10] About the concept and content of the *regalies* in Catalonia see Lalinde Abadía (1964: 320-327).

[11] Cfr. Marsilius of Padua's vision (c.1275 - c.1343) of the *populus* "as a totality composed, ordered and intrinsically differentiated" in Costa (2007: 49).

[12] Cfr: *Cortes de los antiguos reinos de Aragón y de Valencia y Principado de Cataluña publicadas por la Real Academia de la Historia. Tomo I*: 142. As for the representation of the *populus* as *universitas*, see Costa (2007: 47). An explanation for this evolution in Gouron (1996).

monarch itself and his officials are obliged to keep the law. This is why there is no absolutism understood as a total irresponsibility on the monarch's part, who would be excused from following the law. Notwithstanding, from the end of the 15th century and during the 16th, the situation undergoes a substantial change due to the irruption of Renaissance and modern philosophical thought, which will produce the so-called anthropologic turn and the political and legal Humanism with the birth of the *mos gallicus* and the notion of political sovereignty, foundations for the absolute State and their successor, the liberal constitutional State.

If we apply this jurisdictional outline to the Crown of Aragon and to Catalonia, to be precise, we can assess the existence within Catalonia of a plurality of jurisdictions: two universal ones (the ecclesiastic one and the one of the royal Crown), a few generic ones (the monarch's and the one of the General or *universitas* from every territory: Catalonia, Aragon, Valencia,…) and many special ones (as many as were the demands or the ones used by the municipalities or lordships and other *universitates* or smaller existent entities). Also, in the Crown of Aragon, the relationship among these jurisdictions, or among the different multi-layered public powers, was one of coordination and one of a symbiotic nature more than of a strictly hierarchical one[13].

The resurgence of the legislative power that was brought about by the use of the *iurisdictio generalis* by the monarch, stumbled in Catalonia against the decisions of the Courts of Barcelona of 1283, which prescribed the obligation of the monarch to produce the general constitutions and the agreement statutes together with the approval of all three general government entities of Catalan society, as well as the approval of the better part of their representatives summoned and gathered in the Assembly of the Courts. This is the expression in Catalonia of a dimension of the European legal culture which Paolo Grossi has highlighted by remembering that the true protagonist of the community is not the *rex* but the *populus*: "It is [the *populus*] who holds the normative power *par excellence*: the *lex* is above all else, *consitutio populi*, bound to the *consensus* of the community" (Grossi 1996: 199). The monarch issues laws on his own is an exception to the standard procedure which attributes the legislative power "to the community, the plurality organized in the unity" (Grossi 1996: 201). This was one of the fundamental principles of the Catalan political constitution of the moment: the legal *pactism*. In order to establish the general law of Catalonia (*Constitucions* or *capitols de Cort*) there was the need for a negotiation between the king and the Catalan governing entities during the time when the Courts were being held, as well as a final agreement on both parts.

The other fundamental pillar of the medieval and modern political constitution of Catalonia was the principle of the law's empire (*imperium*, medieval rule by law). That included everyone, even the monarchs themselves were to be bound by the Catalan law, insofar as the predominant objective conception of the law implied the conviction that the law is not created but proclaimed —*ius dicere*—as a consequence, since it ensues from a natural order preestablished by God, it bounds all (Costa 2007: 54; Montagut Estragués 2019).

This constitutional design meant that Catalonia had established itself as a dualist monarchy, in which the general community was represented at its highest level by the prince and by the cor-

[13] This symbiotic relationship can be seen as a relative hierarchy instead of an absolute one. On this topic, see Costa (2007: 45).

poration which represented the principality, that is, by the General or *universitas Cathalonie* and its representative organs: the governmental entities or estates of the Courts and the *Diputació* of the General or *Generalitat*. The relationship between the two general powers was based on allegiance. This allegiance was formalized by the monarch's preceding oath to keep the Catalan law, a condition *sine qua non* for the king to establish his title of *iurisdictio generalis* in Catalonia and, afterwards, with an oath of obedience and allegiance on the part of the Catalans.

In this regard, in order to make effective the law's *imperium* in Catalonia, it was necessary for the General to have a compilation of the general Catalan law (Montagut Estragués 1995), to have financial autonomy in order to negotiate the donation to the monarch which was due during the holding of the Courts (Sánchez Martínez and Ortí Gost 1997: VI-IX) and it was also necessary for him to have an independent justice administration with the ability to impose the law on the monarch and his officials (Montagut Estragués 1999 and 2008).

The compiling process of the Constitutions and of the other Catalan law, as well as of the privileges and rights of the General, began in the early 15th century and has been thoroughly studied by other scholars (d'Abadal i de Vinyals and Rubió i Balaguer 1910; Font 2004 [1988]; Álvarez Gómez 2016; Ripoll Sastre 2018).

The recently tracked *Llibre de Vuit Senyals* (LVS) and its transcription and analysis prove to us that the rules of the Generalitat were clearly an object of compilation even before the writing of the *Llibre dels Quatre Senyals* (LQS)[14]. We also learn from it that this process was linked to the general compilation we have previously mentioned which would have hardly ignored that the institution most representative of the emancipation of the estates due to its crucial role in the defense of political dualism and legal *pactisme*, the Generalitat, would have escaped such compilation principles and would have taken a back seat with regards to other constitutions and law of Catalonia. The goal of the LVS had been to put together a compilation of all of the fundamental norms which constituted the legal system of the delegates of the General of Catalonia. The content of this compilation made it possible to draft a treatise on the legal and political nature of the Generalitat. This treatise would need to prove that the institution was not a subtle estate commission with an arbitrary duration, as Ferran I Trastàmara had insinuated, but that its practical origin had enabled the creation of a political space which had continuity in time. The law and more specifically the LVS—which turned into an instrument of reaffirmation of institutional autonomy—showed that it was impossible to tear down this political arena which rested on the bases of legal pact-making and political dualism, both of which configured the mentioned symbiotic structure of the public or jurisdictional power of the principality of Catalonia and by extension of the Crown of Aragon.

The LVS proves that in the early 15th century there is an understanding that the legal bases of the institution are found in 1359—although the precedents of 1289 and 1291 are taken into account—and shows which moment is considered to be most representative of the legal and admin-

[14] This document, which was widely spread after being printed for the first time in 1634, is a compilation of the regulations which governed the Generalitat since its reformation in 1413. Tomàs de Montagut in studying it closely developed a hypothesis according to which the *Llibre de Vuit Senyals* (which was missing although it appeared referenced in documents of the 16th and 17th centuries) should have contained the regulations corresponding to the time period of the creation of the institution and, therefore, prior to 1413 (Montagut Estragués 2006: 16).

istrative development of the institution during the period of its consolidation: the Courts of 1376. The legal concepts laid out in the manuscript are informative of the contractual relationship existing between the king and the estates which moved towards displacing political monism at a time in which the *cessante causa cessat effectus* clause was well in place, as were the conditions under which the king would lose the aid offered to him by the estates, as is seen for instance in the chapter 14 of the *Cort* of 1359[15]. Financial autonomy was being secured by limiting the monarch's actions in the powers provided by the *ius commune*, the disposition 35 of 1359[16] establishes limitations on prerogatives such as the *motu proprio* principle, the royal mercy or pardon, remission (pardoning debts), acquittal (halting legal procedures), *alongament* (postponing payments) or *empara* (self-serving embargos): in sum, checked powers which represented anti-absolutist measures. The distinction between ordinary legal jurisdiction, regulated by the law, and delegated jurisdiction, the one that was susceptible to the king's abuse of power, is pervasive throughout the LVS; that is why chapters such as the 14 of the Court of 1373[17] prevented the king from naming judges *ad hoc* during the subsidy or donation of the estates in those ordinary jurisdictions which interfered with the independence of the ongoing procedures of those jurisdictions, with only three exceptions: crimes of lese-majesty (treason, rebellion, sedition, etc.), false coin or sodomy. As we will see, these measures are found in the majority of the Courts of the LVS.

It is worth noting that the dualist system not only implied the limitation to the king's possession of the contributions made by the estates, but it would directly prohibit accessing and spend it, since the execution would rely on a decision of the Court and only by those appointed by it (disp. 16 de 1373)[18], at a time in which the royal family and its entourage had already been subjected to tributes some years prior, placing the monarchy under the law (disp. 4.71 de 1365)[19]. At the same time, fiscal autonomy was being established through standardized administrative procedures such as the precepts of the chapter 16 of 1365[20] which posed two different procedures: on one hand, the obligation of collecting and managing the money as a jurisdiction exclusive to each estate individually—given the divergence in interests according to their representativity in the community—, yet, on the other hand, the expenses of this collection would be joint, and in being thus integrated, it would become the transversal element, common to all. And so, the collecting represents the different interests of the estates within the General, turning it into a reflection of the estate regime; whereas the expenses represented the overcoming of this regime, making it so the distribution had a solidarity component which produced a joint management system.

[15] In this specific instance, those were: 1) in the case of the application of peace and truce for over two years; 2) if the truce were of one year or less the aid would still be collected and kept by the deputies, who would hold on to them for war affairs if the war returned within the following two years or even a third; and 3) if the truce was over a year but under two, the aid would be collected for one year and would be then be acquitted, yet if the war returned, the aid could be collected again for up to two full years. The key to this provision at that time was that there were two years of time to collect the aid, therefore, the provisos revolved around those two years. The provisions came with other provisos as well such as the need for the king to swear to the Archbishop of Tarragona under penalty of excommunication (veto sentencing) that he would not use the money from the treasury for private matters or that any proceeds that were not destined to the war could be used for other public policies. LVS, ff. 74ra - 74va. *Vid.* M. Sánchez on the period of the Catalan fiscal system's construction (1288-1345) in which this principle appears, a period that Henneman calls "war financing" (Sánchez 1992: 367).
[16] *LVS*, ff. 77v[a] - 77v[b].
[17] *LVS*, ff. 98v[a] - 99r[a].
[18] *LVS*, ff. 99r[a] - 99v[a].
[19] *LVS*, ff. 129v[b] - 130r[a].
[20] *LVS*, ff. 134v[a] - 135r[b].

This inchoate vision would end up in the General being identified as a public corporation in posterior Courts, as a result of the development of some political assemblies which appeared as a product of a war-oriented economy, which guaranteed the right to consent to the tribute, the right to participate in the elaboration and sanction of the law, the right to celebrate these meetings periodically, the election of the representatives of the third estate in a so-to-speak quasi democratic way, the control over the royal officials and the participation in the exercise of the sovereign justice (Hébert 2014: 254).

The LVS compiles the particularities of all of these principles, as can be seen in the chapter 87 of 1376[21] stablishing a conditional subsidy offered after a legal redress of grievances (also developed in other dispositions such as the chapter 14 of 1378[22] which imposed that redress by judicial means and, therefore, through a judicial sentence and not by the arbitrary way of government, a crucially binding aspect for *pactisme*), with the gratuity of the administrative acts and the enaction of the constitutions at the request of the estates and not of the king.

This dynamic involved the multiplicity of subjects dealt with in the Courts which appeared in the LVS. It shows the interest of the estates in regulating subjects on penal, naval, military or procedural law, with strong measures destined to prevent tax evasion as a result of a strong taxation system, which would have been difficult to attain without a legal structure common to all the estates. The discovery of complex financial procedures will end up in a debt which, on one hand, will cause a problem but on the other, it will generate a system which will benefit from the Generalitat's tributes. Moreover, this will promote the development of a policy of economic unity and common market within the Crown of Aragon, as can be seen in the ordinations on taxation, which is favorable to these tributes and which, in the end, will allow the continuity of the Generalitat given the political failure of the repayment of the debt.

The LVS is, thus, the representation of the construction of the powers of the Generalitat, and an accurate portrait of the articulation of the Catalan political system through a dualist monarchy, built by way of legal *pactism*. On another note, it is significant that the LVS (with the 1413 regulations) disposes not only the rights of the General, but also the obligations of the monarch (in which the role of the oath is crucial), and according to which, as has been said already, it becomes a right of the General that before swearing allegiance to the king he has to have necessarily sworn the general law of the principality[23]. That law is the one that limits his *plenitudo potestatis* and enables, thus, the jurisdiction of the Generalitat.

Professor Víctor Ferro studied the main elements that configured the legal doctrine on *pactisme* in Catalonia and other parts of Europe using as his source the Catalan legislation in force in 1715/16 and the Catalan judicial and doctrinal jurisprudence that appeared in the work of Catalan jurists published during the 16th and 17th centuries (Ferro Poma 1987: 289-292). He also used the bibliography which established the state of the question at the time of the writing of his book (1985) as well as some documentary sources. In his work, Víctor Ferro addresses some of the fundamental issues which make up the mesh that is institutional *pactism* in Catalonia: the *Corts*, the Generalitat, the co-legislation power of estates, the defense of the law and the contraventions,

[21] *LVS*, ff. 36r^{b} - 37r^{a}.
[22] *LVS*, ff. 43r^{b} - 43v^{b}.
[23] For a thorough view on this question, Bajet Royo (2009).

the interpretation of the law, the principle of civil liberty and the *Tribunal de Contrafaccions* (a Court for all actions against the law) (Ferro Poma 1987; Capdeferro i Pla and Serra i Puig 2015a).

As for the Catalan *Corts*, they hold the most relevant ceremony of *pactism*, the one that establishes the general Catalan law. The jurist Lluís de Peguera (1560-1610), following in part the work of Jaume Callís (1364/70-1434) (Callís 1518), wrote a booklet which was published posthumously in 1632 and was reedited in 1701, called *Practica, forma, y estil, de celebrar Corts Generals en Cathalunya, y materias incidents en aquelles* (Practices, form and style of celebrating the General Courts in Catalonia and matters incidental to them) (Peguera 1701). This work is an elementary exposition of the Catalan parliamentary procedure by which the general law of Catalonia is established. The procedure guarantees parliamentary freedom because it requires following the procedures in a timely and organized way: (i) royal summoning; (ii) the king's initial proposition and the response by the estates' representatives; (iii) the election of the estate positions; (iv) the oath; (v) the authorization process; (vi) the dissent; (vii) incidences of the king; (viii) the grievances presented to the monarch; (ix) the constitutions and the Court chapters; (x) the ending and conclusion of the *Cort*.

This procedure of Catalan parliamentary law shapes the structuring principles of *pactism*: the rule by law and of legal *pactism*; the latter coming into effect by orienting and encouraging the production of the Catalan constitutions and laws by way of negotiation, treatment and contract between the king and the three Catalan estates of the Catalan General.[24]

Therefore, if we look into the procedure for establishing constitutions which was followed by the General Court of Montsó of 1585, we will see it follows these steps:

I. It is customary to appoint a commission of 18 people (six per estate) which meet in a house located outside the place where the estates meet, to deal and write down in memorandums or notebooks the chapters of the constitutions which must be considered and approved by the three estates.

II. Then, these chapters are read in each estate which will formulate amendments or notes that are considered pertinent by the members of each estate as they expose their opinion in corresponding the election.

III. Next, the procedure is to combine the notes and amendments made within each estate.

IV. The promoter of each estate refers to the others the results of this combination.

V. Then, the three already combined documents are combined and agreed upon.

VI. Insofar as the resulting document pleases the majority, the chapters of the constitutions are passed and approved by the three estates.

VII. The chapters of the constitutions, already having been passed by the three estates, are pre-

[24] These principles were well known during the seventeenth century, as highlighted by Joan Pere Fontanella, *Decisiones* SRSC, dec. 283, 7, p. 528: "*Quia in Cathalonia Rex solus non condit leges, sed Rex cum populo, et eis adstringitur Rex sicut caeteri, et eas iurat se observaturum in ingressu sui regiminis in vim Const. 2. tit. de iuram. ax. volun. comm. necessari. et idem cavetur aliis etiam constitutionibus...*"

sented to the king together with a supplication that he might decree them.

VIII. The King or, in his name, the *tractadors* (officials who mediated between the king and the estates), grant the first decrees to the chapters of the constitutions supplicated for by the estates. These decrees can consist in giving the quite simple *Plau al Senyor Rei*, "It pleases His majesty", or maybe to grant it with a manifestation of a vaguely approximate expression of this will, which may even be negative or incongruous with that which has been supplicated for. At times, the king responds with a manifestation of his own will more or less congruent with that which has been supplicated for by the three estates yet without manifesting the "It pleases His majesty".

IX. Next up, the first decrees of the King are treated by the three estates in the same way as the initial memorandums or notebooks from the chapters of the constitutions; and then they finally present to the monarch their replies and acceptances to the first decrees, which may consist either in purely accepting the decree of the monarch or in asking the king to reform, improve or enable the first decrees or, perhaps even, to ask the king to command a decreed chapter to be erased.

X. The monarch proceeds, usually through the aforementioned *tractadors*, to decree the first replies pleaded by the three estates, giving way to the second decrees which may consist in: granting the "It pleases His majesty" (purely or conditional); in ratifying the first decrees stating that "There is nothing to be changed"; in manifesting his will freely; or in granting "it shall be erased".

XI. Once the second decrees have been communicated to the three estates, they proceed to formulate the second acceptances and replies.

XII. The monarch proceeds to grant the third decrees to the second acceptances and replies in a way analogous to the previous ones (Montagut Estragués 1998: XL-XLI).

The jurist Andreu Bosch (1570-1628) maintains that in the *Cort General de Catalunya* there is present the Republic or mystical body of Catalonia, that is, the Catalan *populus* configurated or institutionalized as the *Principat de Catalunya* (Principality of Catalonia), comprised by the king as head (the prince) and the *braços* (arms) or estates. Nevertheless, these estates could also be conceived of as members of the *populus* of Catalonia (the Principality, specifically, without including the king), which constituted the General of the country, that is, the *Universitas Cathaloniae*. In sum, there would be only one *populus* of Catalonia but with two different persons: the first *República general per tots* ("general Republic for all") which consists of both the king and the estates; and the second Republic which comprises only the estates. This bi-republican doctrine, valid in Catalonia, is that which allows us to affirm its political constitution as a blunt example of the model of dualist monarchy, founded on the principles of the early rule of law and legal *pactism* (Ferro Poma 1987: 137-138, particularly n. 1). The General or its permanent Deputation—later called Generalitat—dialogued and negotiated with the king and swore to him allegiance and obedience which were not only not unconditional but the very opposite, they were expressly conditioned to the king's keeping of the Catalan law.

The constitution *Volem, estatuïm e ordenam* (*We will, we rule, and we order*) of the Courts of

Barcelona of 1283 establishes a true collegiate power of the estates and the king. These "pacts override the legislative power of the prince and they limited it" (Ferro Poma 1987: 191).

If we take a look at comparative law, we will see other equivalent co-legislative powers—albeit in a later period than in Catalonia—in Aragon (1301), Valencia, Castille (1387), England and Germany; in France, conversely, the Estates General could never put it into effect (Ferro Poma 1987: 192 and 442ff). Yet, even more important than declaring the principle of the rule by law, was to attain its effectiveness through the institutionalization of organs and procedures of control. "Compliance, the key to Catalan law" (Capdeferro i Pla and Serra i Puig 2015a: 38-52) is the title Professor Josep Capdeferro and Professor Eva Serra give to the chapter that discusses "The pacted law of Catalonia and its perception; the consummation of the secular process of Compliance" (Capdeferro i Pla and Serra i Puig 2015a: 43), and the "Contraventions, grievances, inspection: Communicating vessels" (Capdeferro i Pla and Serra i Puig 2015a: 50). All these mechanisms and institutional procedures had the shared goal of defending the Catalan legal system as well as the rights that comprised it. Among them the *pacted* law at the Courts, expressed in the shape of the Constitutions, the chapters of the Court and acts of the Courts stand out due to their particular relevance. The chapter of the Court, passed by the king Martí and by the estates during the Courts of Barcelona in 1409 and the constitution of the Courts of Barcelona in 1599, list in an ordered way—and even in a prevalent one—the sources of law that constitute the Catalan legal system. In neither of these provisions is there any mention of a source of the general Catalan law of an exclusively royal production.

There is no room for pragmatic sanctions, nor provisions, nor edicts. The intervention of the King must be channeled through the Courts in which he has only a co-legislative power which must be completed with the consent of the estates, with the pact. The King does not have primacy in the creation of law and this is confirmed by the aforementioned disposition of 1599. The King's private legislation must never derogate *pacted* law.

If we compare this system to the one in Castille we will see that the way of solving the same problem is quite different there. Since the 14th century, it is aimed at endorsing and solidifying an absolute monarchy. In Castile, the "*Ordenamiento de Alcalá*" of 1348—later qualified by the "*Ley primera de Toro*" of 1505—establishes a true order of legal source preference which grant to the privative monarch's legislation—which the Courts can't derogate—a primal spot in the ranking of sources. In second place, and in the case of a lack of a general rule, the local municipal rights can be invoked, yet these could be modified by the King and there would be the need to prove that they are still in use in order to be duly invoked.

In the third place of the order or preference we find the *Partidas*, the Castilian version of the *ius* commune, a royal law which synthesizes and filters the Empire's law and that of the Church through the Castilian language and nature.

Finally, it is also the King who will be authorized to interpret the entire system and fill in gaps with new dispositions.

As we can see, in Castille the King is not bound to any superior or inferior political power. His will can be directly translated into a law which binds the entire kingdom. There is no social power that can legitimately oppose their own law to a law of the King. That explains why in Castille

judges were not forced to display the reasoning and grounds of the judgments. Everything leads to an absolute monarchy.

In Catalonia (like in the rest of the Crown of Aragon) the situation, as we have seen, was quite the different. The leading social estates were directly linked to the creation of the law:

a) through the legislative and political institutions (Courts and Deputation of the General).

b) through the recognition of the full force of the municipal and feudal law.

c) through the possibility of an interpretation and a direct invoking of the *ius commune*, equity and good reason.

In the creation of Catalan law, *pactism*—designed in the Courts of Barcelona in 1283—remains during the 15th and 16th centuries due to express ratifications of the monarchs, appearing in the Compilations under the title *De observar Constitutions* (On the observing of constitutions) and proving that the legislative sphere limits the absolute powers of the monarchy. Nevertheless, in judicial and executive matters, the King will attain certain absolute powers which will be gathered under the name *regalia*. This will produce a tension between absolutism and *pactism*, which will remain in Catalonia during this period, while in Castille it had already been resolved in favor of absolutism (Montagut Estragués 1989: 670-672).

The supremacy of the pacted law has as a corollary the invocation by Francesc d'Eiximenis of the old doctrine of tyrannicide, once formulated by John of Salisbury in the 12th century, in order to include within the figure of the tyrant, besides the figure of a governor who governs *absque titulo* and the figure of the governor who governed with a title but serving a particular interest instead of the common good, the figure of a governor who governed infringing the law (Ferro Poma 1987: 271-272; Costa 2007: 57-58). As a consequence, this last one, by infringing the law, incurred in a *contrafacció*.

The *Tribunal de Contrafaccions* (1702/1705/1713) is the last mechanism that appears within a series of institutions aimed at ensuring the compliance of the Catalan law (Montagut Estragués 2008) and to reestablish the right that has been infringed. Professor Víctor Ferro in 1987 schematically (Ferro Poma 1987: 418-427) and in a broader and more thorough way, the studies of Josep Capdeferro and Eva Serra in 2015 (Capdeferro i Pla and Serra i Puig, 2015a, and 2015b) have analyzed the precedents, the organic constitution, the operation and procedures of this Tribunal created by *the Courts* de Barcelona in 1702 and reformed by the ones of 1705. Capdeferro and Serra have also studied the activity of the Tribunal up until 1713 through the specific cases they have been able to document. Nevertheless, in order to protect the violated Catalan legality, there had been established other previous court proceedings such as: the syndic of the Deputation of the General in 1413, a control by the Royal Audience in 1481 and by a mixt Tribunal composed of judges appointed by the king and by the estates, during the period of the French dominion (1640-1652).

The political constitution of the modern and medieval Catalonia based on the principles of legal *pactism* and the early rule of law had evolved, and its legal and institutional system updated inasmuch as was possible, given its belonging to a monarchy comprised by the Austrian dynasty

and by the legal pathways that were open to them. The *Tribunal de Contrafaccions* became a good example of this institutional modernization of *pactism* that emerged within a society with hints of modernity, as Josep Capdeferro and Eva Serra pointed at:

The *Tribunal de Contrafaccions* came to be established in a Catalonia which was progressively more and more cohesive, with a territory which was articulated at the productive and mercantile level, where social advancement was working well enough (García Espuche 1998). A community with republican traits, horizontal strength, with a very extended idea of common good among the popular strata (Corteguera 2005) and with an elevated participation on public affairs. The frequent audits increased and reinforced the participation in such matters albeit not with the desired efficiency (Capdeferro 2007). It goes without saying that that world was not only filled with virtue, but also with defects and corruptions.

To end this quick and impressionist vision of modern and medieval Catalan *pactism* until its violent suppression by the military conquest of Catalonia by the Bourbon troupes in the beginning of the 18th century (1705-1714), it is convenient to reproduce a part of the final evaluation of the history of Catalan public law by Víctor Ferro:

> The Catalan institutions which attained such notable achievements both due to their novelty and to their absolute merits—sharing de facto the legislative power between the king and the country; subordinating all authority to the agreed upon law; direct binding of the officials to the legal system; political and legal custody of the legal and administrative system of a public treasury, which is different from that of the prince and is in the hands of a permanent representation of the estates; guarantee of personal security and so many others—culminate thus in procedures that fulfill in a practically unsurpassable way the implicit aspiration in all of them: the preservation of the principle of liberty under the rule of law, clearly defined and declared, if need be, in an impartial trial. (Ferro Poma 1987: 449-450).

Translation by Wendy R. Simon

REFERENCES

[n/a] 1896. *Cortes de los antiguos reinos de Aragón y de Valencia y Principado de Cataluña publicadas por la Real Academia de la Historia, Tomo I (1064-1327).* Madrid: Establecimiento tipográfico de la viuda e hijos de Manuel Tello. Retrived from: https://sirio.ua.es/libros/BDerecho/cortes_de_aragon_y_catalunya_tomo_I/ima0195.htm

Álvarez Gómez, D. 2016. *Compendium Constitucionum Generalium Cathalonie de Narcís de Sant Dionís.* Barcelona: Departament de Justícia de la Generalitat de Catalunya.

Baydal Sala, V. 2016. "Pactistes des de quan? Les arrels del concepte de "pactisme" en la historiografia catalana i l'obra de Jaume Vicens Vives". *eHumanista/IVITRA* 9: 314-340.

Bajet Royo, M. 2009. *El jurament i el seu significat jurídic al Principat segons el dret general de Catalunya (segles XIII-XVIII). Edició de la "forma i pràctica de celebrar els juraments i les eleccions a la ciutat de Barcelona en el segle XV".* Barcelona : Universitat Pompeu Fabra, Seminari Permanent i Interuniversitari d'Història del Dret Català Josep M. Font Rius.

Berman, H. J. 1998. *Diritto e rivoluzione. Le origini della tradizione giuridica occidentale*. Bologna: Il Mulino.

Callís, J. 1518. *Extragravatorium curiarum ... per dominum Iacobum de Callicio*. Barcelona. Calasso, F. 1959. *Il negozio giuridico.* Milan: Giuffrè.

Capdeferro i Pla, J. 2007-2008. Promoció, edició i difusió d'obres jurídiques a Catalunya a cavall delssegles XIV i XVII". *Ius fugit: Revista interdisciplinar de estudios histórico-jurídicos*, 15: 537-559.

Capdeferro i Pla, J. and Serra i Puig, E.2015 (a). *El Tribunal de Contrafaccions de Catalunya i la seva activitat* (1702-1713). Barcelona: Textos Jurídics Catalans (Parlament de Catalunya i Departament de Justícia de la Generalitat de Catalunya).

Capdeferro i Pla, J. and Serra i Puig, E. 2015 (b). *Casos davant del Tribunal de Contrafaccions de Catalunya (1702-1713).* Barcelona: Textos Jurídics Catalans (Parlament de Catalunya i Departament de Justícia de la Generalitat de Catalunya).

Corteguera, L. 2005. "Sancho Panza Wants an Island", *Romance Quarterly* 52: 261-270.

Costa, P. 2002 [1969]. *Iurisdictio. Semantica del potere politico nella pubblicistica medievale (1100-1433).* Milano: Giuffrè.

Costa, P.2007. "La soberanía en la cultura político-jurídica medieval: imágenes y teorías", *Res Publica,*17 (2007): 37-59.

D'Abadal i de Vinyals, R. and Rubió i Balaguer, J. 1910. "Notes sobre la formació de les Compilacionsde 'Constitucions i altres Drets de Catalunya i de Capítols de Corts referents al General", *Revista dels Estudis Universitaris Catalans,* 4: 409-465.

Eiximenis F. 1499. *Regiment de la cosa publica ordenat per lo reverent mestre Francesch Eiximenis*.València.

Eiximenis, F. 2009. *Lo regiment de la cosa pública en el Dotzè del Crestià.* Madrid: Centro deLingüística Aplicada Atenea.

Feenstra, R.1994. "L'insegnamento del diritto civile a Bologna e la sua diffusione nell'Europa occidentale". In Gian Paolo Brizzi and Jacques Verger (Eds.) *L'Università dell'Europa. Le scuole e i Maestri. Il Medioevo*, Milano: Pizzi, pp.179-210.

Ferro Poma, V. 1987. *El Dret Públic Català. Les Institucions a Catalunya fins al Decret de Nova Planta*.Vic: Eumo.

Ferro Poma, V. circa 1989. "Algunes reflexions sobre el pactisme". Unpublished conference at the University of Barcelona.

Font, J. M. 1988. "Estudi Introductori". In *Constitucions de Catalunya (1495): incunable of 1495.* Ed.,Josep Maria Font. Barcelona: Textos Jurídics Catalans (Parlament de Catalunya i Departament de Justícia de la Generalitat de Catalunya), pp. 33-75.

Fontanella, Iohannes Petrus. 1668. *Decisiones Sacri Regii Senatus Cathaloniae,* t. 1, Lió.Grossi, P. 1996. *El Orden jurídico medieval*. Madrid: Marcial Pons.

Gouron, A.1996. "Populus: legal entity and political autonomy*". Fundamina, a Journal of legal History,* 2/2: 249-260.

Hébert, M. 2014. *Parlamenter. Assamblées représentatives et échange politique en Europe occidentalà la fin du Moyen Age*. Paris : Éditions de Boccard.

Kosto, A. J. 2001. *Making Agreements in Medieval Catalonia: Power, Order, and the Written*

Word(1000-1200). Cambridge: Cambridge University Press.

Lalinde Abadía, J. 1964. *La Institución virreinal en Cataluña (1471-1716).* Barcelona: Instituto Españolde Estudios Mediterráneos.

López-Amo y Marín, A. 1946. "El pensamiento político de Eiximeniç en su tratado de 'Regiment dePrinceps'". *Anuario de Historia del Derecho Español,* 17: 5-139.

Montagut Estragués, T. D. 1989. "Pactisme o absolutisme a Catalunya: les grans institucions de govern(s.XV-XVI)". *Anuario de Estudios Medievales,* 19: 669-680.

Montagut Estragués, T. D. 1995. "Les compilacions del dret general català". *Glossae: EuropeanJournal of Legal History,* 7:113-134.

Montagut Estragués, T. D. 1998. "Estudi introductori". *In Practica, forma, y estil, de celebrar Corts Generals en Cathalunya, y materias incidents en aquelles.* Lluís de Peguera. Madrid: Centro de EstudiosPoliticos y Constitucionales.

Montagut Estragués, T. D. 1999. "La justicia en la Corona de Aragón". In *La administración de justicia en la historia de España: actas de las III Jornadas de Castilla-La Mancha sobre investigación en archivos. Guadalajara, 11-14 noviembre 1997*. Guadalajara: Anabad and Juntas de Comunidades de Castilla-La Mancha, pp. 649-686.

Montagut Estragués, T. D. 2005. "Pactar i transaccionar a Catalunya : L'Usatge de Barcelona 'Communie et Convenientie'". In Maria Teresa Ferrer, Jean Marie Moeglin, Stéphane Péquignot and Manuel Sánchez (Eds.), *Negociar en la Edad Media/Négocier au Moyen Âge.* Madrid: CSIC InstituciónMilá y Fontanals/Casa de Velázquez (Madrid), pp. 27-43.

Montagut Estragués, T. D. 2006. *Llibre dels Quatre Senyals, Estudi introductori.* Barcelona: EditorialBase.

Montagut Estragués, T. D. 2008. "El principi de l'imperi del dret i el control de la seva observança a la Catalunya medieval i moderna". In Remedios Ferrero Micó and Lluís Guía Marín (Eds.) *Corts i Parlaments de la Corona d'Aragó: unes institucions emblemàtiques en una monarquia composta.*València: Universitat de València, pp. 559-568.

Montagut Estragués, T. D. 2013. "La Constitució política de la Corona d'Aragó". In María Isabel Falcón Pérez (Ed.) *El compromiso de Caspe (1412): cambios dinásticos y Constitucionalismo en la Corona de Aragón*. Zaragoza: Ibercaja, Diputación General de Aragón, pp. 104-116.

Montagut Estragués, T. D. 2019. Joaquim Albareda and Manuel Herrero Sánchez (Eds.) "Constitution and Political Representation in the Crown of Aragon". In *Political Representation in the Ancien Règime.*New York, London: Routledge, pp. 145-160.

Orestano, R. 1987. *Introduzione allo studio del diritto romano*. Bologna: Il Mulino.

Peguera, Lluys de. 1701. *Practica, forma, y estil, de celebrar Corts Generals en Cathalunya, y materiasincidents en aquelles.* Barcelona.

Palomo, C. 2019. "Denominaciones históricas de la Corona de Aragón. Balance crítico e historiográfico". *eHumanista/IVITRA* 16: 160-180. https://www.ehumanista.ucsb.edu/sites/ default/files/sitefiles/ivitra/volume16/1.%20Palomo.pdf

Pergiovani, V. 1994. "Il diritto canonico: il medioevo". In Gian Paolo Brizzi and Jacques Verger (Eds.) *L'Università dell'Europa. Le scuole e i Maestri. Il Medioevo*. Milano: Pizzi, pp. 211-237.

Ripoll Sastre, P. 2018. *Llibre de vuit senyals (15th century): An edition, legal and comparative study*.Doctoral dissertation, Universitat Pompeu Fabra.

Sánchez, M.1992. "La fiscalidad real en Cataluña (siglo XIV)". *Anuario de estudios medievales*, 22:341-376.

Sánchez Martínez, M. and Ortí Gost, P. 1997. "Introducció". In Manuel Sánchez i Pere Ortí (Eds.). *Corts, Parlaments i Fiscalitat a Catalunya: els capítols del donatiu (1288-1384)*. Barcelona: Textos Jurídics Catalans (Parlament de Catalunya i Departament de Justícia de la Generalitat de Catalunya).

Terradas Saborit, I. 2019. *La justicia más antigua: teoría y cultura del ordenamiento vindicatorio*.Madrid: CSIC.

Vicens Vives, J. 1954. *Noticia de Cataluña*. Barcelona: Àncora.

Vicens Vives, J. 2010. *Notícia de Catalunya. Nosaltres els catalans* [1960]. Barcelona: Vicens Vives.

Zeller, O. (ed.) 1966. *Corppus iuris civilis iustinianei, studio et opera Ioannis Fehi, reimprssio phototypica editionis 1627*. Osnabrück.

Journal of Catalan Intellectual History (JOCIH)
Online ISSN 2014-1564 DOI: 10.2478/jocih-2019-0003

Received 02/02/2018 / Accepted 04/06/2018 / Published 20/12/2019

VIVES'S VIEWS ON LAW: KEY NOTIONS IN THE *AEDES LEGUM*

Joan Tello
(Universitat de Barcelona)
joan.tello@ub.edu

ABSTRACT

Renaissance humanist Joan Lluís Vives explained his views on Law, its origin, its elements, and its corruption mainly in the *De disciplinis* (1531). However, he had already outlined some relevant key notions in early works such as the *Praefatio in Leges Ciceronis* (1514) and, especially, the *Aedes legum* (1519). The aim of this article is twofold: on the one hand, to provide the reader with a succinct introduction to the latter work and, on the other hand, to identify some of its key concepts and describe their meaning.

Keywords: Humanism, Law, lexicography, Renaissance philosophy, Vives.

Acknowledgements: Project IEC PRO2018-S05. *Models del dret i la filosofia política catalanes: semàntica de les doctrines juridicopolítiques del pactisme en les seves diferents fases* [Models of Catalan political philosophy and law: Semantics of pact-model driven political and legal doctrines at their different stages].
Disclosure statement: No potential conflict of interest was reported by the authors.

Suggested citation: Tello, J. (2019-2020). "Vives's Views on Law: Key Notions in the *Aedes legum*". *Journal of Catalan Intellectual History* 12: 25-45. DOI: 10.2478/jocih-2019-0003

1. VIVES'S INTEREST FOR LAW

Joan Lluís Vives[1] (1492/3 Valencia - 1540 Bruges) was an eminent humanist known widely for his works that deal with social care, peace and pedagogy, such as *De subuentione pauperum* (1526), *De Europae dissidiis et republica* (1526), *De concordia et discordia in humano genere* (1529), the second part of *Dedisciplinis* (1531), and *Linguae Latinae exercitatio* (1539). He is also considered to have been a philosopher,[2] mainly because of the insights conveyed in *De initiis, sectis et laudibus philosophiae* (1519), *In pseudodialecticos* (1519), *Introductio ad sapientiam* (1524), the third part of the aforementioned *De disciplinis*, and his mature work *De anima et uita* (1538).

Be that as it may, Vives developed as well a liking for Law and jurisprudence,[3] which must have flourished in his adolescence or, even earlier, in his childhood spent in Valencia,[4] through the teachings and tutoring of Enric March, a lawyer and the brother of Blanquina March (Vives's mother). As the humanist admits, "I recall to my mind that, when I was still a child, my uncle Enric March […], a lawyer of enormous subtleness, explained to me in my native city the *Institutiones* of Emperor Justinian".[5] Similar words are found in *Ling.*, when a boy named Lucius

[1] His native Catalan-Valencian name. "Ioannes Lodouicus Viues" is the Latin name that he used in all his works; "Juan Luis Vives" is the Spanish version of it, by which he is commonly known. Primary sources for Vives's works are the *VOO* (1782-1790; complete works in Latin), the *SWJV* (1987 –; ongoing Latin-English critical editions), Riber (1947-1948; complete works translated into Spanish, though not always rendered accurately), the *CJLV* (1992- 2010; Spanish translation of some works), and Pérez Durà (1992; bilingual Latin-Catalan and Latin-Spanish selectionof texts). Regarding Vives's life, works and thought, the reader may start with the following studies: Bonilla (1903), Pinta and Palacio (1964), Noreña (1970), Guy (1972), Garcia (1987), González (1987), Noreña (1989), González (1992), Mestre (1992), Gómez-Hortigüela (1998), González (2007), Fantazzi (2008), Tello (2018, 2019). When necessary, Vives's works have been abbreviated according to Tello 2018 (references also available at the end of this article). Regarding the English translations provided in my article, they are all my own, otherwise translators are duly referenced.

[2] The dialogue *Sapiens* (Paris: Gilles de Gourmont, May-June 1514) is introduced by a long title that qualifies Vives as *uir philosophus*: "*Ioannis Lodouici Viuis Valentini uiri philosophi urbanus pariter ac grauis dialogus, qui Sapiens inscribitur, in quo sapientem per omnes disciplinas disquirens professorum earum mores notat denique ueram sapientiam breui sermone depingit*" (title page); also, the title of *Praef. Leg.* includes the same mention (Lyon: Guillaume Huyon, 19 Oct. 1514, f. A2r). However, Matheeussen (M 1984: 2) does not include this reference. In the same work, Vives asks himself "why I, a philosopher, may explain the *Laws* of Cicero before so many legal experts [*iurisconsulti*]" (*VOO* 5: 494; M 1984: 2, lines 6-7). Later, Vives again calls himself *philosophus* in *Pseud.* (1519; Fantazzi 1979: 97, line 8: "I merely warn and give exhortation and, as befits a philosopher, say freely what I think"). Furthermore, Erasmus admits to Hermann von Neuenahr in a letter dated ca. 15 March 1520 that "he [i.e. Vives] has had long and successful experience in almost all branches of philosophy", for which "I see no one in whom you might find so much eloquence combined with such great knowledge of philosophy" (Allen 4: Ep. 1082, lines 43-44, 50-52; *CWE* 7: 229, trans. R.A.B. Mynors). Erasmus also notes in a letter to Thomas More probably written in June 1520 that "he [i.e. Vives] has a wonderfully philosophical mind [*est animo mire philosophico*]" (Allen 4: Ep. 1107, line 9; *CWE* 7: 295, trans. R.A.B. Mynors); and he describes Vives as an "accomplished philosopher [*philosophus absolutus*]" in a letter sent to the Valencian humanist dated ca. June of the same year (Allen 4: Ep. 1111, title; *CWE* 7: 307, trans. R.A.B. Mynors).

[3] An introduction to Law in Vives can be found in Castán (1958), Noreña (1970: 212-227), Monzón (1987, 1992), Roca (1992, 1993), Fernández-Santamaría (1998), Monzón (1998), Havu (2015) (esp. chapter 3, "Managing Discord: Vives on Politics 1523-1529"). Complementary and introductory studies of Law in the Renaissance are those of Maffei (1956), Kisch (1960), Gilmore (1961, 1963), Skinner (1988), Kelley (1991), Maclean (1992), Kuehn (1999), Stein (1999), Coleman (2000), Majeske (2006), Padovani *et al.* (2009), Kilcullen (2011a-b), Fredona (2021).

[4] Vives left his native city in 1509, and he was never to return to it during his entire life, despite the alleged intent expressed in a letter addressed to Erasmus on 10 May 1523 (Allen 5: Ep. 1362, lines 102-103; *CWE* 10: 15).

[5] Vives, *Ciu. dei* 19.21 (Maians 1782: 5; Pérez Durà 1992-2010, vol. 5: 319, lines 20-22): "*Id quod puer pene audisse me de Henrico Marcho auunculo meo memini, quum acutissimus ille iuris peritus Iustiniani Caesaris* Institutiones *in patria mihi praelegeret*"; see also Garcia (1987: 171, 199).

(somehow an impersonation of Vives) refers to "an uncle of mine, who applied himself to the humanities [*litterae*] in Bologna".[6]

Vives's stay in the Low Countries enabled him to forge a close friendship with important people related to the field of Law. Frans van Cranevelt,[7] doctor in civil and canon law, and since October 1522 member of the Grand Council of Mechelen, became one of the closest and most intimate friends of Vives. In a letter sent to Cranevelt in 20 December 1520, Vives asks him not to write anything about Reuchlin, Luther, theology or even the theologians, but "about literature, Greek, Latin, dialectics, rhetoric, eloquence, philosophy; add to this, if you like, and occasionally, something about your things as a legal expert [*de iurisconsultis tuis*]. I devote myself to all these subjects and I honor them because they give me delight without danger".[8]

Jan van Fevijn and Mark Lauwerijns (Marcus Laurinus)[9] pursued studies of Law. The former had a close association with the Prinsenhof of Bruges, and became prebend of St. Donatian's, in the same city. He officiated the wedding of Vives (he married Margarida Valldaura) that took place on 26 May 1524 also in ruges. On the other hand, Lauwerijns's house in Bruges served as a meeting place and even a guest house for politicians, diplomats and humanists.

Thomas More,[10] lawyer and councilor of king Henry VIII since approximately August 1517, may have first met Vives in person in 1520 at Bruges, while the English diplomat was in the Low Countries joining the international meeting gathered at the Field of Cloth of Gold (Calais, 7-24 June) and, later, some trade negotiations held at Bruges. However, More was already familiar with some of Vives's writings, as it can be inferred from the letter that he sent to Erasmus in 26 May 1520.[11] The English lawyer praises both the scholarship and the style of Vives, saying that his works (*opera*) "were as stylish and as scholarly as anything I have seen for a long time. How few people one can find (indeed one can hardly find one anywhere) who at such a tender age (for you [i.e. Erasmus] tell me in a letter that he is still quite young) have absorbed such encyclopaedical learning!"[12]

Guillaume Budé[13] should also be taken into account among those close friends of Vives who held studies in Law and published research on this field: the *Annotationes in quatuor et uiginti Pandectarum libros* (Paris: Badius Ascensius, 1508) is a fine example. Both humanists met in Paris around May 1519 and they maintained epistolary exchange until, apparently, 1533. Unfortunately, most of these letters are not extant.[14] Vives highly praised Budé's knowledge of Law in the *Ciu. dei*, where he wrote that "thanks to him, the knowledge of Law, which had fallen to pieces, has begun to be restored".[15]

[6] Vives, *Ling.* 5 (*VOO* 1: 292; García Ruiz 2005: 142, lines 30-31).
[7] See *LC* xxxiii-xci; *CEBR* 1: 354b-355b.
[8] *LCB* Ep. 26, lines 44-50.
[9] See *LC* xci-xcix; *CEBR* 2: 26a-b, 306a-307b.
[10] See *CEBR* 2: 456a-459a.
[11] Allen 4: Ep. 1106 (*CWE* 7: 288-295). More mentions the following works: *Aedes*, *Pseud.*, *Somn. uig.*, and *Syll.*
[12] Allen 4: Ep. 1106, lines 21-26 (*CWE* 7: 290-291; trans. R.A.B. Mynors).
[13] See *CEBR* 1: 212b-217a.
[14] See Tournoy (2015).
[15] Vives, *Ciu. dei* 2.17 (Pérez Durà 1992-2010, vol. 2: 319, lines 35-36): "*quae* [i.e. scientia iuris] *per ipsum instaurari collapsa iam coepit*".

It is safe to say that Vives was quite familiar with the main challenges posed by Law (or rather, jurisprudence) as it can be inferred from the thoughts, reflections and notions expressed in the *Aedes*, the *Praef. Leg.*, and, particularly, the *Disc. corr.* 7, and the *Disc. trad.* 5.[16] He was genuinely interested in these matters, since his aim was to help people perfect themselves in order to achieve a learned and harmonious society, peaceful coexistence and the common good. His point of view can be summarized by the sentence of Terence "I am a human being and all that is human concerns me",[17] for according to Vives, "one must know a human being entirely, both inside and outside".[18]

2. THE AEDES LEGUM: PUBLICATION AND MAIN THEMES

The *Temple of laws* was first published by Dirk Martens (also known as Thierry Martens or, in Latin, Theodoricus Martinus) in Louvain in a 4º book[19] which, under the name *Opuscula uaria*, included the following works: *Med. psal.*, *Temp.*, *Clyp.*, *Triumph.*, *Ouatio*, *Prael. Triumph.* (or *Veritas fucata* I), *An. sen.*, *Philos.*, *Fab.*, *Georg.*, *Geneth.*, *Praef. Leg.*, *Aedes*, *Pomp.*, and *Pseud*. Given the fact that the printer did not stamp any date in the title page nor in the colophon, 1519 has been accepted as the year of publication.[20]

The *Aedes* was not to be reprinted again until 1555, as part of the *Opera Omnia* edited by Nicolaus Episcopius Iunior (Basel: Nicolaus Episcopius / Iacobus Parcus, 1555); it was included in the first volume out of two (*BOO* 1: 301-306). Two centuries later, Gregori Maians also incorporated this brief allegorical text in his edition of the complete works of Vives (Valencia: Benet Monfort, 1782-1790); it was included in the fifth volume out of eight (*VOO* 5: 483-493). This edition had the novelty of presenting an *interpretatio* of one section of the *Aedes* that Vives wrote in archaic Latin, and an index of words (*VOO* 5: 508-518). In fact, this appendix seems to be valuable and necessary, as Thomas More already remarked in 1520 in a letter sent to Erasmus on 26 May 1520: "There are in his *Aedes legum* and also in his *Somnium* (which in other respects far surpasses what may other people have spent sleepless nights on) some things which are too abstruse to be clear to any except specialists".[21] In 1984 Constant Matheeussen prepared a critical edition of this work (*Aedes* and *Aedes ep.*), along with the *Praef. Leg.* Even though some criticism has been made to it,[22] it is the only available critical edition and, therefore, references to the Latin text of the *Aedes* will be made according to it.

[16] *Aedes* (*VOO* 5: 483-493, 511-518; M 1984: 1-2, 16-30); *Disc. corr.* 7 (*VOO* 6: 222-242; Vigliano 2013: 251-272); *Disc. trad.* 5.3-4 (*VOO* 6: 408-415; Vigliano 2013: 458-466); *Praef. Leg.* (*VOO* 6: 408-415; M 1984: 1-15). It is also worth analyzing Vives's conceptions on peace and international relations presented in *Conc.* (*VOO* 5: 187-403) and *Pacif.* (*VOO* 5: 404-446). Available translations are displayed in the "Bibliography".

[17] Terence, *Heautontimoumeros* 77. This sentence was dear to Vives; see *Conscr.* 16 (*VOO* 2: 271; *SWJV* 3: 38), *Disc. prob.* (*VOO* 3: 89), *Sub.* 1.9.4 (*VOO* 4: 452; *SWJV* 4: 60).

[18] Vives, *Disc. trad.* 5.3 (*VOO* 6: 402; Vigliano 2013: 451): "*Quare noscendus est homo totus intus et foris*".

[19] See González (1992: 117-119).

[20] The oldest datable works are *Triumph.*, *Ouatio*, *Clyp.*, *Praef. Leg.* and *Prael. Triumph.* (1514); then *Med. psal.*, *Philos.*, *Fab.*, *Georg.* and *Temp.* (1518); finally, *Geneth.*, *Pseud.*, *An. sen.*, *Aedes* and *Pomp.* (April 1519).

[21] Allen 4: Ep. 1106, lines 103-106 (*CWE* 7: 294-295; trans. R.A.B. Mynors). A thorough philological commentary has been made by Roca (1993) on Vives's archaic Latin employed in the *Aedes* as well as new words or neologisms created by him; see also the apparatus provided by Matheeussen in his edition (M 1984: 17-22).

[22] Tournoy (1987) and Roca (1993: 47-60) have assessed this edition and, when necessary, have outlined its shortcomings.

As far as the content of the *Aedes* is concerned, this work is formally dedicated to Martí Ponç, "most experienced in human and divine Law; […] an authority on Law and justice".[23] In the introductory epistle, Vives wholeheartedly encourages him to become a defender of the right of philosophers to discuss (*disputare*) anything related to Law (*de re aliqua legum*).[24] In the *Disc. trad.*, Vives reinforces his point of view by asserting that "it is evident that it is the duty of the philosopher to treat of equity and to derive the laws from it. […] In ancient times, those who enacted laws to the people were philosophers: Draco, Solon, Lycurgus".[25]

Being a literary work placed somewhere between a fable, an allegory and jurisprudence, the *Aedes* is a first person narrative story of a scrutinizing walker (certainly Vives)[26] who comes to a place (*locus*) that happens to be both well-fortified (*munitissimus*) and charming (*amoenissimus*). In this place called 'city' (*ciuitas*) there is a tower (*turris*) that has contradictory elements: its look is soft and friendly, but also hard and terrifying. The caretaker[27] (*atriensis*) of such tower explains to Vives, in the language of the people of Quirinus—that is, in ancient Latin[28]—that he hopes to restore the old dignity of the laws, since they have been perverted and overturned by some brainless people (*cerriti*) like Accorso di Bagnolo (ca.1182-1263), Bartolo da Sassoferrato (1313-1357), Baldo degli Ubaldi (1327-1400), Giovanni Nicoletti (Ioannes de Imola, ca.1370-1436), and Angelo Gambiglioni (Angelus Aretinus, 1400-1461).[29] Such pernicious individuals (*triconum principes*, 'leaders of the schemers') have too much power and their way of performing jurisprudence spread dissension and provoke unnecessary conflicts.

Now in classical Latin, the caretaker continues his speech and describes the variety of elements that inhabit the tower: justice (*iustitia*), good sense (*prudentia*), moderation (*temperantia*), strength (*fortitudo*), health (*salus*), love (*amor*), peace (*pax*), concord (*concordia*), victory (*uictoria*), faith (*fides*), solace (*solacium*), leisure (*otium*), innocence (*innocentia*), safety (*incolumitas*), quiet and happy life (*uita quieta et beata*), religion (*religio*), inviolability (*sanctitas*), praise (*laus*), honour (*honor*), glory (*gloria*), chastity (*castitas*), decency (*pudicitia*), comfort in the event of deprivation (*consolata orbitas*), poverty of the upright (*proborum paupertas*), the arts (*artes*), the sciences (*scientiae*), the three Graces (*tres Gratiae*), the nine Muses (*novem Musae*), and the reward for virtue (*praemium uirtuti*).[30]

According to the caretaker, all these elements may flourish provided that laws are strong and healthy (*uigentes leges*), and dignity (*dignitas*) prevails.[31] He quotes Cicero's notion of 'law',[32] and notes the twofold nature of it: laws are upright and equal, but also mute and deaf. He then introduces the role of the judge (*iudex*), counterpoints the fair one with the unfair, and strongly re-

[23] Vives, *Aedes ep.* 1, 4 (M 1984: 1, lines 3 and 28): "*Ponti, iuris et humani diuini consultissime, […] iuris iustitiaeque antistes*".
[24] See *Aedes ep.* 1, line 6 (M 1984: 1).
[25] Vives, *Disc. trad.* 5.3 (*VOO* 6: 409; Vigliano 2013: 459): "*manifestum est fit philosophi esse de aequitate tractare et ex ea deriuare leges […]; quique olim populis leges sanxerunt philosophos fuisse constat, Draconem, Solonem, Lycurgum*".
[26] The allusion to "*nostram Valentiam*" (*Aedes* 1; M 1984: 16, line 16) makes it clear.
[27] Or "cantankerous concierge", as described by Fantazzi (2008: 3).
[28] See *VOO* 5: 512 (*Curinalis*); Roca (1993: 84); also note 21.
[29] See Vives, *Aedes* 7 (M 1984: 18-20).
[30] See Vives, *Aedes* 12 (M 1984: 23-24).
[31] See Vives, *Aedes* 13 (M 1984: 24).
[32] See Cicero, *De legibus* 3.1.3.

marks that laws must not be created by degenerated people (*perditi homini*), but ought to be based on the rule of nature (*naturae norma*).[33] The temple of laws only opens its gate to the noblest and most righteous people. Those rejected populate the noisy and corrupted *forum*. The contrast between such place and the temple is vivid and sharp: the square is crammed with fishers (*piscatores*), who instigate distressing disputes (*carnificina litigii*) and fraud.[34]

At this moment, the walker mentions Aristotle and this draws the attention to the notion of *epiicia* (ἐπιείκεια, 'equity'). The last paragraphs of the *Aedes* reflect Vives's vivid conception of Law and bring a rather compelling climax to the work: rules must spring from what is fair and good; laws should be simple and clear; rigid interpretation of the law causes injustice; an excellent man is preferable to an excellent law.[35]

3. STUDY OF CONCEPTS

In this section I will analyze six concepts that are relevant in the *Aedes*. These are, in order of appearance:

ciuitas; *lex*; *ius*, *iudex*, *iurisconsultus*; and *epiicia*.

3.1. Ciuitas

This word appears ten times throughout the *Aedes* ($1^{[3]}$, $3^{[2]}$, $12^{[1]}$, $13^{[2]}$, $23^{[1]}$, $24^{[1]}$), and Vives employs it to describe a place (*locus*) which is "the most agreeable and delightful to God".[36] In such place occur deliberations (*consilia*) and meetings (*coetus*) of people (*homines*) that are associated by Law (*iure sociati*), namely that are bound by the same laws, the same rights or the same legal code. According to the scrutinizing walker, the city hosts justice (*iustitia*), peace (*pax*), culture (*humanitas*), trust (*fides*), hospitality (*hospitalitas*) and the many virtues (*uirtutes*).[37] Notice that a human being can only perfect its humanity in the city, by virtue of the refinement provided by education and, particularly, the curriculum devised by humanists (the so called *studia humanitatis*). With proper education, human beings will be safe from low passions and, hence, trust and hospitality (that is, friendliness, from *hospes* 'guest', 'stranger') will develop. Moreover, faith in one another and in God will keep peace and make it last long, hopefully forever. A place of this kind will undoubtedly be most kind to God, our ultimate "master (*imperator*)", our ultimate "prince (*princeps*)".[38]

3.2. Lex

This word (compounds, such as *legis lator*, have also been included) appears forty times throughout the *Aedes*: $3^{[1]}$, $11^{[1]}$, $13^{[4]}$, $14^{[1]}$, $15^{[3]}$, $16^{[5]}$, $17^{[1]}$, $18^{[1]}$, $20^{[3]}$, $21^{[1]}$, $22^{[13]}$, $23^{[2]}$, $24^{[4]}$. It is the most used word, which demonstrates that law is the central subject addressed in this short work of Vives and, therefore, also appears in its title.

[33] See Vives, *Aedes* 15-16 (M 1984: 25-26).
[34] See Vives, *Aedes* 17-19 (M 1984: 26-27).
[35] See Vives, *Aedes* 21-24 (M 1984: 28-30).
[36] Vives, *Aedes* 1 (M 1984: 16, line 8): "*deo gratius atque iucundius*".
[37] Ibid., lines 9-10.
[38] Ibid., lines 4 and 7.

The examination of law is preceded by a general but significant remark: "no one can examine this temple of laws thoroughly", says the caretaker, "unless he has completely absorbed the true and pure Latinity as well as the old language, at least to some extent".[39] Indeed, knowledge of the Roman civilization is a paramount element in order to fully understand the implications of some passages quoted from Cicero and the criticism to Medieval and Early Renaissance jurists.[40] Proficiency in Greek civilization is also required, given the various allusions to the *Ethica Nicomachea* and the *Politica* of Aristotle.

In its first appearance in section 3, the word *lex* is employed to describe the divine law (*lex illa … diuina*). According to Vives, such law is everlasting and imperishable (*aeterna*), and it "rules the entire world". It is, in fact, the expression of "God's mind", who "by reason compels or forbids all that exist".[41] Moreover, the humanist insists that "the sea and the earth obey God; and human life complies with the commands of the supreme law".[42] According to Cicero, this ultimate law is previous to human assemblies, even to human reason, and therefore can only emanate from God himself:

> Law was not brought up by human minds; it is not some piece of legislation by popular assemblies, but it is something eternal, which rules the entire universe through the wisdom of its commands and prohibitions. Therefore, they said, that first and final law is the mind of the god who compels or forbids all things by reason.[43]

If "laws have been established by the rule of Nature",[44] says the scrutinizing walker, "according to which all laws have been created, deployed and shaped",[45] it is of high importance to clarify what the rule of Nature is. This explanation is given in more detail in the following passage of the *Praef. Leg.*:

> In the moment of birth, Nature itself, whose power is very subtle and quite impossible to examine, instills in everyone the veneration and worship of the gods; it instills the desire of association and human communication; […] also the shame of crimes, the remorse for a life conducted badly; […] it introduces the respect for superiors, sensible people, elders or princes.[46]

This is, succinctly, the rule of Nature devised by Vives, from which human laws ought to spring and with which they should comply. It can also be inferred from Vives's words that the

[39] Vives, *Aedes* 11 (M 1984: 23, lines 11-13): "*quum tamen nullus perscrutari domum hanc legum rite possit, qui plene ueram tersamque Latinitatem et antiquariam hanc modice saltem non imbiberit"; cf. similar thought in Disc. corr. 7.3 (VOO 6: 235; Vigliano 2013: 265): "opus est uaria notitia antiquitatis*". Regarding the Archaic Latin, see notes 21, 28.
[40] See note 29.
[41] Vives, *Aedes* 3 (M 1984: 17, lines 9-11): "*lex illa erat aeterna diuina, quae uniuersum mundum regit, nec scitum aliquod esse populorum, quae est mens omnia ratione aut cogentis aut uetantis dei*". It is an almost exact quotation of Cicero, *De legibus* 2.4.8.
[42] Vives, *Aedes* 13 (M 1984: 24, lines 27-28): "*huic oboediunt maria terraque, et hominem uita iussis supremae legis optemperat*".
[43] Cicero, *De legibus* 2.4.8 (trans. Zetzel 2017: 134): "*legem neque hominum ingeniis excogitatam, […] sed aeternum quiddam, quod uniuersum mundum regeret imperandi prohibendique sapientia. Ita principem legem illam et ultimam mentem esse dicebant omnia ratione aut cogentis aut uetantis dei*".
[44] Vives, *Aedes* 16 (M 1984: 26, lines 7-8): "*leges constitutae sunt … naturae norma*".
[45] Vives, *Aedes* 22 (M 1984: 29, lines 3-5): "*…naturae normae, ad quam … leges omnes conditae, directae ac formatae sunt*".
[46] Vives, *Praef. Leg.* 3 (M 1984: 29, lines 28-33; 30, lines 1-2): "*Ingessit enim ipsa natura, cuius sunt subtilissimae et imperscrutabiles uires, unicuique primum nascenti deorum uenerationem et cultum. Ingessit congressos ac humanae communicationis appetitum […] Ingessit etiam delictorum nonnullam erubescentiam et male actae uitae conscientiam […] Indidit et superiorum aut prudentium aut senum aut principum reuerentiam*".

rule of Nature (*norma naturae*), the supreme law (*suprema lex*), and God's mind (*mens dei*) seem to allude to the same notion and might be interpreted somehow as synonyms.

Inspired by the supreme law, human laws need to be established in such a way that they are "upright (as you can realize by this building), and fair in every single element".[47] The caretaker explains that in order to achieve this uprightness, laws must follow the law of "the good and the equitable".[48] However, uprightness does not necessarily mean a blind observance of the law, because it may bring dissension, as the scrutinizing walker points out.

It is an invitation and fuel to countless disputes—he says—the fact of wanting to maintain the laws and control them ferociously, not only in their language and style but also syllable by syllable and letter by letter, as some individuals do.[49]

In the *Disc. corr.*, Vives explains more thoroughly what the aim of the laws should be:

> Since laws were invented so that human beings could live together in peace and with a certain equality of rights, the first duty of the laws must be to set and shape the soul, which is the origin of all actions; and they should apply themselves not to punish the wicked but to see that no one wants to be wicked.[50]

Furthermore, laws must be "clear, easy and simply a few,[51] so that everyone knows how they ought to live, do not fail to live as required because laws are obscure, nor overlook it because of the great number of laws".[52] The importance of law in the building and organization of a human civilization can be summarized by the following passage of Cicero, quoted by the caretaker of the temple of laws:

> When I say 'law', I want you to understand that I am not speaking of anything else than the power of command, without which no home or state or nation or the whole race of mankind can survive, nor can nature or the world itself.[53]

[47] Vives, *Aedes* 15 (M 1984: 25, lines 11-12): "*leges … rectae (sicut aedificio hoc contueris) aequabilisque omni sui sunt parte*".

[48] Vives, *Aedes* 20 (M 1984: 28, lines 10-11): "*…ab ipsa legis lege, quod est bonum et aequum*".

[49] Vives, *Aedes* 22 (M 1984: 29, lines 12-14): "*Sunt enim innumerarum litium incitamenta et fomites, non solum orationatim ac dictionatim sed syllabatim etiam litteratimque (ut quidam faciunt) persequi ac mordicus tenere leges uelle*".

[50] Vives, *Disc. corr.* 7.1 (*VOO* 6: 227; Vigliano 2013: 256): "*Sed quoniam in hoc repertae sunt leges, ut homines inter se quiete et aequali quodam iure uiuant, primum legum munus esse debet, ut animum constituent ac forment fontem actionum omnium, dentque operam, non ut puniant malos sed ne qui uelint esse mali*".

[51] See Erasmus, *Institutio principis Christiani* (*ASD* IV-1: 194, lines 856-857; *CWE* 27: 264; trans. N. M. Cheshire and M. J. Heath): "*Dabit igitur operam, non ut multas condat leges, sed ut quam optimas maximeque reipublicae salutares",* that is, *"*[The prince] will therefore spare no effort to enact the best possible laws, those most beneficial to the state, rather than a great number".

[52] Vives, *Disc. corr.* 7.2 (*VOO* 6: 229; Vigliano 2013: 258): "*leges sint et apertae ac faciles et paucae, ut sciat quisque quomodo sibi sit uiuendum, nec id propter obscuritatem legum ignoret, nec propter illarum multitudinem ei excidat*".

[53] Vives, *Aedes* 13 (M 1984: 24, lines 22-26): "*quum dico legem […] a me dici nihil aliud intelligi uolo quam imperium, sine quo nec domus ulla nec ciuitas nec gens nec hominem uniuersum genus stare nec rerum natura omnis nec ipse mundus potest". Quotation of Cicero, De legibus 3.1.3; the beginning has been slightly rephrased by Vives. The original text says (trans. Zetzel 2017: 159-160): "Nihil porro tam aptum est ad ius condicionemque naturae (quod quom dico, legem a me dici intellegi uolo) quam imperium…"* that is, *"*There is nothing so consonant with the justice and structure of nature (and when I say that, I want you to understand that I am speaking of the law) as the power of command…".

3.3. Ius, iudex, iuris consultus

Ius appears thirteen times throughout the *Aedes*: 1[1], 8[1], 13[1], 16[2], 17[1], 18[1], 20[2], 22[3], 23[1], 24[1]; as much as *iudex*, which appears in thirteen occasions: 15[2], 16[8], 17[1], 20[1], 22[1]; whereas *iuris consultus* occurs only in two occasions: 21[1], 23[1].

Ius is a complex term which already had different meanings in the Roman juristic language. According to Berger, "in the broadest sense, the term embraces the whole of the law, the laws", but *ius* is also "applied to indicate the subjective right or rights (*iura*) of an individual".[54] Isidore of Seville clearly explained the difference between *ius*, *lex* and *mos*:

> Jurisprudence [*ius*][55] is a general term, and a law [*lex*] is an aspect of jurisprudence. It is called jurisprudence [*ius*] because it is just [*iustus*]. All jurisprudence consists of laws and customs [*mores*]. A law is a written statute. A custom is usage tested by age, or unwritten law, for law is named from reading [*legere*], because it is written. But custom [*mos*] is a longstanding usage drawn likewise from 'moral habits' [*mores*].[56]

Hence, *ius* can be understood as 'code', 'body of laws', 'system of laws', 'Law'; 'body of rights', 'rights', 'Right', whereas *lex* refers to a particular 'law', 'rule' that has been issued. The following passages taken from Vives serve to provide examples to illustrate the aforementioned meanings of *ius*.

In the *Aedes*, the scrutinizing walker asserts that "it has been said quite adequately that the rule of Law is the good and the equitable",[57] that is, *ius* implies the element of goodness (morality) and equality (justice). In a later work, Vives will assert that "Law is defined as the art[58] of the good and the equitable".[59] In these cases, *ius* means 'the whole of the law' or 'the body of laws' and thus has been translated as 'Law'.[60] However, it could also have been rendered as 'Right', meaning 'the whole of rights' or 'the body of rights'.[61] For instance, this interpretation could be applied to the following passage. In the *Aedes*, the scrutinizing walker comments that "they [i.e. some judges] disparage trials, rights, laws, and justice";[62] and that there is no little door through which one can access "the true home of laws, the Right, and justice".[63]

Both the Law and the many laws fail to regulate all the particularities that human beings create through their actions. Although the divine law and the rule of Nature may be clear and

[54] Berger (1953: 525b); see also Zetzel (2017: xxxiii-xxxiv).
[55] The translators (S. A. Barney *et al.* 2006: 117; see note 56) render *ius* as 'jurisprudence', which is not in my opinion the best option because it can be confused with *iurisprudentia*. However, they admit in a footnote to the text that "the Latin term *ius* has a broad range of meaning and application, with no single English equivalent. We have generally translated it as 'jurisprudence', but have also used the terms 'right', 'law', or 'justice', according to the context".
[56] Isidore of Seville, *Etymologiae* 5.3; trans. S. A. Barney, W. J. Lewis, J. A. Beach, O. Berghof (2006: 117).
[57] Vives, *Aedes* 22 (M 1984: 29, lines 9-10): "*Idcirco recte iuris normam aequum bonumque esse dictum est*".
[58] In both senses, 'skillful technique' and 'methodical science'.
[59] Vives, *Disc. corr.* 7.1 (*VOO* 6: 224; Vigliano 2013: 252): "*Ius finitur ars boni et aequi*"; 7.3 (*VOO* 6: 235; Vigliano 2013: 264): "*Ius est ars aequi et boni*". Exact quotation of Ulpian, in *Digesta* 1.1.1. pr.; cf. Vives, *Ciu. dei*19.21 (Pérez Durà 1992-2010, vol. 5: 319, lines 14-15).
[60] Maclean (1992: 24) renders *ius* as 'law' in translating the passage of Ulpian cited in the previous note.
[61] This is the option chosen by the Fathers of the English Dominican Province in their translation of Thomas Aquinas. See, for example, *Summa Theologiae* II2, q57: "On Right [*De iure*]".
[62] Vives, *Aedes* 16 (M 1984: 26, lines 1-2): "[aliqui iudices] *iudicia, iura, leges, iustitiam deserunt*".
[63] Vives, *Aedes* 17 (M 1984: 26, lines 28-29): "*in hoc uerum legum, iuris, aequitatis domicilium*".

straightforward, the many circumstances and roles that befall a particular human being call for an interpretation of the body of laws that gives a customized treatment to every single case. A strict adhesion to the Law or to the universal Right may incur in gross injustice.[64] Erasmus himself, when commenting the adage *Summum ius, summa iniuria* explains that

> 'Extreme right is extreme wrong' means that men never stray so far from the path of justice as when they adhere most religiously to the letter of the law. They call it 'extreme right' when they wrangle over the words of a statute and pay no heed to the intention of the man who drafted it. Words and letters are like the outer skin of the law.[65]

Inasmuch as "there are many things which the lawmaker is unable to anticipate",[66] and given the fact that laws are by themselves "mute and deaf",[67] "some men are used by laws so that laws can speak through their voices and see and hear though their sight and hearing. We are used to call such men 'judges', and Greece named them *dikastai*, from *dike* 'justice'".[68] According to the scrutinizing walker, the judge "represents the law, and preserves it".[69] Furthermore, he "bends the law, as the nature of a given matter demands".[70] Therefore, judges adapt Law or Right to the particular circumstances of a given situation. Such process involves an interpretation that must be dealt over with extreme caution.

The caretaker of the temple of laws says that judges, if they are truly devoted to justice, are

> serious, revered, incorruptible, strict, immune to flattery, pure, moderate, sensible. Favors will not change their minds, nor will human fears frighten them. They shall be free from hatred, ties of friendship, wrath and compassion. They shall never have the silver-quinsy,[71] nor will they be assaulted by silver spears.[72]

Unfortunately, evidence showed that a great number of judges acted and proceeded improperly. The caretaker sadly admits that such unbefitting individuals "are inflexible and strict with little helpless animals but panic at those more powerful, even at their slightest movement".[73]

Firstly, the variety of legal codes inherited from the past and their own additions and commentaries;[74] secondly, the diversity of laws themselves; and thirdly, the many adaptations made by judges fostered the growth of a powerful class, the *iuris consulti*, that is, the 'legal experts'.

---

[64] Vives, *Aedes* 22 (M 1984: 29, lines 2-3): "*ius summum sequi, quae saepissime summa iniuria est*"; see Terence, *Heautontimorumenos* 796; Cicero, *De officiis* 1.10.33.
[65] Erasmus, *Adagiorum chiliades* 925 (*ASD* II-2: 432, lines 395-398; *CWE* 32: 244; Trans. R.A.B. Mynors).
[66] Vives, *Aedes* 22 (M 1984: 28, lines 30-31): "*Sunt enim multa de quibus legis lator praecipere non potest*".
[67] Vives, *Aedes* 15 (M 1984: 25, lines 12-13): "[leges] *per se mutae sunt atque surdae*".
[68] Ibid., lines 14-17: "*Viri quidam his adhibentur, quibus loquentibus ipsae loquantur, quibus uidentibus ac audientibus uideant ipsae atque audiant. Hos iudices appellare soliti sumus, quos ἀπὸ τῆς δίκης δικαστὰς Graecia nominauit*".
[69] Vives, *Aedes* 22 (M 1984: 28, lines 31-32): "*iudex, qui legum personam gerit atque sustinet*".
[70] Ibid., lines 32-33: "*flectatque legem ut exigit rei qua de agitur natura*".
[71] *Argentangina* 'silver-quinsy', meaning that judges will never agree to accept bribes. See Vives, *Sat.* 159 (Tello 2020a: 84, 107; *VOO* 4: 55, *Sat.* 155); Erasmus, *Adagia* 619 (*ASD* II-2: 144-146; *CWE* 32: 78).
[72] Vives, *Aedes* 15 (M 1984: 25, lines 20-24): "*graueis, sanctos, incorruptos, seueros, inadulabiles, castos, temperatos, prudentes, quos nec gratia flectet nec timor deterrebit humanus; odio, amicitia, ira uacabunt atque misericordia; non patientur umquam argentanginam nec argenteis hastis oppugnabuntur*".
[73] Vives, *Aedes* 16 (M 1984: 25-26, lines 31-1): "*bestiolis imbecillibus acres sunt et seueri, maiores uero minimo quoque eorum motu expauescun*t".
[74] See Maclean (1992: 12-66); Kuehn (1999: 390-391).

Such consultants were defined by Vives quite accurately in the *Disc. trad*. According to the humanist, "those who maintain and interpret the laws that have already been issued and accepted are called 'legal experts'", that is, 'experts in Law', 'experts in Right' or 'jurists', "because we request from them what the general Law performed in a particular case".[75] In the *Conc.*, the humanist called them "priests of the good and the equity, authorities on justice, guardians of the laws, defenders of the Law".[76] The leading role that jurists played in discussing legal matters is reflected in the *Aedes*, for the scrutinizing walker admits that he would like to discuss about the goodness and the equitable "according to the records of those who were experts in human and divine Law".[77] However, just as not all judges qualify as 'fair', not all legal experts either perform their duties properly. According to Vives, these advisors ought to be proficient in moral philosophy and to avoid causing more confusion through their counsel.

> If the duty and the business of a true and accomplished legal expert is precisely to explain the sense and the intention of the laws as well as what is equity in each particular law (that is, what makes the strength and the viability of the law; which law is useful to preserve in a particular time, and which one is to be rejected), such man is undoubtedly in need of philosophy, not much of natural philosophy but mostly and absolutely of moral philosophy.[78]

Indeed, Vives firmly believed that the purpose of moral philosophy is "to arrange the customs of human beings",[79] and that laws should help attain this purpose.[80] It is plausible that Vives may have suggested the following works of Aristotle as part of the formation of a proper legal expert: *Ethica Nicomachea, Magna Moralia, Oeconomica*, and *Politica*. These works were all gathered under the title of *libri morales* in the brief commentary on the works of the Greek philosopher that the humanist published in 1538.[81]

However, "those in whose hand lay the reflection and the advice on the Law (in order not to seem to be giving a service to the people that is meagre and easily understandable to anyone) take care that the laws be obscured so that it is not an easy matter for anyone to discern their sense; and that people have to visit them as though they were oracles".[82] Indeed, Vives makes a bitter criticism to this sort of pernicious legal experts. In the *Aedes*, the caretaker, in addition to attacking some jurists and commentators from the thirteen and fourteen centuries,[83] warns that

[75] Vives, *Disc. trad.* 5.4 (*VOO* 6: 409; Vigliano 2013: 459): "*Qui uero leges has latas iam et receptas tenent atque interpretantur, iuris consulti sunt dicti, quod ab eis quid sit ius in quaque re sancitum rogamus*".
[76] Vives, *Conc.* 3 (*VOO* 5: 310): "*sacerdotes boni, aequi, antistites iustitiae, praesides legum, patroni iuris*".
[77] Vives, *Aedes* 21 (M 1984: 28, lines 14-15): "*ex monumentis eorum qui humani diuinique iuris consultissimi fuere*".
[78] Vives, *Disc. trad.* 5.4 (*VOO* 6: 409-410; Vigliano 2013: 459): "*Sin id uero id demum est ueri et perfecti iurisconsulti munus ac professio, ut legem sensa et mentem explicet, ut quae sit in quaque lege aequitas (id est, qui uigor, quae uita, quas conseruari quoque tempore expediat, quas antiquari), nimirum philosophia huic homini est opus, mediocriter quidem naturali, sed morali plene ac absolute*".
[79] Vives, *Disc. corr.* 6.1 (*VOO* 6: 208; Vigliano 2013: 234): *"[Disciplina … Ethica], qua mores hominem componerentu*r".
[80] See note 50.
[81] See Vives, *Arist*. 16 (*VOO* 3: 34-36; Tello 2019: 78-91).
[82] Vives, *Disc. corr.* 7.2 (*VOO* 6: 229; Vigliano 2013: 258): "*At ii in quorum manu est consultatio et responsio de iure, ne rem exiguam et cuius obuiam uideantur praestare populo, curant ut obscurentur leges, ne promptum sit cuiuis qui sit sensus perspicere, adeundum uero ad se habeant tanquam ad oraculum*".
[83] See note 29.

> there are also others (they are, in fact, a huge plague) of a pure, rough and unknown fierceness. They dishonor, misuse and obliterate the entire Law with every kind of filthy deceptions and offenses; and finally, they obstruct and pollute all beauty.[84]

According to Vives, such advisors or legal experts are unfitted for jurisprudence, as they lack "good sense (*prudentia*): the only quality without comparison that is necessary in all the affairs of life".[85] In ancient times, legal experts were called *prudentes* ('sensible'),

> for the legal experts have always been considered to be 'sensible' and so named; and their branch of study called 'the good sense of the Law', and 'the answer of the sensible ones'. In fact, they did not believe that their profession could be practiced and be of service to the city without good sense.[86]

According to Vives, "it is necessary [for them] to have, as a kind of seasoning, a powerful and alert ability to judge in order to observe and estimate facts one by one".[87] This fair ability can only be achieved once the legal experts acknowledge the common nature of all human beings, and study the customs, the history, and the idiosyncrasies of many nations, but mainly those of their own cities.[88] Only by doing so will the Civil Law fulfill its aim, that is, to foster concord among citizens.[89]

3.4. Epiicia

This word appears only in *Aedes* 21; the Greek word ἐπιείκεια is used in 22. In other occasions, either the noun *aequitas* (in two occasions: 17[1], 24[1]) or the adjective *aequus* in its neutral form *aequum* (in six occasions: 18[1], 20[2], 21[1], 22[2]) are used. Ἐπιείκεια comes from the adjective ἐπιεικής 'fitting', 'reasonable', 'fair'; hence the noun conveys the notion of 'reasonableness', 'fairness', 'equity'. This word was usually rendered into Latin as *aequitas*,[90] but can also be found adaptations such as *epieikeia*,[91] and *epiichia*,[92] which is the closest version of Vives's *epiicia*.

After having presented the city (*ciuitas*) as the place where human beings can hold discus-

[84] Vives, *Aedes* 8 (M 1984: 20, lines 3-6): "*Sunt et alii (nam multesima haec est colluuio) assae totius squalae ac alienae feritatis, et omnium fallarum atque iniuriarum com omni proluuio collutulantes, obuarantes atque exfundantes cunctum ius, postremo uniuersa speciei porcentes et taetrantes*". Regarding the archaic Latin used by Vives in this passage, see note 21.

[85] Vives, *Disc. corr.* 7.3 (*VOO* 6: 235; Vigliano 2013: 265): "*prudentia…, res una in negociis uitae omnibus incomparabiliter necessaria*".

[86] Vives, *Disc. corr.* 7.3 (*VOO* 6: 236; Vigliano 2013: 265): "*Prudentes enim et habiti sunt semper 'iurisconsulti' et nominati, eaque ipsa disciplina 'iuris prudentia' et 'responsa prudentum': quippe eam professionem non sunt rati absque prudentia tueri se ac praestare suae ciuitati posse*".

[87] Vives, *Disc. trad.* 5.4 (*VOO* 6: 413; Vigliano 2013: 463): "*Quibus uelut condimento opus est magno et uegeto iudicio, ad adnotanda et censenda singula*".

[88] See ibid.: "*cognitis tum humani generis communi natura, tum multarum gentium animis et moribus, sed potissimum suae ciuitatis*".

[89] See ibid.: "*Ius ciuile spectare ad ciuium concordiam debet*".

[90] See, for example, the Latin translation of Aristotle's *Ethica Nicomachea* 5.10 (1137a31-1138a3) in I. Bekker (ed.), *Aristotelis Opera*, vol. 3: "*Aristoteles Latine interpretibus variis*" (Berlin: Academia Regia Borussica, 1831), 562; also Cicero, *De finibus* 2.18.59, 2.23.76; *De officiis* 1.16.50, 1.19.64 1.25.89; *De legibus* 1.6.19.

[91] See, for example, Thomas Aquinas, *Summa Theologiae* II2, q120, a1-2.

[92] See, for example, Thomas Aquinas, *Sententia libri Ethicorum* liber 5, lectio 16, n1.

sions and debates in a peaceful way, Vives remarks the importance of abiding by the natural law (*norma naturae*), while making a few and clear general laws (*leges*) that anyone could remember and practice without confusion. Further, the humanist stresses that the body of laws (*ius*) or each of the general laws must be adapted by judges (*iudices*) to the particular facts and circumstances; and that legal experts (*iuris consulti*) should provide wise and enlightening advice in interpreting the laws. Indeed, conflict arises from the fact that the "law is unable to take care of all things implied",[93] and a rigid application of the law may be, paradoxically, unfair.[94]

The scrutinizing walker of the *Aedes* seems to grasp this contradiction and draws the attention to the term *epiicia*, a kind of virtue[95] with which the Greeks tried to counteract this supposed deviation from justice. "Aristotle names with one single word", he explains, "what is equitable and good: ἐπιείκεια. He says that ἐπιείκεια is not the Law or a particular law that has been written and stamped, but the interpretation and the emendation of that particular law".[96] The original argument of Aristotle is as follows:

> When the law [νόμος] speaks universally, and a case arises on it which is not covered by the universal statement, then it is right (when the legislator fails us and has erred by oversimplicity) to correct the omission: to say what the legislator himself would have said had he been present, and would have put into his law if he had known […] This is the nature of the equitable [τὸ ἐπιεικές]: a correction of the law where it is defective owing to its universality.[97]

According to Vives, this universality cannot (and must not) be amended through a sudden increase of legislation. "When we want to explain everything but do not leave room for an honest interpretation of equity [*aequitas*], we introduce injustice".[98] The improvement of both particular laws and the whole legal system is not the result of enacting more laws (as new circumstances will eventually question the validity of present laws), but of adapting the existing ones to equity or what is equitable. "Equity is the soul of the laws", says Vives, "since nothing is more unfair than the laws which do not emanate or are conducted by what is equitable and good".[99]

Ius will only be the body of fair and even laws provided that judges and legal experts act with good sense (*prudentia*) and interpret the laws accordingly. "Undoubtedly", declares the scrutinizing walker, "I believe to be of a more acute good sense the fact of weighing and measuring all

[93] Vives, *Disc. corr.* 7.1 (*VOO* 6: 223; Vigliano 2013: 252): "*Lex de omnibus cauere non potest*".

[94] See notes 64, 65.

[95] Aristotle (*Ethica Nicomachea* 5.10; 1138a3) calls it "a sort of justice [δικαιοσύνη]", which is a virtue itself. See Thomas Aquinas, *Summa Theologiae* II2, q120, a1-2.

[96] Vives, *Aedes* 22 (M 1984: 28, lines 28-30): "ἐπιείκεια *hoc aequum et bonum unico Aristoteles appellat uocabulo; quam dicit non id ius esse aut eam legem quae sit scripta et expressa, sed legis emendationem atque interpretationem*".

[97] Aristotle, *Ethica Nicomachea* 5.10 (1137b19-24, b26-27; trans. D. Ross): "ὅταν οὖν λέγῃ μὲν ὁ νόμος καθόλου, συμβῇ δ' ἐπὶ τούτου παρὰ τὸ καθόλου, τότε ὀρθῶς ἔχει, ᾗ παραλείπει ὁ νομοθέτης καὶ ἥμαρτεν ἁπλῶς εἰπών, ἐπανορθοῦν τὸ ἐλλειφθέν, ὃ κἂν ὁ νομοθέτης αὐτὸς ἂν εἶπεν ἐκεῖ παρών, καὶ εἰ ᾔδει, ἐνομοθέτησεν *[…]* καὶ ἔστιν αὕτη ἡ φύσις ἡ τοῦ ἐπιεικοῦς, ἐπανόρθωμα νόμου, ᾗ ἐλλείπει διὰ τὸ καθόλου"; see also *Rhetorica* 1.13 (1374 a26- b23); Herodotus 3.53.4; Plato, *Leges* 757e.

[98] Vives, *Disc. corr.* 7.4 (*VOO* 6: 242; Vigliano 2013: 272): "*Vbi omnia explicare uolumus nec aequitatis syncerae interpretationi locum relinquimus, iniquitatem introducimus*".

[99] Vives, *Disc. corr.* 7.1 (*VOO* 6: 223; Vigliano 2013: 252): "*Est enim aequitas legum anima […] Nihil est enim iniquius quam leges, quae per aequum et bonum non spirant ac reguntu*r".

matters according to the place, the time, the people and the things themselves".[100] In fact, "who could see equity in reality or determine it, without good sense?"[101] Therefore, in order to carry out an accurate assessment of things,[102] "four fundamental qualities are necessary regarding the understanding and interpretation of equity: intelligence, judgment,[103] learning,[104] familiarity with a variety of subjects, and particularly experience".[105]

4. LAW WITHIN THE HUMANISTIC PROJECT

In the opening section of this article I briefly outlined some personal relationships that may have fostered Vives's interest for Law. But now, in this closing section, I would like to reflect briefly on a broader picture: the humanistic movement. Erasmus was definitely convinced that "man certainly is not born, but made man".[106] This, if pondered carefully, carries enormous implications, the most important being that *humanity's humaneness* is not given by Nature to humans for the sake of being born as such, but a quality that needs to be acquired, that is, aroused, grown, practiced, refined. Hence, education is paramount; moreover, Christian education is paramount. "In the *Areopagicitus*", says Vives, "Isocrates conveys that, in Athens, men did not become good by virtue of the laws, but because their customs had been arranged to uprightness through a decent education, and because love for virtue and equity had been imprinted in and attached to their hearts".[107] Whence, the wise saying of Horace, cited by Vives in the same section of the *Disc. corr.*: "Of what use are laws, pointless without morals?"[108]

When Erasmus remarked that "there will be no true law unless it is just, fair, and conducive to the common good",[109] he tried to admonish the future Emperor Charles V that "your first aim

[100] Vives, *Aedes* 24 (M 1984: 29-30, lines 30-1): "*Ego sane prudentiae maioris existimarem omnia iuxta loca, tempora, personas, res denique ipsas perpendere ac metiri*".

[101] Vives, *Disc. corr.* 7.3 (*VOO* 6: 236; Vigliano 2013: 265): "*Nam quis aequitatem rerum uideat aut definiat sine magna prudentia?*".

[102] See Vives, *Ad sap.* 1 (*VOO* 1: 1; Tobriner 1968: 85): "*Vera sapientia est de rebus incorrupte iudicare, ut talem unamquamque existimemus qualis ipsa est*", that is, "True wisdom is to judge a thing correctly and to identify it for what it actually is".

[103] *Ingenium, iudicium*. See Vives, *An. uita* 2.5, 2.6 (*VOO* 3: 362-369; Sancipriano 1974: 278-301).

[104] *Eruditio*. See Vives, *Ad sap.* 122-201 (*VOO* 1: 11-16; Tobriner 1968: 101-110).

[105] Vives, *Disc. corr.* 7.3 (*VOO* 6: 235; Vigliano 2013: 265): "*Nam ad cognitionem atque interpretationem aequitatis, quattuor maximis rebus est opus: ingenio, iudicio, eruditione, uariarum rerum usu atque experientia*".

[106] Erasmus, *De pueris statim ac liberaliter instituendis declamatio* (ASD I-2: 31, line 21; *CWE* 26: 304; trans. B. C. Verstraete): "*homines […] non nascuntur sed finguntur*".

[107] Vives, *Disc. corr.* 7.1 (*VOO* 6: 228; Vigliano 2013: 257): "*Isocrates docet in Areopagitico, non beneficio legum bonos uiros Athenis fieri, sed quod mores haberent honesta educatione ad rectum compositos, amorem uirtutis et aequitatis pectoribus impressum et infixum*". See Isocrates, *Areopagiticus* 41-42; also, Vives's translation from Greek into Latin (*SWJV* 12: 193; trans. E.V. George, G. Tournoy): "It is not by decrees but by good morals that a city [*ciuitas*] is best governed. For among those badly educated and taught, there is no respect for the laws, regardless how painstakingly they are written [*quamlibet exacte perscriptarum*]. On the contrary, what was bequeathed to those who have been brought up properly is sufficient to assure good morals. To those who understood all this, the first priority in governing was not which punishments [*poenis*] should be meted out to malefactors, but what measures they could ultimately find that would keep the citizens from even wanting to do anything deserving punishment. That is what in the end they decided was their duty [*munus*] and what was most befitting administrators of cities [*moderatores ciuitatum*]. For to contemplate punishments is to play the role of an enemy [*hostem*], not a citizen [*ciuem*]".

[108] Horace, *Carmina* 3.24.35-36: "*Quid leges sine moribus / uanae proficiunt*?"

[109] Erasmus, *Institutio principis Christiani* (*ASD* IV-1: 194, lines 865-866; *CWE* 27: 264; trans. N. M. Cheshire and

therefore should be to have citizens in whom the best of principles have been implanted".[110] Without sensible rulers and virtuous citizens, whose heart and mind are free from low passions and full of God's precepts, Law will always be insufficient to guarantee social harmony and the prevalence of the common good; whence the prominence of pedagogy, moral philosophy, Christian religion and pacifism in Vives's writings. Goodness and virtue need to be aroused, elicited, taught, spread, cherished, preserved; and laws must be issued taking into account this purpose. In the end, what Vives pursues is extremely simple, and yet so difficult to accomplish: encourage everyone in such a way that "no one wants to be wicked".[111] And of all existing and possible laws two stand out: to know oneself,[112] and to love each other.[113]

5. BIBLIOGRAPHY

The following bibliography includes books cited in this article, but it would also like to present a selection of monographs and articles that may help the reader to further pursue research on Vives's approach to jurisprudence, and on Law in the Renaissance.

Abbreviations[114]

Ad sap. = Introductio ad sapientiam (Louvain: P. Martens, 1524).

Aedes = Aedes legum (Louvain: D. Martens, 1519).

An. sen. = Anima senis (Louvain: D. Martens, 1519).

An. uita = De anima et uita libri tres (Basel: R. Winter, 1538).

Arist. = De Aristotelis operibus censura (1538).

Conc. = De concordia et discordia in humano genere ad Carolum V Caesarem libri quattuor (Antwerp: M. Hillen, 1529).

Conscr. = De epistolis conscribendis (Antwerp: M. Hillen, 1534 [1533]).

Ciu. dei = Aurelii Augustini De ciuitate dei commentarii (Basel: J. Froben, 1522).

Clyp. = Christi clypei descriptio (Paris: J. Lambert, 1514).

Disc. = De disciplinis libri XX (Antwerp: M. Hillen, 1531).

Disc. corr. = De causis corruptarum artium (first part of *Disc.*, seven books)

Disc. prob. = De instrumento probabilitatis (included in the third part of *Disc.*)

M. J. Heath): "*ne lex quidem erit […] ni iusta sit, ni aequa, ni publicis commodis consulens*".

[110] Erasmus, *Institutio principis Christiani* (*ASD* IV-1: 196, lines 924-925; *CWE* 27: 266; trans. N. M. Cheshire and M. J. Heath): "*Id igitur in primis agendum, ut ciues habeas optimis institutos rationibus*".

[111] Vives, *Disc. corr.* 7.1 (*VOO* 6: 227; Vigliano 2013: 256): "*ne qui uelint esse mali*"; see note 50.

[112] See, for example, Vives, *Conc.* 4.3 (*VOO* 5: 338): "Human beings [*homo*] should already begin to be as such, that is, to know themselves [*nosse se*]"; *Ad sap.* 11 (*VOO* 1: 2; Tobriner 1968: 86).

[113] See, for example, Vives, *Sub.* 1.10.7 (*SWJV* 4: 69; quotation of Jn 15:12): "This is my commandment, that you love one another [*diligatis inuicem*]"; also *Ad sap.* 351 (*VOO* 1: 29; Tobriner 1968: 129).

[114] Abbreviations in alphabetical order, with the original Latin title that appears on the title page of the printed edition. In square brackets, the date of completion of the work, if it differs from the date of publication.

Disc. trad. = De tradendis disciplinis siue De institutione Christiana (second part of *Disc.*, five books).

Fab. = Fabula de homine (Louvain: D. Martens, 1519 [1518])

Geneth. = Genethliacon Iesu Christi (Louvain: D. Martens, 1519).

Georg. = Praefatio in Georgica Virgilii (Louvain: D. Martens, 1519 [1518]).

Ling. = Linguae Latinae exercitatio (Basel: R. Winter, 1539 [1538]).

Med. psal. = Meditationes in septem psalmons poenitentiae (Louvain: D. Martens, 1519 [1518]).

Ouatio = Mariae parentis Christi Iesu ouatio (Paris: J. Lambert, 1514).

Pacif. = De pacificatione liber unus (Antwerp: M. Hillen, 1529).

Philos. = De initiis, sectis et laudibus philosophiae (Louvain: D. Martens, 1519 [1518])

Pomp. = Pompeius fugiens (Louvain: D. Martens, 1519).

Praef. Leg. = Praefatio in Leges Ciceronis (Lyon: G. Huyon, 1514)

Prael. Triumph. = In suum Christi triumphum praelectio (Lyon: G. Huyon, 1514).

Pseud. = In pseudodialecticos (Louvain: D. Martens, 1519).

Sap. = Sapiens (Paris: G. Gourmont, 1514).

Sat. = Satellitium siue Symbola (Louvain: P. Martens, 1524).

Somn. uig. = Somnium et uigilia (Antwerp: J. Theobaldus Gorneensen,1520)

Sub. = De subuentione pauperum siue De humanis necessitatibus libri II ad senatum Brugensem (Bruges: H. De Croock, 1526).

Syll. = Declamationes Syllanae quinque (Antwerp: M. Hillen, 1520).

Temp. = De tempore quo natus est Christus (Louvain: D. Martens, 1519 [1518]).

Triumph. = Christi Iesu liberatoris nostri triumphus (Paris: J. Lambert, 1514).

Editions and translations

Alcina, J. F. (tr.). 1988. *Juan Luis Vives: Diálogos y otros escritos*. Barcelona: Planeta. [*Aedes*, 165-178]

Allen = P. S. Allen, H. M. Allen, H. W. Garrod (eds.). 1906-1958. *Opus epistolarum Des. Erasmi Roterodami*. 12 vols. Oxford: Clarendon Press.

ASD = 1969 – . *Opera Omnia Desiderii Erasmi Roterodami*. Amsterdam: North-Holland / Elsevier / Brill. [Last volume published so far: ASD VIII-1, 2019]

Calero, F.; Arribas, M. L.; Usábel, P. (trs.). 1997. *Juan Luis Vives: De concordia et discordia in humano genere / Sobre la concordia y la discordia en el género humano; De pacificatione / Sobre la pacificación; Quam misera esset uita christianorum sub turca / Cuán desgraciada sería la vida de los cristianos bajo los turcos*. Valencia: Ajuntament de València. [*CJLV* 8A]

CJLV = Roca Meliá, I. (dir.). 1992-2010. *Colección Juan Luis Vives*. Valencia: Ajuntament de

València.

Coronel, M. A. *et al.* (trs.). 1997. *Juan Luis Vives: De disciplinis / Las Disciplinas*. Valencia: Ajuntament de València (*CJLV* 7A-C). [*Disc. corr.* 7, vol. 7A: 305-332; *Disc. trad.* 5, vol. 7B: 250-258]

CWE = 1974 – . *Collected Works of Erasmus*, vols. 1-22: "Correspondence". Toronto: University of Toronto Press.

García Ruiz, M. P. (ed., tr.). 2005. *Luis Vives: Los Diálogos (Linguae Latinae Exercitatio)*. Pamplona: EUNSA.

LC = De Vocht, H. (ed.). 1928. *Literae virorum eruditorum ad Fransciscum Craneveldium 1522-1528*. Louvain: Uystpruyst.

LCB = Ijsewijn, J. *et al.* (eds.). 1992-1995. "Litterae ad Craneveldium Balduinianae. A Preliminary Edition".

Humanistica Lovaniensia 41 (1992): 1-85, Ep. 1-30; 42 (1993): 2-51, Ep. 31-55; 43 (1994): 15-68, Ep. 56-85; 44

(1995): 1-78, Ep. 86-116. [116 letters, from March 1520 to November 1528; cited according to letter number]

M = Matheeussen, C. (ed.). 1984. *Ioannis Lodovici Vivis Valentini Praefatio in Leges Ciceronis et Aedes legum*. Leipzig: Teubner.

Pérez Durà, F. J. (coord.). 1992. *Joan Lluís Vives: antologia de textos*. Valencia: Universitat de València / Generalitat Valenciana. [Bilingual Latin-Catalan edition: *Aedes ep.*, 192-193; *Aedes*, 220-237; *Praef. Leg.*, 196-217. There is also a bilingual Latin-Spanish edition, published the same year]

— ; Estellés González, J. M. (eds.). 1992-2010. "Ioannis Lodouici Viuis Valentini Commentarii ad diui Aurelii Augustini De ciuitate Dei", 5 vols. In *Ioannis Lodouici Viuis Valentini Opera Omnia* 2-6. Valencia: Alfons el Magnànim / Universitat de València. [2 (1992), 3 (1993), 4 (2001), 5 (2004), 6 (2010)]

Riber, L. (tr.). 1947-1948. *Juan Luis Vives: Obras completas*. 2 vols. Madrid: Aguilar, 19. [*Aedes*, vol. 1: 681- 689; *Praef. Leg.*, vol. 1: 691-702; *Disc. corr.* 7, vol. 2: 510-526 ; *Disc. trad.* 5, vol. 2: 664-669]

Roca Meliá, I. "El santuari de les lleis". In Pérez Durà 1992: 219-237. [Catalan translation] Sancipriano, M. (ed., tr.). 1974. *Ioannis Lodovici Vivis De anima et vita*. Padua: Gregoriana Editrice.

SWJV = Ch. Fantazzi (gen. ed.). 1987 – . *Selected Works of J. L. Vives*. Leiden / Boston: Brill [12 vols. have appeared so far].

SWJV 1 = Fantazzi, Ch.; Matheeussen, C.; George, E. V. (ed., trs.). 1987. *Early Writings I: De initiis, sectis et laudibus philosophiae; Veritas fucata; Anima senis; Pompeius fugiens*.

SWJV 3 = Fantazzi, Ch. (ed., tr.). 1989. *De conscribendis epistolis.*

SWJV 4 = Fantazzi, Ch.; Matheeussen, C. (eds., trs.). 2002. *De subventione pauperum. SWJV* 12 = George, E. V.; Tournoy, G. (eds., trs.). 2019. *De Europae dissidiis et republica.*

Tello, J. (ed., tr.). 2009. *Joan Lluís Vives: L'assistència als pobres (De subuentione paupe-*

rum). Barcelona: Llibres de l'Índex.

— (ed., tr.). 2019. *Joan Lluís Vives: Presentació de les obres d'Aristòtil (De Aristotelis operibus censura).* Barcelona: Institut d'Estudis Catalans / Societat Catalana de Filosofia. [Bibliography, 107-124]

— (ed.). 2020a. "The *Satellitium sive Symbola* of Joan Lluís Vives: Critical Edition with a Short Introduction". *Humanistica Lovaniensia* 69: 35-114.

Tobriner, M. L. (tr.). 1968. *Vives' Introduction to Wisdom: A Renaissance Textbook*. New York: Teachers College Press / Columbia University.

Tournoy, G.; Mund-Dopchie, M. (eds., tr.). 2015. "La correspondance de Guillaume Budé et Juan Luis Vives. Introduction, édition critique et annotations". *Supplementa Humanistica Lovaniensia* 38. Louvain: Leuven University Press.

Vigliano, T. (ed., tr.). 2013. *Juan Luis Vives: De disciplinis / Savoir et enseigner*. Paris: Les Belles Lettres.

VOO = Maians Siscar, G. (ed.). 1782-1789. *Ioannis Ludouici Viuis Valentini Opera Omnia, distributa et ordinata in argumentorum classes praecipuas*. 8 vols. Valencia: B. Monfort. [*VOO* 1 (1782); *VOO* 2 (1782);*VOO* 3

(1782); *VOO* 4 (1783); *VOO* 5 (1784); *VOO* 6 (1785); *VOO* 7 (1788); *VOO* 8 (1790)]

Zetzel, J. E. G. (tr.). 2017. *Cicero: On the Commonwealth and On the Laws*. Cambridge: Cambridge UniversityPress. [Second edition]

Studies

Berger, A. 1953. "Encyclopedic Dictionary of Roman Law". In *Transactions of the American Philosophical Society* 43/2 (New Series): 333-808. [Reprinted at Clark, NJ: The Lawbook Exchange, 2014]

Bonilla San Martín, A. 1903. *Luis Vives y la Filosofía del Renacimiento*. Madrid: Imp. del Asilo de Huérfanos del

S. C. de Jesús [Reprinted at Madrid: Publicaciones de la Real Academia de Ciencias Morales y Políticas, 1981].

Buccolini, C.; Lamarra, A. (eds.). 2019 *Nomos-Lex: Atti del XV Colloquio Internazionale Roma,4-6 gennaio 2016*. Florence: Leo S. Olschki.

Carreras Artau, T. 1910. "La concepción jurídica de Juan Luis Vives. Sumario de una disertación". Congreso de la Asociación Española para el Progreso de las Ciencias. Valencia, 17-20 de mayo de 1910.

— 1911. *La filosofía moral y jurídica de Luis Vives*. Barcelona. [Lecture delivered at the University of Barcelona].

— 1931. "La filosofía moral, social y jurídica de Vives. Lección en la Cátedra Luis Vives". *Cultura Valenciana*,5: 32. [Review]

Castán Vázquez, J. M. 1958. "El derecho civil en la obra de Luis Vives". *Anuario de Derecho Civil*, 2: 411-433.

— 1977. “Las leyes y su reforma según Erasmo y Vives”. In *Filosofía y Derecho. Estudios en honor del Profesor José Corts Grau*. Ed. M. Cobo del Rosal. Valencia: Universitat de València, vol. 1: 81-93.

CEBR = Bietenholz, P. G.; Deutscher, Th. B. (eds.). 1985-1987. *Contemporaries of Erasmus: A Biographical Register of the Renaissance and Reformation*. 3 vols. Toronto: University of Toronto Press.

Coleman, J. 2000. *A History of Political Thought: From the Middle Ages to the Renaissance*. Oxford: Blackwell. Dyck, A. R. 2004. *A Commentary on Cicero, De Legibus*. Ann Arbor: The University of Michigan Press.

Fantazzi, Ch. (ed.). 2008. *A Companion to Juan Luis Vives*. Leiden / Boston: Brill.

Fernández Nieto, F. J.; Melero, A.; Mestre, A. (eds.). 1998. *Luis Vives y el Humanismo Europeo*. Valencia: Universitat de València.

Fernández-Santamaría, J. A. 1977. *The State, War and Peace: Spanish Political Thought in the Renaissance 1516-1559*. Cambridge: Cambridge University Press.

— 1998. *The Theater of Man: J. L. Vives on Society*. Philadelphia: American Philosophical Society.

Fredona R. 2021. “Roman Law in the Renaissance”. In *Encyclopedia of Renaissance Philosophy*. Ed. M. Sgarbi. 4 vols. Cham: Springer. [Forthcoming]

Garcia, A. 1987. *Els Vives: una família de jueus valencians*. Valencia: Tres i Quatre.

George, E. V. 1991. “Fanciful Journeys in Vives’ Early Writings”. In *Acta Conventus Neo-Latini Torontonensis: Proceedings of the Seventh International Congress of Neo-Latin Studies*. Eds. A. Dalzell, Ch. Fantazzi, R. J. Schoeck. New York: SUNY (Medieval & Renaissance Texts & Studies), 335-343.

Gilmore, M. P. 1961. “The Jurisprudence of Humanism”. *Traditio*, 17: 493-501.

— 1963. *Humanists and Jurists: Six Studies in the Renaissance*. Cambridge (Mass.): Harvard University Press.

Gómez-Hortigüela, Á. 1998. *El Pensamiento filosófico de Juan Luis Vives*. Valencia: Institució Alfons el Magnànim.

González González, E. 1987. *Joan Lluís Vives: de la escolástica al humanismo*. Valencia: Generalitat Valenciana.

— Albiñana, S.; Gutiérrez, V. 1992. *Vives. Edicions prínceps*. Valencia: Universitat de València / Generalitat Valenciana.

— 2007. *Una república de lectores: difusión y recepción de la obra de Juan Luis Vives*. Mexico: IISUE / UNAM/ Plaza y Valdés. [Detailed bibliography, 403-493]

Guy, A. 1972. *Vivès ou l’Humanisme engagé*. París: Éditions Seghers.

Havu, K. 2015. *Politics, Emotions, and the Rhetoric of Decorum in Juan Luis Vives (1492/1493-1540)*. PhD Dissertation. Florence: European University Institute.

Iglesias Santos, J. 1993. *Derecho romano: historia e instituciones*. Barcelona: Ariel. [11th edition, revised and updated]

Kastely, A. H. 1991. "Cicero's De Legibus: Law and Talking Justly Toward a Just Community". *Yale Journal of Law & the Humanities* 3/1: 1-31.

Kelley, D. R. 1991. "Law". In *The Cambridge History of Political Thought 1450-1700*. Eds. J. H. Burns, M. Goldie. Cambridge: Cambridge University Press, 66-94.

Kilcullen, R. J. 2011a. "Natural Law". In Lagerlund 2011: 831-839.

— 2011b. "Natural Rights". In Lagerlund 2011: 867-873.

Kisch, G. 1960. *Erasmus und die Jurisprudenz seiner Zeit: Studien zum humanistischen Rechtsdenken*. Basel: Helbing & Lichtenhahn.

Kuehn, Th. 1999. "Law". In *Encyclopaedia of the Renaissance*. Ed. P. F. Grendler. New York: Charles Scribner's Sons, vol. 3: 388-396.

Lagerlund, H. (ed.). 2011, *Encyclopedia of Medieval Philosophy: Philosophy Between 500 and 1500*. 2 vols. Dordrecht: Springer.

Llano Alonso, F. H. 2012. "Cicero and Natural Law". *Archiv für Rechts-und Sozialphilosophie*, 98/2: 157-168.

Maclean, I. 1992. *Interpretation and Meaning in the Renaissance: The Case of Law*. Cambridge: Cambridge University Press.

Maffei, D. 1956. *Gli inizi dell'Umanesimo Giuridico*. Milan: Dott. A. Giuffrè Editore [Reprinted, 1972]. Maians Siscar, G. 1782. *Vita Vivis*. In *VOO* 1: 1-220.

Majeske, A. J. 2006. *Equity in English Renaissance Literature: Thomas More and Edmund Spenser*. New York: Routledge.

Matheeussen, C. 1981. "Das rechtsphilosophische Frühwerk des Vives". In *Juan Luis Vives: Arbeitsgespräch in der Herzog August Bibliothek Wolfenbüttel vom 6. bis 8. November 1980*. Ed. A. Buck. Hamburg: Hauswedell, 93-106.

Mestre, A. (coord.). 1992. *Ioannis Lodouici Viuis Valentini Opera Omnia*, vol. 1: "Volumen introductorio". Valencia: Institució Alfons el Magnànim / Generalitat Valenciana.

Monzón, A. 1982. "Juan Luis Vives y la enseñanza del Derecho". *Revista de la Facultad de Derecho de la Universidad Complutense*, 5: 241-248.

— 1987. *El Derecho en Joan Lluís Vives*. Valencia: Universitat de València.

— 1992. "Humanismo y derecho en Joan Lluís Vives". In Mestre 1992: 263-316.

— 1998. "Estado, derecho y pasiones en Vives. Perspectivas de antropología jurídica". In Fernández 1998: 97- 105.

Moreno Gallego, V. 2006. *La recepción hispana de Juan Luis Vives*. Valencia: Generalitat Valenciana. Noreña, C. G. 1970. *Juan Luis Vives*. The Hague: Nijhoff.

— 1989. *Juan Luis Vives and the Emotions*. Carbondale: Southern Illinois University Press.

Padovani, A.; Stein, P. G.; Errara, A. (eds.). 2009. *The Jurists' Philosophy of Law from Rome to the Seventeenth Century*. Dordrecht: Springer ("A Treatise of Legal Philosophy and General Jurisprudence", vol. 7).

Pennington, K. 1993. *The prince and the Law, 1200–1600: Sovereignty and Rights in the Western Legal Tradition*. Berkeley: University of California Press.

Piano Mortari, V. 1978. *Diritto, logica, metodo nel secolo XVI*. Naples: Jovene.

Pinta Llorente, M. de la; Palacio y De Palacio, J. M de. 1964. *Procesos Inquisitoriales contra la familia judía de Juan Luis Vives*. Madrid: Instituto Arias Montano.

Roca Meliá, I. 1992. "Comentario filológico a las obras jurídicas de Juan Luis Vives". *Real Academia de Cultura Valenciana (Aula de Humanidades y Ciencias, Serie Filológica)* 9: 65-82.

— 1993. "Juan Luis Vives 'Aedes legum', 5-10. Estudio Filológico". *Real Academia de Cultura Valenciana (Aula de Humanidades y Ciencias, Serie Filológica)* 11 (1993): 7-177.

— 1994. "Notas de C. Matheeussen a Aedes legum 5-10 de J. Luis Vives". *Actas del VIII Congreso Español de Estudios Clásicos (Madrid, 23-28 de septiembre de 1991)*. Madrid: Ediciones Clásicas, vol. 3: 559-564.

— 1995. "Revisión crítica de la interpretación de Gregorio Mayáns sobre J. L. Vives, Aedes legum, 5-10".

Helmántica 139-141: 505-524.

— 1998. "La primera 'Praelectio' de Luis Vives 'In Leges Ciceronis' (ed. Lyon 1514)". In *Actas Congreso Internacional sobre Humanismo y Renacimiento*. Gen. Ed. J. Matas Caballero. León: Universidad de León, vol. 1: 625-631.

Skinner, Q. 1988. "Political philosophy". In *The Cambridge History of Renaissance Philosophy*. Eds. Ch. B. Schmitt, Q. Skinner. Cambridge: Cambridge University Press, 389-452.

Stein, P. 1999. *Roman Law in European History*. Cambridge: Cambridge University Press.

Tello, J. 2018. "A catalogue of the works of Joan Lluís Vives: a tentative proposal". *Convivium* 31: 59-100.

— 2020b. "Els límits del raonament i les possibilitats de la fe en Joan Lluís Vives". In *Actes del Cinquè Congrés Català de Filosofia*. Eds. J. Monserrat, J. Tello. Andorra la Vella / Barcelona: Societat Andorrana de Ciències / Societat Catalana de Filosofia / Institut d'Estudis Catalans, 83-92.

Tournoy, G. 1987. "Ioannis Lodovici Vivis Valentini Praefatio in Leges Ciceronis et Aedes Legum by Constantinus Matheeussen". *Gnomon* 59/2: 121-124. [Review]

Journal of Catalan Intellectual History (JOCIH)
Online ISSN 2014-1564 DOI: 10.2478/jocih-2019-0004

Received 30/03/2020 Accepted 07/09/2020 Published 01/12/2020

RESPONDING TO VIOLENCE: THE *HASKAMOT* OF BARCELONA AND THE JEWISH POLITICAL TRADITION

Mario Macías
(Institute of Law and Technology, Universitat Autònoma de Barcelona)
mario.macias@uab.cat

ABSTRACT

The aim of this article is to present the *Haskamot* of Barcelona of 1354 in their political and legal context. These agreements were a response to the difficult situation faced by the Jews of the Crown of Aragon in the 14th c., when natural and human disasters threatened the survival of their communities. The target of this project was to assemble all the *aljamas* of the Crown in a supra-communal assembly of representatives. The drafters also wished to achieve a number a measures from the King and the Church improving the delicate situation of Catalan-Aragonese Jewry. These *Haskamot*, despite not succeeding in their objectives, are a perfect starting point for any research on the legal and jurisdictional relations between Christians and Jews.

Keywords: Jewish Political Thought, Medieval Catalonia, Jewish self-Government, 14th century.

Acknowledgements: *Project IEC PRO2018-S05. Models del dret i la filosofia política catalanes: semàntica de les doctrines jurídicopolítiques del pactisme en les seves diferents fases* [Models of Catalan political philosophy and law: Semantics of pact-model driven political and legal doctrines at their different stages].
Disclosure statement: No potential conflict of interest was reported by the authors.

Suggested citation: Macías, M. (2019-2020). "Responding Violence: The *Haskamot* of Barcelona and the Jewish Political Tradition", *Journal of Catalan Intellectual History* 12: 46-63 DOI: 10.2478/jocih-2019-0004

1. INTRODUCTION

The purpose of this contribution is to present the agreements signed in Barcelona in 1354 by a number of delegates from some of the *aljamas* of the Crown of Aragon as a political and legal response to the rise of anti-Jewish hostility. In addition, this paper also aims to provide a preliminary approximation to the political and legal implications of the document. As will be observed, these *haskamot* intended to strengthen intercommunal cooperation, as well as to improve the management of the most transcendental aspects of their administration. Their final goal was the creation of a supra-communal institution, which would have become a groundbreaking construction in the Crown. The delegates thereby tried to overcome the endemic disunion and internal conflicts that weakened the aljamas and facilitated the Christian attacks, both legal and physical. However, these targets were impossible to achieve without the support of the monarchy and the Church.

The difficult context experienced during the reign of Peter III (IV in Aragon) *the Ceremonious* had deep negative effects on the Catalan society as a whole; however, the Jews, a repudiated minority, suffered its consequences with greater intensity. The dramatic introduction that opens the *Haskamot* of Barcelona and the subsequent demands attest to this situation. References to the assaults at the Jewish quartiers (especially in times of sickness and Christian celebrations), the abuse of authority by royal servants and the lack of self-government competences are frequent.

The historiographical interest of these agreements lays in their unintentional narrative richness. Though they were conceived as a cold and functional normative document, the *Haskamot* are, in fact, a neat portrait of Christian-Jewish relations in 14th c. Crown of Aragon. Every single measure adopted shows an aspect of that intricate coexistence. They all are perfect departure points for any research in this regard. In addition, these *haskamot* allow appreciating the interaction of two legal systems in a complex reality. Jewish communities invested their efforts in keeping alive their laws and political traditions—a pretension more or less respected by Catalan-Aragonese monarchs—but they had to deal with the interferences of the external ruling powers. The interrelation of both systems in the Jewish sphere had an impact on some of their traditional conceptions about authority and self-government. This fact led to a certain hybridization of Jewish politics and public law, as well as to many—successful—attempts to *Judaize* the reception of Western influences, a reality denied by many scholars. The *Agreements of Barcelona* can open a door for the study of this phenomenon.

After presenting the content of the *Haskamot* of Barcelona, we will study their position in the Jewish Catalan legal tradition. One of the most striking aspects of the evolution of this tradition is the parallelism with the process of political and legal construction of Catalan statehood. The analysis of this aspect in these scarce pages would be an objective too ambitious, but we will try to summarily present the current scholarly debate about the independent birth of this tradition and its relation with European theories.

Ultimately, this paper is no more than a first approximation to the topics and ideas that are to be developed in my doctoral dissertation.

2. SOME NOTES ABOUT THE CONTEXT OF THE CATALAN JEWRY IN 1354

As any other historical event, the *Haskamot of Barcelona* were a direct consequence of their particular context. Trying to summarize in a few lines the outlook of Judaism in the Crown of Aragon would be an impossible and futile task. The dialectic between popular hate and the attempts of governmental institutions to protect the Jewish subjects of the Crown was, as in the rest of Western Europe, constant. A huge number of excellent and extensive works has been written about anti-Jewish disorders, segregation, legal treatment and Christian apologetics. Therefore, we will limit ourselves to point two causes that had a direct impact on our topic: the Black Death, with all its aftermaths, and the financial situation of the Crown and its repercussion on Jewish communities.

These agreements were written barely six years after Black Death (summer of 1348), whose political, economic and spiritual consequences had important repercussions in the mentality of European societies. Even nowadays the Black Death still plays a dark role in the collective imagination. As all the regions affected by the disease, Catalonia experienced high mortality rates, though there is no agreement on the exact number of deceases. Indeed, the estimations proposed by the experts range from a 20% (like Freedman 1991: 162) to a 70% (Parrilla Valero 2019, for example) out of the 600,000[1] inhabitants of Catalonia before the spreading of the pandemic[2]. In the city of Valencia, Peter III reported that in June "*hi moriren tots jorns més de tres-centes persones*" (Pere el Cerimoniós 1983: 1104)[3]. Obviously, Jewish communities were not an exception and they also suffered the ravages of the pandemic. In addition to this natural catastrophe, they had to deal with the outbreaks of anger among the Christian population, who needed to find a responsible for such a biblical plague.

Unlike other territories stricken by Black Death[4], in Catalonia, as well as in the rest of the Crown of Aragon, no official document blaming the Jews for the propagation of the disease exists. That did not hamper popular explosions of violence against Jews, as the assault to the *call* (Jewish quartier) of Barcelona in that summer. Seemingly, Christian population did not consider that the Jews were the direct culprits of the plague (as poisoners or evil wizards); they rather thought that Jews were the main sinners that God wanted to punish (Nirenberg 1996: 239). Among all this chaos and devastation it is difficult to determine how many victims resulted from

[1] This is the estimation proposed by Postan and Miller (1987: 343). Unfortunately, the first large scale censuses on fireplaces (homes, *fogatges* in Catalan) in Catalonia were elaborated in the decades that followed to the pandemic. See Smith (1944), Ortí i Gost (1999) and Feliu, G. (1999).

[2] According to estimations exposed by Freedman (1991:162), mortality would have risen to 28.5% in La Seu d'Urgell and to 70% in the Plain of Vic. Antoni Pladevall (1962) studied the consequences of Black Death in the Plain of Vic, an inland Catalan region south the Pyrenees. He concluded that over two thirds of local population perished during the disease. The same rate is accepted by Bisson (1986: 165). Nirenberg (1996: 235) suggested that about a 36% of Barcelonan population perished—that is, around 15.000 out of 42.000 inhabitants. Thomas Bisson (1986: 165) finally estimated that mortality ranged between the 25% and 35% for the entire Crown of Aragon. Nevertheless, estimations on mortality rates tend to be quite inexact since they can only rely on indirect sources, such as the number of last wills executions or the burial records of the parishes (Montoro 2018)

[3] Despite this number can appear overstated, d'Abadal (1987: 43) held that between 12.000 and 18.000 out of the 30.000 inhabitants of the city of Valencia were killed by Black Death, which lend credibility to the king's estimation of 9.000 deaths in June.

[4] Some examples of measures against Jews adopted by local noblemen and city councils in Central Europe are compiled in Horrox (1994: 208-211).

the assaults, but some authors have pointed that they were enough to reduce drastically the Jewish demography in the Peninsula during generations[5].

All the authors who have approached the text concur in the major role of the Black Death in triggering the agreements, especially for the necessity to prevent further popular outbreaks and forced conversions (Feliu and Riera 1987; Baer 2001, II: 24; Tartakoff 2012: 63, f.n. 4). However, despite the dramatic impact of Black Death and its aftermath on Jewish communities, there are no direct mentions to the pandemic in the *Agreements*. The only allusion to diseases in the text comes from their relation with the anti-Jewish disorders. Despite the lack of references, and albeit it would be nearly impossible to calculate the real impact of Black Death on this political decision, it is highly probable that such a horrible, traumatic, and transcendent fact (to which we should add the economic consequences and the explosions of violence[6]) had a direct influence on the planning of a project of that sort.

In addition to the impact that the Black Death had on the whole Catalan society, as well as to the rising legal and popular anti-Judaism, we should also pay attention to the financial situation of the Crown, particularly in Catalonia. The reign of Peter the *Ceremonious* was tumultuous in many aspects, both political and natural, which had a negative effect on the royal treasury. Leaving aside other factors that could have contributed to create this difficult economic context, the concatenation of wars in which the Crown of Aragon was involved played a major role. During his fifty years reign, King Peter had to deal with an endless number of conflicts. Some of them were internal, aroused by revolted noblemen (War of the *Union*, 1347-1348); in some others, the Crown had to fight against its neighbors in the Peninsula (perhaps the most important was the war against Castile, from 1356 to 1369) and others were provoked by power struggles in the Mediterranean, like the Sardinian revolts, the conquest of the Crown of Mallorca and the conflicts with Genoa. The weight of the military expenses was excessive and atrocious for royal economy (Bisson 1986: 107-121; AAVV 1991) and the king was pushed to frequently summon the *Corts* (saving distances, the Catalan Parliament) to defray his armies[7]. This led to the prorogation or endorsement of taxes and contributions.

Thus, for example, the sessions of the *Corts* held during the ten previous years to the writing of the *Haskamot* (between 1344 and 1354) evince the evolution of fiscal pressure: In the *Corts* held in Barcelona on March 1344, the donation of 70.000 pounds was approved to be collected from royal municipalities in order to finance the campaign against the Kingdom of Mallorca in the Roussillon; in the *Corts* held in Perpignan (November 1350), in Vilafranca del Penedès (march 1353) and in Barcelona (April 1353), it the direct collection of 170.000 bronze pounds was endorsed, as well as the approval of new taxes on trade goods and the prorogation of some

[5] Cohen Jr (2007: 31). In a wider perspective, the number of Jews in the Peninsula would have decreased from 900.000 at the end of XIII c. to 250.000 in 1410 due to violence, natural disasters and forced conversions. Also Baron ([1942] 1976: 16).

[6] Mosse Natan, one of the drafters of the agreements, is a good example: during the riots, his house was burned down and all his debt instruments were destroyed by the assailants. He stayed broke for the rest of his life. His brother Salomon was probably murdered in the attacks. Archivo de la Corona de Aragón (ACA), registros (reg.). 658, f. 178 v-179r [in Muntané i Santiveri (2006)]. Also, Alsin and Feliu, E (1995); and Muntané i Santiveri (2012).

[7] Other instruments, like fiscal allocations to third parties and the alienation of the royal lands and jurisdictions were also frequently used. In fact, these practices led to a patrimonial crisis that the monarchy did not overcome until the 15th c. See, Ferrer i Mallol (1970-1971).

others, to defray the war in Sardinia against Genoa and the local rebels. Even in the previous month to the negotiation of the *Agreements*, a new imposition of 150.000 pounds was agreed upon (Sánchez Martínez and Ortí Gost 1997: 81-156).

These sums are just indicative because the *Corts* did not have authority to tax the Jews[8], who were a royal property. However, fiscal pressure on the *aljamas* always tended to be stronger. Unlike the Christian subjects, who had the *Corts* to force the king to negotiate any new fiscal imposition, the Jews could be discretionally compelled to pay new taxes. Thus, when the king needed funds, the Jews were the first resort. Although we do not have any document detailing the parallel fiscal pressure on the *aljamas*, we have noticed the imposition of special taxes to support the war against Granada[9] and the Saracens[10] or even the king's marriage[11].

Fiscal pressure has a leading presence in several demands of the *Haskamot* of Barcelona. As it will be observed later, more than the onerous burden of the new taxes (that was supported by all the Catalans), the real problem for Jewish communities was the excessive and unmerciful use of violence by tax collectors. Additionally, the high taxes had impoverished drastically not few *aljamas*[12]. The objective of the *Haskamot* on fiscal issues was the suppression of these practices.

3. THE CONTENTS OF THE HASKAMOT OF BARCELONA

The *Agreements* of Barcelona are usually classified as *taqqanot* (תקנות; taqqanah in singular, תקנה). These legal instruments are often described, especially those produced in the Middle Ages, as the communal ordinances of Jewish communities. Nevertheless, in this paper we have opted for the use of the term *Haskamot* (הסכמות; *haskamah* in singular, הסכמה), which literally means *agreement*. The difference between both legal categories is subtle and almost inexistent. Indeed, in the Catalan tradition both terms were often used as synonymous. However, we consider that the word *haskamah* is more suitable for a range of agreements enacted out of the usual legal procedures.

The elemental function of *taqqanot* and *haskamot* was supposed to be the development, adaptation and implementation of the *Halakha*, through a hermeneutical and realistic reinterpretation of the religious precepts to make them suitable for the daily management of the communities as socio-political entities (Dorff and Rosett 1988: 402-407). Nonetheless, they accomplished wider regulatory roles. The importance of tradition and the presence of a primal and unalterable legal framework (Torah) caused that most of the contents of the *taqqanot* and *haskamot*, just like the Cristian legal codes, were compilations of customs understood according religious law[13]. Louis Finkelstein compiled and translated some remarkable examples of medieval *taqqanot* in his classical book *Jewish Self-Government in the Middle Ages* (Finkelstein 1924).

[8] ACA, reg. 257, f. 44v, quoted and commented in Assis (1996-1997: 332).
[9] ACA, Cartas Reales, Alfonso III, c. 10, n 1343 (10 November 1330) [in Assis, Mañé and Escribà (1993: doc. 660)].
[10] ACA, Cartas Reales, Pedro III, c. 12, n 1561 (14 July 1340) [Assis, Mañé and Escribà (1993: doc. 935)].
[11] ACA, Cartas Reales, Pedro III, c. 23, n 3159 (23 October 1347) [Assis, Mañé and Escribà (1993: doc. 1074)].
[12] ACA, Cartas Reales, Pedro III, c. 13, n 1718 (19 March 1343), c. 23, n 3196 (7 May 1347) and c. 23, n 3193 (16 May 1347) [Assis, Mañé and Escribà (1993: docs. 1015, 1071 and 1072, respectively)]. Also: Assis (1997).
[13] Shetreet and Homolka (2017: 14-15). The authors point that until the 16th c. the rigidity of Jewish legal sources hampered the production of original and modern legislation. However, it is worthy to note that the *Haskamot* of Barcelona differed in many ways with this general principle.

Despite the particular context of the Jewish communities in the medieval world (scattered, segregated from their environment and at the mercy of popular violence) which led to the proliferation of these codes, the *taqqanot* were not a genuine invention of Medieval European Judaism. Actually, their historical origins might be found in the early antiquity, approximately in the times of the Second Temple (± 530 B.C to 70 A.D). Local nucleuses, especially those far from urban centers, were regulated by semi-autonomous assemblies composed by the elders and other dignitaries of the community. These leaders were in charge of interpreting properly religious laws in order to implement them adequately for the political and economic administration of those settlements (Shapira 2014: 269-272). With the diaspora and its habitual marginalization in Christian territories, Judaism faced an inevitable process of governmental, judicial and religious decentralization that required from a greatest and more dynamic legal production (Elon 1993: 41).

The *Haskamot* of Barcelona were written in September 1354, in one of the most turbulent periods of the turbulent reign of Peter III *the Ceremonious*. Their authors were three wealthy oligarchs from the aljamas of Barcelona, Tàrrega and Valencia: Crescas Solomon, Judah Eleazar and Moses Nathan. Their main objective was to reach a further political union of the *aljamas* through the creation of a supra-communal assembly and the adoption of common policies. The elemental task entrusted to the delegates was the achievement of legal concessions from Christian authorities improving the competences and protection of the *aljamas*. They wanted to appear as a single entity, with a single voice, before the king and the Church. To succeed in their goals, the elected delegates would have been provided with full powers of negotiation and decision. The *Agreements* would have been binding for the whole Jewry of the Crown, once they had been sanctioned by the king.

Finkelstein asserted that there was a second text containing specific measures related to the internal management of the communities—though he did not provide any evidence or argument supporting this theory. In his opinion, this second part of the *Haskamot* would have been similar to other compilations carried by other communities culturally similar, like the *Taqqanot* of Toledo of 1432 and those agreed in Italy between 1416 and 1418 (Finkelstein 1924: 102).

As for the editions and studies on the text, the Galician maskil scholar Joshua (Osias) Herschel Schorr published the very first edition and comment on the text of the *Agreements* in the first number of the journal *He-Ḥalutz* (The Pioneer) in 1852 (Schorr 1852)[14]—an annual publication managed by Schorr and distributed among Haskalah circles in Centre Europe between 1852-1859. Two more editions of the manuscript were published during the first half of the twentieth century: One by Fritz [Yitzhak] Baer in his archival compendium *Die Juden im Christlichen Spanien* (1929: 348-359) and the other by Louis Finkelstein in his book *Jewish self-Government in the Middle Ages* (1924: 328-335). In his books *Studien zur Geschichte der Juden im Königreich Aragonien* (1965: 123-126) and *History of the Jews in Christian Spain* (2001: 24-28), Baer devoted a number of pages to address the general features of the document and the drafters' biography, although he did not conduct a deep analysis and did not untapped the legal dimensions and possibilities of the document.

[14] "דברי הברית:אשר באו בו איזה קהלות ספרד בשנת הייא קטייו (1354)עם הקדמה והדות.
["On the Agreement that Came from the Communities of Spain in the year 1354, with an Introduction and Testimony]

Two exhaustive works on the *Haskamot* of 1354 appeared later. The first one was co-published by the Catalan researchers Eduard Feliu and Jaume Riera in the journal *Calls*, in 1987. The article—"Els acords de Barcelona de 1354"—was composed by Feliu's full Catalan translation of the agreements and by a fifteen pages essay written by Riera (Feliu and Riera 1987). It also included a short documentary annex related to the outputs of the proposals. Finally Bert Pieters (2006) published a small book in Flemish titled *De Akkorden van Barcelona (1354). Historische en Kritische analyse*. However, less than a third of the book is really devoted to the agreements, while the rest focuses on the general context of the Catalan Jewry. The greatest virtue of this work is the edition of the text—including a facsimile version of the original manuscript- and the linguistic analysis.

It is possible to find short and superficial—sometimes almost anecdotal—references to the *Agreements* of 1354 in a nearly endless list of works, especially thanks to the influence of Finkelstein's *Jewish self-Government*.

The *Haskamot* start with a poetical preamble in which the author mourns for the disgraces suffered by the people of Israel during their exile. The long and tortuous diaspora, the prosecutions and massacres perpetrated by the Christians, the forced conversions and the resentment of many converts against their former coreligionists are some of the calamities mentioned in this elegy. The author points out that the progressive deterioration of the position of the *aljamas* is historically evident. This current situation, as the verses claim, has been emphasized by the internal disputes and the lack of unity. Louis Finkelstein did not translate this preamble because he considered that it was impossible (Finkelstein 1924: 336). For his part, Eduard Feliu, in the prologue of his integral translation (including the preamble), attributed the difficulties of the Hebrew text to the paraphrases of the biblical text and to the lack of literary skills of the author (Feliu and Riera 1987: 146). This last assertion contradicts Baer's hypothesis, who attributed the prolegomena to Nissim b. Reuben of Girona, one of the most prominent scholars of the period (Baer 2001, II: 26). Perhaps it was written by one of the drafters, Mossé Natan, who was himself a poet.

The preamble is followed by the proposals. According to the general nature of the petitions, they can be classified in two basic groups. On one hand, the measures that the delegates expected to achieve from the king and the Pope. On the other hand, those related to internal organization. The drafters' objective was that the king would sanction the agreement, accept the unitary representation of the *aljamas* and, if it was the case, he would act as mediator before the Pope. In fact, the text, after recalling once again the suffering of the people of Israel, starts with a list of pompous praises to the goodwill of the king and his ancestors, as well as to the Pope, who is named *King of Nations* (or of the "gentiles", depending on the translation: "מלך הגוים"). On the other hand, there are a number of provisions related to the legal regime (duties and responsibilities) of the delegates.

The first petitions are addressed to the Pope. The authors of the text complain about the attacks and assaults to the *calls* every time that epidemics and hunger spread (this is the only reference to diseases). According to the text, it was not unusual that occasional miracles or divine manifestations were interpreted as God's signs to go against the Jews. In order to avoid these episodes, they ask the pontifex to consider heretics these interpretations, as well as to discredit the priers who used to predicate in that way. Going beyond, they demand the prohibition of anti-

Jewish aggressions under penalty of excommunication (¶2[15]). Although targeting the use of excommunication to protect the Jews was an ambitious target, it was one of the few points that had a relative success, as it will be shown later. Another proposal in order to prevent the assaults was to declare sinful the construction of towers and embankments surrounding the *calls* because they were usually utilized to attack the communities (¶3).

The other demands to the Church are all related to the inquisitorial processes. Firstly, they requested that the inquisition must refrain from bringing charges against any Jew who held opinions not shared by Christianism (¶4). The writers begged for restricting inquisitorial prosecutions to those blasphemies and heresies common to both creeds, like denying the divine origin of the Torah; only Jewish courts should be in charge of the processes referring internal religious issues. The prosecution of Jews accused of blasphemy toward Catholic dogma was a usual practice along Western Christendom since the 13th c. and soon became widely popular in Catalonia, especially after the Disputation of Barcelona in 1263[16].

They also asked for the acknowledgment of a number of due process rights, such as the right of the defendant to know the content of the indictment and to have the assistance and representation of lawyers and legal experts (¶4). The main target of that last proposal was to avoid judicial processes motivated by false accusations. In order to achieve all these concessions from the Church, the *Haskamot* foresee the possibility of electing more delegates to act as representatives of the *aljamas* in front of the Ecclesiastical authorities.

Most of the requests to the king pursued political and administrative objectives, like the improvement of self-government competences, the reduction of fiscal pressure and the adoption of some measures aiming to guarantee the viability of the project. Regarding the protection of the physical integrity of the communities, the delegates just expected from the king to control the abuses of power exerted by his officials (¶17, for example). It seems that the writers of the *Agreements* were more worried about achieving the protection of the Church rather than the king's. That might not be surprising. Officially, the communities already enjoyed royal protection, and monarchs used to be compliant with this duty as far as possible. Street preachers were the real instigators and the intellectual authors of the attacks (McMichael and Myers 2004: 173-176). The delegates requested the king to deprive from protection and employment anyone who has killed a Jew or incited riots (¶9).

In the fiscal domain, and in addition to the cease of brutality from tax collectors (¶13), the delegates aimed to be exempted from financing the *protector aliamorum iudeorum terre nostre*, an institution created some years before the Black Death (Riera 2018) to protect the aljamas from possible attacks (¶15). The viscount of Illa was appointed for the charge, but he died little after. He was succeeded by the Infant Joan—the future Joan I—when he was barely three years old. The drafters considered that the institution should have been abolished after the death of the viscount. In the same way, they ask for the end of their legal duties to provide the collectors with ac-

[15] The proposals are identified according to the numeration of the paragraphs proposed in Baer (1929).

[16] Grayzel (1933: 29-33). For his part, Robert Chazan (2006: 44-51) holds that considering "blasphemy" all the Jewish beliefs contrary to Christianism was one of the main of causes of the progressive abandonment of the Agustinian thesis related to tolerance towards Jews. In the case of Catalonia after 1263, the fight against the infidel used to combine the legal prosecutions with an active missionizing activity, mainly carried by the Dominicans. See, for example: Cohen (1983: 168-169).

commodation and to pay part of their salaries (¶14 and ¶18). The delegates also inform the king that many *aljamas* have created a common fund to prevent the economic consequences of future riots (¶9).

On the measures aiming to improve communal self-government, a number of them show the delegates' special interest in expanding the judicial capabilities of the *aljamas*. In fact, the paragraphs about the inquisitorial processes advanced some aspects of the delegates' intention to improve the Jewish court system. The writers claimed for the effective implementation of the judicial autonomy granted by several royal privileges (¶19). Royal attorneys would have to be deprived from their faculties to commence public processes if there is not a previous denounce (¶20). The objective of these measures, as it is indicated in the text, was to promote unity and to purge the *aljamas* of unwanted individuals, such as the informers, who were supposed to be the greatest danger for the stability and safeguard of the communities (¶8).

The elemental action tools to guarantee the implementation of these reforms were the *Herem* and fines, as in almost all medieval *taqqanot* (Neuman 1944, I: 50). The *herem* (חרם) could be considered as the Jewish equivalent to the Christian excommunication, *"*a ban imposed on an individual to separate him from the other members of the community (…) a method of maintaining communal cohesion and authority*"* (Jacobs 2015: 234). Due to the limitations of the judiciaries in European Jewish communities and the difficulties to inforce penalties, the *Herem* became the basic legal punishment in any community. Actually, there is not a unique and univocal definition of the concept. The wide and diverse casuistry in which this institution is mentioned in the Torah (Lyons 2010: 25-34) and the decentralization of Jewish governments during the Middle Ages led to a rich and varied typology of *Herems*[17]. However, the definition we have provided reflexes accurately the nature of this penalty in the *Agreements* of Barcelona. When the offense was mild and the repudiation was short, the punishment was called *niddui* (נידוי), which is also mentioned in the *Haskamot*. These punishments were to be imposed on those who contravened the *Haskamot* or the decisions of the delegates (¶24 and ¶32), as well as on those communities that did not pay their contributions to the common treasury (¶22).

The authors of the *Haskamot* were completely aware of the fact that the mere authorization of the king would not be enough to ensure the success of the project. A closer cooperation with royal institutions was necessary. Several proposals appear to pursue this ultimate goal. First, the drafters aimed to obtain the right to participate in the *Corts* (¶11). They also aimed for that the king to use his power to collect the contributions of the *aljamas* which had signed the *Haskamot* and from those which had not signed them but benefited from the achievement of new general measures (¶23). At the same time, they ask the king for ensuring the enforcement of the *herems* enacted against individuals (¶26).

The last parts of the document deal with the legal regime of the delegates, including the method of election (¶28), the budget (¶33) and their functions. On that point, the text becomes greyer and more functional; there is an abandonment of the demonstrations of pain and passion that, in some occasions, we can observe in the petitions. In contrast, these regulations are succinct

[17] Thus, for example, the notion of *herem ha-yishub* (חרם הישוב), a preventive ban on foreigners very popular among East European Jews, was unknown in the Iberian Peninsula; see, Rabinowitz (1938).

and quite superficial; the authors do not seem to aim to develop profusely the vicissitudes of the charge. Perhaps, they supposed that they would be able to solve the problems on the go or maybe they wanted to postpose the debate. Nevertheless, and as it has been pointed by Jaume Riera (Feliu and Riera 1987), the *Agreements* cannot be considered a democratic initiative in the current meaning of the term. The authors were three ambitious plutocrats with important commercial and political interests. The lack of response from many of the *aljamas*—especially from the Kingdom of Aragon (¶29)—and the attempts to achieve more judicial competences prove that the quest for unity was not as unanimously wished as it pretends to be in the text. The material success of the project—notwithstanding the multiple benefits that it would have produced for the *aljamas*—would have also conferred a nearly absolute power to these men and would have guaranteed their political supremacy.

The project was a failure. The delegates only reached partial successes, but they could not accomplish the creation of a confederation of *aljamas*. Perhaps, their goals were too ambitious. They just got some specific concessions from the king and the pope, and none of them increased the autonomy of the *aljamas*. These concessions were granted slowly, and some of them required from prolonged and costly embassies in the papal court of Avignon (Baer 2001, II: 27). The conserved bulls and letters were compiled by Jaume Riera in his already cited work, "Guia per una lectura comprensiva dels acords". Thus, the delegates achieved (with the mediation of the king) a papal bull condemning the attacks and false accusations against Jews. They also achieved a number of edicts forbidding the extortions by royal officials.

Although these agreements failed, mostly due to their inability to reach unity between the *aljamas*, they were not the only attempt in that sense during the XIV c. Despite no supra-communal organization existed in the Crown of Aragon, a royal decree allowed, some decades later, the instauration of a supreme judge for all the *aljamas*. This institution had its greatest peak under the leadership of the prolific scholar Hasdai Crescas (1340-1410) (Ray 2012: 314).

4. JEWISH TRADITION, EUROPEAN CONTEXT

Despite the failure of the project of the *Agreements of 1354*, its study does not lack interest. If the drafters had reached their targets, they would have revolutionized the organization of the Catalan-Aragonese communities. Their first remarkable element is, without a shadow of a doubt, the effort made to overcome the notion of community as a single and self-governed entity. They aspirated to create a confederation almost comparable to which nowadays we would call international integration. Contrarily to the traditional political conceptions, the decisions taken by the delegates could have had effects on the rest of communities. Secondly, the traditional Jewish model of representation was taken a step further in order to create a supra-communal organization in which the delegates were more than representatives of their *aljamas*, but representatives of all the Jews in the Crown. Thirdly, the achievement of this goal would have required from a harmonization of the criteria of interpretation of the *Halakha* and communal norms, contributing to uniform legal hermeneutics. Disagreements on the *Halakhatic* interpretations could have been a source of conflicts between communities, as well as a danger for the project.

The fourteenth century ushered the decadence of Catalan-Aragonese Jewry. Forty years after the outburst of violence during the Black Death, the chain of assaults occurred in 1391 implied the disappearance of a great amount of aljamas, including the huge and important community of Barcelona. Albeit it is usually assumed that the expulsion in 1492 was the abrupt end of Iberian Jewry, it was just the definitive endpoint for a social group which had languished after a long agony. Perhaps, the success of the project would have contributed to bypass some of those traumatic events. The result would have probably been the same; but the path could have been less bloody and traumatic.

Aside from the ambition of the project and its hypothetical outputs, its interest lays on the information it can bring to light. *Haskamot* and *taqqanot ha-qahal* were enacted in order to offer a legal response to the problems and organizational necessities in a particular time and place. For historians, they are static portraits of the concerns and political inclinations of the communities. In the case of the *Agreements of 1354*, they do not provide any input about intra-communal daily life, but their value as historical document is incalculable. Each proposal is a perfect starting point for research on the legal relationship between Christian/Royal and Jewish institutions. Despite many works on the *Agreements* have been published, none of them have addressed the text from the perspective of legal historiography—considering that these *haskamot* are a legal document, it is an unforgivable mistake. In consequence, many elements remain untapped, especially in their relationship with the devolvement of Jewish legal and political traditions.

Throughout the twentieth century, Jewish historiography has appeared to be interested in the development of the legal and political tradition in European communities, especially on the evolution of the use of majority rule in decision-making. A minority part of the authors has considered that the political evolution of Medieval Judaism was a consequence of the influence exerted by Roman law, as well as by the coetaneous theories that were blossoming within the European States (Baer 1989), which has been harshly criticized by a wide range of scholars (Agus 1952; Elazar 1997; Shapira 2014, for example). Paralleling Judaism, Christian religious hermeneutics and juridical interpretation enabled the development of a range of theories about civil participation, which became the roots of parliamentary democracy. The rationalist perspective of Scholasticism and the openness of the new generations of Christian authors towards foreign and classical sources were fundamental for the construction of the Modern State and its institutions (Gierke 1987: 61-67, 92). Additionally, the connection between the Jewish and Christian processes is highly probable, considering that they were simultaneously developed and there was a continuous intellectual and practical interaction between Christian and Jewish. It should neither be forgotten that the scholars from both religions shared sources and models, especially the Arab and Roman-Greek works (Melamed 1993). Authors like Plato and Aristotle or al-Farabi and Avicenna were usual bibliographical references in all the treatises of that age.

However, whether a theoretical influence took place, it is difficult to assure. There are many historical (and even cultural) aspects that hinder intellectual reconstructions in this sense. In the Jewish case, for example, authors never used to cite Christian sources (excepting for apologetic purposes) and hardly ever quoted in Latin (Sirat 2001: 210). For its part, Western studies on political philosophy have systematically tended to ignore the Jewish contributions and have not considered the possibility of intellectual exchanges within this field (Waller 1989). Nevertheless, the

majority of contemporary authors hold (sometimes with some chauvinist hints[18]) that there was a Jewish previous and independent political and juridical tradition. Generally, they do not reject the influence of Roman law, although many scholars consider that its presence was limited to precise terminology and definitions (Agus 1952: 159). In any case, it is undeniable that, during the Middle Ages, an important *Halakhatic* development with political vocation took place. The survival of the communities as social and economic entities, the preservation of their religious identity and the legitimacy of their governmental structures, relied on that (Mittleman 1996: 39-42).

Jewish political theories on the power of majority and on its legitimation to impose its decisions to the minority started to be developed some centuries before the drafting of the *Agreements* of Barcelona. The process was slow and scarcely uniform for European Judaism in general, and divergent opinions and interpretations between communities and generations were habitual. The reasons of this tortuous path can be found in the political and religious decentralization of Medieval Judaism, which made intellectual communication difficult. In this sense, each territory tended to develop its own legal school of Talmudic interpretation (Roth 1988; Sagi 1995). It should not be surprising, considering that the evolution of the Western conception of democracy took more than 2,500 years. The doctrinal development of the *Halakha* was needed in order to provide real power to administrative institutions, especially when they were managed under the rule of majority, as in Catalonia.

Notwithstanding the undeniable existence and development of Jewish political and legal traditions, it would not be correct to think that this progress was alien to external theories. Social, judicial and economic interactions between Christian and Jews preclude this alleged isolation and self-sufficiency. In the case of the Crown of Aragon, Christian and Jewish political organization belonged to two different systems that coexisted in a same legal ecosystem framed under the supreme authority of the monarch.

In the 13th and 14th c., the reception of the *ius commune* and the legal innovations coming from Bologna had spurred the progressive and still distant construction of a *ius proprium* capable of replacing High-Medieval *theocentrism* by a *iuscentric* model[19]. Legal evolution was not uniform in the whole Crown, but the process appeared to be irreversible. The compilation of Catalan customs in the *Usatges de Barcelona* (12th c.), the grant of the *Furs of Aragón* (1247) and their confirmation and enlargement in the *General* Privilege (1283), the *Furs de Valencia* (1261) and the *Leges Palatinae* (1337) were some of the most important steps achieved in this process. Besides, the instauration of a proto-parliamentary system with whom the king had to agree part of his legislative activity was one of the main characteristics of Catalan-Aragonese politics. In that sense, Victor Ferro defined it as "a hierarchical set of general and particular rules which had acquired the rank of contract by virtue of the monarchs' inaugural oath and the solemn confirmations agreed in the Corts" (Ferro 2015: 320)[20].

[18] Some authors have noted this problem and have tried to offer more objective, and less romantic, approaches. See, for example, Sicker (1993).
[19] De Montagut (2005: 191; 2010). For a theological perspective, see Kantorowicz (2016).
[20] "[El sistema jurídic de Catalunya era] *un conjunt jerarquitzat de normes generals i particulars que en virtut del jurament inaugural dels monarques i de les solemnes confirmacions fetes en corts havien adquirit totes elles la categoria de contracte*" (our own translation).

The Jewish legal system was millenary. It was a perfectly organized legal system, with a complex hierarchy of sources with the written and oral Torah at the top. Its foundation and ins-and-outs were based on different sources, hermeneutical approaches and experiences. However, the diaspora forced the People of Israel to develop political theories capable of dealing with their position as a margined and non-sovereign minority. In this sense, the enforcement of Jewish models of authority was limited by this reality. Some of the most important aspects of communal self-government and organization were transpositions of royal decrees and privileges. Jewish autonomy never went so far. Therefore, the evolution of Jewish political traditions cannot be addressed from the romantic prism of intellectual self-sufficiency. The greatest role played by Catalan-Aragonese Jewish scholars was the harmonization between royal impositions and the *Halakha*. This effort permitted the progress of Jewish political thought.

Perhaps, an example would clarify it. At the end of the 13th Century, the Catalan aljamas enforced a deep reform of their institutions and mechanism of self-government. These reforms led to a "democratization" of the aljamas, which allowed the political participation of all the communal strata. This idea has captivated a wide range of historians, who have seen in the Catalan communities a clear example of Jewish democracy (for example, Epstein 1968). One of the milestones of this evolution took place in 1327, when the community of Barcelona enacted a *taqqanah* reforming the ruling institutions of the *aljama*[21]. The main objective of the ordinance was to prevent undue monopolizations of power and corruption. Among the measures of this *taqqanah*, it was decided to confer greater powers and a greater degree of institutionalization to the communal assembly. This assembly was known as the "Council of the Thirty", in reference to the number of members. For Daniel Elazar and Stuart Cohen, this reform aimed to recover the traditional Jewish assemblies *('edah)* (Elazar and Cohen 1984: 163ff). However, it cannot be a coincidence that this institution coexisted with the "Council of the Hundred" (*Consell de Cent*), the ruling institution of Barcelona, whose attributions were almost the same.

It is true that some Medieval scholars attempted to inforce models of representativeness, like Maimonides—a gerontocracy largely based on Plato's republic (Melamed 1993)—or Rabbenu Tam—unanimity (Finkelstein 1924). However, those theories just aimed to replace the void authority that followed the end of kingship. The Catalan intellectual Nissim Gerondi expressed brightly that problem in his *Darashah* (religious sermon) n. 11, in which he noted the difference between the ideal government of the Torah and the real necessity to develop models of communal authority[22]. Although it is impossible to speak about an isolated Jewish political tradition, Jewish communities reached certain harmony in dealing with external interferences and the *Halakha*, which enriched their political approaches. In that sense, the *Agreements of 1354* are a window from which researchers can unravel this tangle of ideas, interactions and progresses.

[21] ACA, reg. 230, f. 106-107v [Baer (1929: doc. 189)].

[22] An online version is published in https://www.sefaria.org/Darashos_HaRan?lang=bi [15 August 2019]. See also the analysis by Professor Menachem Lorberbaum (2001).

5. CONCLUSIONS

In the fourteenth century Catalonia endured a significant amount of political and economic hardships as well as natural disasters. A devastating plague, the Black Death, overcame Catalan territories causing thousands of deaths. To top it off, the already impoverished population had to withstand an increase of fiscal pressure as a consequence of the toll this context had taken on the king Pere *el Cerimoniós'* reign. The wars and conflicts that he had had to deal with caused an erosion of the economy and in terms of human lives without parallel since the Catalan counties and the Kingdom of Aragon had been united. Nevertheless, despite this general exhaustion affecting society as a whole, the impact that it had on the Jewish population specifically went even deeper. In addition to their precarious social and political position in Western Europe since the dawn of Middle Ages and its progressive worsening, they now had to undergo the prejudice and wrath of the people and some sectors of the clergy. Assaults, forced conversions, murders, kidnappings and extortions became commonplace. Also, the *aljamas* were immersed in internal power struggles and divisions.

In order to guarantee the survival of the communities in the midst of such mayhem, it became necessary to articulate a legal and politically responsible means. If it was to be effective at all it would have to be a joint effort with the explicit consent of the lay and ecclesiastical powers of the time. These were the premises that motivated the appearance of the *Haskamot* of Barcelona in 1354. They were specific agreements which attempted to achieve complete unity for the *aljamas* of the Crown through the creation of a confederation in which the entire Jewry would have been represented by delegates and whose attributions and duties would have been widely regulated. Their objective was to get the king and the pope to issue a number of measures which would put an end to the popular violence against the Jews, to reduce fiscal pressure and to increase their self-government on the basis of unity.

We know today the *Haskamot* project eventually failed. Notwithstanding, the document is still interesting for legal historiography. The measures proposed in the text shed some light on the ins-and-outs of the complex legal and jurisdictional relations between royal and communal institutions. Moreover, they evince the parallel development of both political and legal traditions. However, if we want to offer conclusive results the innumerable problems involved in seeking a theoretical common ground among both traditions are almost insurmountable. In that regard, the *Agreements of 1354* are a perfect starting point for a comparative study on the development and interrelation between these two systems.

6. REFERENCES

Primary Sources

Assis, Y. T and Mañé, Mª C. and Escribà, G. 1993. *Sources for the History of the Jews in the Crown of Aragón. Regesta of the Cartas Reales in the Archivo de la Corona de Aragón.* Jerusalem: The Hank Schussheim Memorial Series.

Baer, F. 1929. *Die Juden im Christlichen Spanien*. Berlin: Akademie Verlag.

Finkelstein, L. 1924. *Jewish Self-Government in the Middle Ages*. New York: The Jewish Theological Seminary of America.

Muntané i Santiveri J.X. 2006. *Fonts per a l'estudi de l'aljama jueva de Tàrrega*. Barcelona: PPU.

Nissim of Girona. *Darashos ha-Ran* in *Sefaria* https://www.sefaria.org/Darashos_HaRan?lang=bi

Sánchez Martínez, M. and Orti Gost, P. (editors). 1997. *Textos jurídics catalans (Lleis i costums II/4). Corts, parlaments i fiscalitat a Catalunya: els capítols del donatiu (1288-1384).* Barcelona: Generalitat de Catalunya (Departament de Justicia).

Schorr, Y. H. 1852. "On the Agreement that Came from the Communities of Spain in the year 1354, with an Introduction and Testimony. *Ha-ḥalutz*, 1: 20-35" [In Hebrew].

Bibliography

AAVV. 1991. *Les corts a Catalunya. Actes del Congrés d'Història institucional (28, 29 i 30 d'abril de 1988).* Barcelona: Generalitat de Catalunya, Departament de Cultura.

Alsina, T. and Feliu, E. 1995. "Mossé Natan, poeta hebreu de Tàrrega". In *Constitució de l'Associació d'Estudiosos del Judaisme Català a Tàrrega.* Tàrrega: Museu Comarcal, pp. 11-48.

Agus, I. A. 1952. "Democracy in the Communities in the Early Middle Ages". *The Jewish Quarterly Review*, 43 (2): 153-176.

Assis, Y. T. 1996-1997. "Jaime II y los judíos en la corona de Aragón". *Anales de la Universidad de Alicante. Historia Medieval*, 11: 331-342.

Assis, Y. T. 1997. *Jewish Economy in the Medieval Crown of Aragon. Money and Power*. Leiden: Brill.

Baer, Y. 1965. *Studien zur Geschichte der Juden im Königreich Aragonien*. Vaduz: Kraus Reprint.

Baer, Y. 1989. "The Origins of Jewish Communal Organization in the Middle Ages". In *Binah: Studies in Jewish History, Vol. 1*. Ed. Joseph Dan. New York: Praeger, pp. 59-82.

Baer, Y. 2001. *A History of the Jews in Christian Spain*. Skokie (Illinois): Varda Books.

Baron, S. W. 1976. "The Jewish Factor in Medieval Civilization" [original in 1942] In. *Medieval Jewish Life: Studies from the Proceedings of the American Academy for Jewish Research*. Ed. Robert Chazan. New York: KTAV Publishing House, Inc., pp. 3-50.

Bisson, T. N. 1986. *The Medieval Crown of Aragon*. Oxford: Oxford University Press.

Chazan, R. 2006. *The Jews of Medieval Christendom, 1000-1500.* New York: Cambridge University press.

Cohen, J. 1983. *The Friars and the Jews*. Ithaca (NY) and London: Cornell University Press.

Cohen Jr., S. K. 2007. "The Black Death and the Burning of Jews". *Past and Present*, 196: 3-36.

D'Abadal, R. 1987. *Pere el Cerimoniós i els inicis de la decadència política a Catalunya*. Barcelona, Edicions 62.

Dorff, E. N. and Rosett, A. 1988. *A Living Tree. The Roots and Growth of Jewish Law.* Albany: State University of New York Press.

Elazar, D. J. and Cohen, S. 1984. *The Jewish Polity: Jewish Political Organization from Biblical Times to the Present.* Bloomington: Indiana University Press.

Elazar, D. J. 1997. "The kahal". In *Kinship and Consent: The Jewish Political Tradition and its Contemporary Uses.* Ed. Daniel J. Elazar. New Brunswick: Transaction Publishers, pp. 233-276.

Elon, M. "The Contribution of Spanish Jewry to the World of Jewish Law". *Jewish Political Studies Review*, 5, vol. 3/4 (1993): 35-54.

Epstein, I. 1968. *The "Responsa" of Rabbi Solomon ben Adreth of Barcelona (1235-1310) as a Source of the History of Spain*. New York: Ktav Publishing House.

Feliu, E. and Riera, J. 1987. "Els acords de Barcelona de 1354". *Calls*, 2:145-179.

Feliu, G. 1999. "La demografía baixmedieval catalana: estat de la qüestió i propostes de futur". *Revista d'Història Medieval*, 10: 13-43Ferrer i Mallol, Mª. T. 1970-1971.

Ferrer i Mallol, Mª.T.1970. "El patrimoni reial i la recuperació dels senyorius jurisdiccionals en els Estats catalano-aragonesos a la fi del segle XIV". *Anuario de Estudios Medievales*, 7: 351-491.

Ferro, V. 2015. *El dret públic català. Les institucions a Catalunya fins al Decret de Nova Planta*. Barcelona: Societat Catalana d'Estudis Jurídics.

Freedman, P. 1991. *The Origins of Peasant Servitude in Medieval Catalonia.* Cambridge: Cambridge University Press.

Gierke, O. 1987. *Political Theories of the Middle Age*. Cambridge: Cambridge University Press.

Grayzel, S. 1933. *The Church and the Jews in the XIIIth Century*. Philadelphia: The Dropsie College for Hebrew and Cognate Learning.

Horrox, R. 1994. *The Black Death*. New York: Manchester University Press.

Jacobs L. 1995. *The Jewish Religion, a Companion*. New York, Oxford University Press.

Kantorowicz, E. H. 2016. *The King's Two Bodies: A Study in Medieval Political Theology*. Princeton: Princeton University Press.

Lorberbaum, M. 2001. *Politics and the Limits of Law: Secularizing the Political in Medieval Jewish Thought*. Stanford: University of Stanford Press.

Lyons W. L. 2010. *A History of Modern Scholarship on the Biblical Word Herem.* Lewiston (NY): The Edwin Mellen Press.

McMichael, S. J. and Myers, S. E. 2004. *Friars and Jews in the Middle Ages and Renaissance, Vol. II*. Leiden: Brill.

Melamed, A. 1993. "The Attitude towards Democracy in Medieval Jewish Philosophy". *Jewish Political Studies Review*, 5 (1/2): 33-56.

Mittleman, A. L. 1996. *The Politics of the Torah. The Jewish Political Tradition and the Founding of Agudat Israel*. Albany: State of New York University Press.

De Montagut, T. 2010. "La noció erudita de justicia a la Corona d'Aragó (S. XIII-XVIII)". *Revista d'etnologia de Catalunya*, 35: 88-97.

Montoro, J. 2018. "Mesurar la mortalitat a Catalunya (s. XIII-XIV). Estat de la qüestió, metodologia i fonts". In *Investigar l'Edat Mitjana*. Eds., Flocel Sabaté i Curull and Jesús Brufal Sucarrat. Lleida: Pagès Editors, pp.67-84.

Muntané i Santiveri, J. X. 2012. "Aproximació a les causes de l'avalot de Tàrrega de 1348". *Tamid*, 8: 103-129.

Niremberg, D. 1996. *Communities of Violence. Persecution of Minorities in the Middle Ages*. Princeton: Princeton University Press.

Neuman, A. A. 1944. *The Jews in Spain. Their Social, Political and Cultural Life during the Middle Ages*. Philadelphia: the Jewish Publication Society of America.

Ortí i Gost, P. 1999. "Una primera aproximació als fogatges catalans de la dècada de 1360". *Anuario de Estudios Medievales*, 29: 747-773.

Parrilla Valero, F. 2019. "La Pesta Negra del 1348 a la Corona d'Aragó. Una revolució social, econòmica i salubrista". *Gimbernat*. 71: 13-22.

Pere *el Cerimoniós.* 1983. "Crònica". In *Les quatre grans cròniques.* Ed. Ferran Soldevilla. Barcelona: Editorial Selecta, pp. 1001-1225

Pieters, B. 2006. *De Akkorden van Barcelona (1354). Historische en Kritische analyse*. Barcelona, PPU.

Pladevall, A. 1962. "La disminució de poblament a la Plana de Vich a mitjans del segle XIV". *Ausa*, 44: 361-373.

Postan, M. M. and Miller, E. 1987. *The Cambridge Economic History of Europe, II.* Cambridge: Cambridge University Press.

Rabinowitz, L. 1938. "The Talmudic Basis of the *Herem Ha-Yishub*". *The Jewish Quarterly Review*, 28 (3): 217–223.

Ray, J. 2012. *The Jew in Medieval Iberia, 1100-1500*. Boston: Academic Studies Press.

Riera, J. 2018. "La protecció, un impost sobre les aljames dels jueus reials". In *Renda Feudal i fiscalitat a la Catalunya baixmedieval: estudis dedicats Manuel Sánchez Martínez.* Eds. Pere Ortí Gost and Pere Verdés Pijuan. Barcelona: CSIC, pp. 95-142.

Roth, J. I. 1988. "The Justification for Controversy under Jewish Law". *California Law Review*, 76 (2): 337-387.

Sagi, A. 1995. "Models of Authority and the Duty of Obedience in Halakhic Literature". *AJS Review* 20 (1): 1-24.

Sánchez-Arcilla, J. 2005. *Historia del derecho español*. Barcelona: Cálamo.

Shapira, H. 2014. "The Right to Political Participation in Jewish Tradition: Contribution and Challenges". In *Religion and the Discourse of Human Rights*. Eds. Hanoch Dagan, Shahar Lifshitz, and Yedidia Z. Stern. Jerusalem: Israel Democracy Institute, pp. 266-296.

Shetreet, S. and Homolka, W. 2017. *Jewish and Israeli Law- an Introduction*. Berlin: De Gruyter.

Sicker, M. 1993. "Democracy and Judaism: The Question of Equality". *Jewish Political Studies Review*, 5 (1/2): 57–78.

Sirat, C. 2001. "Biblical commentaries and Christian influence: the case of Gersonides" In *Hebrew Scholarship and the Medieval World.* Ed. Nicholas de Lange. Cambridge: Cambridge University Press, pp. 210-223.

Smith, R. S. 1944. "Fourteenth-Century Population Records of Catalonia". *Speculum*, 19 (4): 494-501.

Tartakoff, P. 2012. *Between Christian and Jew. Conversion and Inquisition in the Crown of Aragon, 1250-1391*. Philadelphia: University of Pennsylvania Press.

Waller, H. M. 1989. "Political Philosophy and the Jewish Political Tradition: Can they be integrated?". *Jewish Political Studies Review*, 1 (3/4, Jewish Political Studies in the University): 43-57.

Journal of Catalan Intellectual History (JOCIH)
Online ISSN 2014-1564 DOI: 10.2478/jocih-2019-0005

Received 05/11/2020 / Accepted 05/12/2020 / Published 31/12/2020

SHEVIRAT HA-KELIM: JEWISH MYSTICISM AND THE CATALAN MATRIX FOR DIALOGUE AND CONFLICT

Mario Macías
(Institute of Law and Technology, Universitat Autònoma de Barcelona)
mario.macias@uab.cat

Pompeu Casanovas
(Institute of Law and Technology, Universitat Autònoma de Barcelona; LawTech Research Group, La Trobe Law School, La Trobe University, Melbourne, Australia)
pompeu.casanovas@uab.cat p.casanovasromeu@latrobe.edu.au

John Zeleznikow
(La Trobe Law School, La Trobe University, Melbourne, Australia)
J.Zeleznikow@latrobe.edu.au

ABSTRACT

Late Medieval anti-Jewish violence is a well-known phenomenon, but its origins and especially its institutionalization are still blurred and enigmatic. In 13th and 14th c. Catalonia, the denouement of the increasing popular hostility against the Jewry was particularly dramatic. The seeds of violence were the result of a long and complex process of social, theological, and political interactions. In this contribution, we will discuss the intellectual matrix of medieval anti-Semitism in Catalonia and its relationship with the rising of scholastics and with the theoretical foundations of Catalan politics. We will also approach its counterpart: the Jewish response to collective suffering.

Keywords: Medieval Catalonia, anti-Jewish violence, Scholastics, Jewish mysticism

Acknowledgements: Project IEC PRO2018-S05. *Models del dret i la filosofia política catalanes: semàntica de les doctrines jurídicopolítiques del pactisme en les seves diferents fases* [Models of Catalan political philosophy and law: semantics of pact-model driven political and legal doctrines at their different stages].
Disclosure statement: No potential conflict of interest was reported by the authors.

Suggested citation: Macías, M., Casanovas, P., Zeleznikow, J. (2019-2020). "Shevirat Ha-Kelim: Jewish Mysticism and the Catalan Matrix for Dialogue and Conflict", *Journal of Catalan Intellectual History* 12: 64-96 DOI: 10.2478/jocih-2019-0005

1. INTRODUCTION

Let' start with a comment by Clive S. Lewis (1964: 211), also quoted by Anthony Bonner (2012: 334) in his last book about the logic and art of Ramon Llull:

> If you had asked Laȝamon or Chaucer 'Why do you not make up a brand-new story of your own?' I think they might have replied (in effect) 'Surely we are not yet reduced to that?' Spin something out of one's own head when the world teems with so many noble deeds, wholesome examples, pitiful tragedies, strange adventures, and merry jests which have never yet been set forth quite so well as they deserve? The originality which we regard as a sign of wealth might have seemed to them a confession of poverty.

Lewis shed light on the common organon that conformed the medieval thinking, the distance that separates our modern understanding from it, and the intellectual ways to represent and overcome such a distance.

This paper is an essay on violence, poetry, resilience and cultural transmission. We should avoid falling into the Platonism of cultural structures and talking about archetypes, ages, parameters, paradigms, epistemes or *eons.* If used, they might be considered just as a stool over which we can stand up and look further, or as a mere scaffold of our language to collect and classify information, to formulate hypotheses about their relations and dynamics. We conceive intellectual history as a toolkit for which we invent rules of usage in order to achieve a reviewable knowledge, rather than an ensemble of consolidated theses to ground certainty.

Concepts embedded and settled on narrations, tales, poems and religious invocations can also be conceived as a cognitive technology: they are natural tools to manipulate the surrounding reality, to make it easier to perceive and to act upon it. As shown by scholars of ancient literature and philosophy such as Lovejoy and Lewis, we cannot take for granted that our reading matches their inception. Concepts and underlying models of knowledge have the property of molding regulatory cultural identities changing over time, but with recognizable boundaries. Medieval minds loved the production of order. We can track them even if "what is truly the rim seems to us the hub" (Lewis 1964: 58).

2. THE JEWISH KABBALAH

Kabbalah [קַבָּלָה] means *reception and tradition.* Its origins are blurred and uncertain. Mysticism has always been present in Jewish theology, but not all the mystical movements can be considered Kabbalah. Sometimes, the theoretical distinctions are too subtle and inconclusive. According to Jewish tradition, Kabbalah has been practiced since the Roman occupation, a belief that has been historically nourished using pseudo-epigraphs to increase the value of modern works. The intellectual authority of a text was directly proportional to its antiquity. This is the case of the *Zohar*, one of the most important kabbalistic works produced by Iberian Judaism, probably written by Moshe de Leon (13th c.), but attributed to Simon bar Yochai (Scholem 1941: 153). However, relevant 20th c. researchers on that field—such as Gershom Scholem 1987, and Moshe Idel 1988—have shown that Kabbalah (in its current meaning) has its origins in Provence and Catalonia.

Kabbalah was the result of an unsolvable tension between tradition and innovation. The target of the first kabbalists was the development of new exegetical methods of reading the sacred texts to discover the true nature of God, the absolute knowledge, which is hidden behind their lines. These theosophical trends led to theorization about some foundational concepts, like the divine ontology of the *Sefirot* or the *Devekut* (communion with God), the final goal of Kabbalah. The sources remained the same, but the approaches changed. Innovation, viewed as revelation, became a virtue. It can be traced from the more spiritual and introspective topics of Kabbalah and their poetical expression. As Jacob ben Sheshet stressed: "Everything that a man on the path of faith can devise anew in the Torah [that is, by studying the Torah] serves to propagate and glorify the Torah" (Scholem 1987: 380-81). Jewish Kabbalah accomplishes this role of origin, transmission and transformation of culture. The Kabbalah certainly depends on the economic and social context, but its internal structure has worked to educate and acculturate a wide range of different social groups, and it is flexible enough to allow its uninterrupted reinterpretation according to several different theoretical tendencies and historical events. Briefly: it *has been institutionalized* in many ways.

The myth, the narration, of *Shevirat Ha-Kelim*, for example, still plays an ontological role and has contributed to the regeneration of Jewish identity after the Holocaust.[1] It means "the shattering of the vessels", and it is a foundational myth in Jewish cosmogony. For the Kabbalah, the vessels are the first receptacles of the Divine Light. The story has been narrated in many different ways, but all the versions contain the same basic elements: the universe is the result of a divine contraction (*tsimtsum*), and not the result of an expansion of matter (energy), as contemporary astrophysics conceives it. The creator contracted himself in order to produce the matter. He first held His breath, producing darkness, then light. He sent ten vessels (*Sefirot*) to bring the world into being. From the perspective of the creature, creation becomes *Yesh me-Ayin* (something from nothingness). From the divine perspective, creation becomes *Ayin me-Yesh* (nothingness from something).

The myth continues as follows. Incapable of constraining the Divine Light, the first seven vessels shattered, and the remaining three cracked. The pieces contained the essence of God and, after they have been shed across the world, they originated the resistance against the same God that had created them—because He cannot be contained in any form or manifestation. So, evil, disharmony, discord, has its origin in goodness too. Human beings find ourselves reflected on this imperfect mirror. God disappears to push us to find Him again in our souls. For all humans there is no other way to receive the infinity and to achieve knowledge. You have first to go down to the bottom to be able to ascend later. This entails pain. God created the world so that human beings—and especially the Jewish people—could rise up again and again. We are simultaneously a target for both devastation and miracle.

The myth is usually linked to the Lurian rabbinic Hebrew mysticism, coming from Rabi Isaac Luria Ashkenazi (Jerusalem 1534-Safed 1572). Some other narrations have been also associated with this myth, such as the one about the sacrificial death of the ten rabbis, condemned by Emperor Hadrian to get burnt into the rolls of the *Torah*. However, the myth of the creation and the

[1] See the artistic reflection on confronting the past, myths and disharmony contained in the works by Ingebor Bachmann and Anselm Kiefer.

symbol of the light are much older. It has been one of the constants in sacred philosophy and poetry of the Early Middle Ages, especially flourishing in the Iberian Peninsula (*Sefarad*), as proved in the many works of one of the most interesting researchers of Sephardic Judaism, J.M. Millàs-Vallicrosa (1940).

Medieval Catalonia was a land of political dialogue, religious thought and feudal fights. The rise of Jewish mysticism coincided in space and time with the new-born Christian Scholasticism and apologetics. Some of the main representors of both sides produced and cohabited in Catalonia, such as Moshe ben Nahman [Nahmanides, Ramban, Bonastruch ça-Porta] (1194–1270), Ramon de Penyafort [Raymundus de Pennaforte] (1180-1275) or Ramon Martí [Raymundus Martini] (~1230 -1284). It led to a strange relationship in which hate, mystics, rationalism, proselytism, and resilience were indissolubly interconnected. These exchanges and mutual influences spread along all the dimensions of daily life. It might be evident, for example, in the language: the use of vernacular ancient Catalan and Hebrew are entangled. *El Cant dels Segadors* (the Catalonian anthem) praising the Catalan revolt in 1640 could have its origins in a Jewish melody (*Ein K'Eloheinu*). Since the 12th c., kabbalists from Provence, Girona and Barcelona such as Jehuda ben Yakar (12th-13th c.), Iṣḥaq Saggi [Isaac *the Blind*] (1160-1235), Joseph ben Shalom ha-Ashkenazi (13th-14th c.), and Shelomo ben Isaac Gerondi (13th c.), elaborate upon mysticism as the only way to reach the true knowledge, in contrast with Maimonides' rationalism (Vajda 1963, 1977; Riera 1986b, 1987).[2] They were intellectually related—Nahmanides was an advanced student of Azriel ben Menaḫem [Azriel of Gerona] (c.1160-c. 1238), and Azriel was an advanced student of Isaac the Blind. Jaume Riera (2014) has shown that many early medieval writers were known with a double name, in Catalan-Latin and Hebrew.[3] He insisted on the non-Sephardic origin of Jews in Provence, Girona and Barcelona.

Moshe ben Naḥman Gerondi (Bonastruch sa-Porta), leader of the Kabbalist School of Girona and rival of Pau Crestià in the *Disputation of Barcelona* (1263), describes the movement of the soul as follows:

מֵרֹאשׁ מִקֶּדְמֵי עוֹלָמִים
נִמְצָאתִי בְּמִכְמַנָּיו הַחֲתוּמִם
מֵאַיִן הִמְצִיאַנִי, וּלְקֵץ יָמִים
נִשְׁאַלְתִּי מִן הַמֶּלֶךְ.

שַׁלְשֶׁלֶת חַיַּי מִיסוֹד הַמַּעֲרָכָה
לְמָשְׁכָּה תַּבְנִית בִּתְמוּנָה עֲרוּכָה
לִשְׁקֹל עַל יְדֵי עוֹשֵׂי הַמְּלָאכָה
לְהָבִיא אֶל גִּנְזֵי הַמֶּלֶךְ.[4]

[2] Georges Vajda (1908-1981) kept a detailed account of the advances in this field with many reviews from 1954 to 1977 generally entitled "Recherches récentes sur l'ésotérisme juif". Jaume Riera i Sans (1941-1918) summarized the research on Catalonia and the Crown of Aragon from 1929 to 1984 in two bibliographic articles with the title "Estudis sobre els jueus Catalans".

[3] Riera (2014: 13) offers a succinct non exhaustive roster, in chronological order: Meixul·lam ben Xelomó de Piera (En Vides de Girona), Menahem ben Xelomó Meïrí (Vidal Salamó Mahir), Yedayà ben Abraham ha-Peniní (Bonet Abraham), Yossef Kaspí (Bonafós de l'Argentera), Moixè ben Yehoixua Narboní (Vidal Efrahim), Menahem ben Abraham (Bonafós Abraham), Yishaq ben Moixè ha-Leví (Profiat Duran), Yehoixua Abenvives ha-Lorquí (Astruc Lorquí), Zerahyà ha-Leví (Ferrer Saladí) i Azaryà ben Yossef ben Aba Mari(Bonafós Bonfill Astruc).

[4] Cfr. שירמן [Schirmann] (1954-1956, II : 322).

From the beginning, before the world ever was,
I was held on high with his hidden treasures.
He brought me forth from nothing and
in the end I will be withdrawn by the King.

My being flowed from the spheres' foundation,
which endowed it with form in evident fashion.
The craftsmen's hands weighed its creation,
so I would be brought to the vaults of the King.

(Translated by Cole 2007: 234)

In these verses, Nahmanides conceives his existence and indeed every human existence, as a premeditated part of the divine plan of creation. The worldly existence of the soul within the human and temporal body is a journey from God to God. For Nahmanides, the Genesis does not describe a complete act of creation, but just the beginning of a continuous process of birth and regeneration (Caputo 2007: 63-64). In his exegesis of Jewish cosmogony[5], there are just three things that were directly created by God from nothingness: the earth, the skies, and mankind (Ramban 2004, I: 23-25, 93-94). Thus, human kind emanates from the divine substance, from the *foundation of the spheres*, the *sefirah ha-yesod* (יסוד), one of the ten vessels. However, this soul, which was created in the spiritual image of God (Ramban 2004: 73-74) and which will be called back again by Him, is roaming across the sensitive world, surrounded by sin and lust (Millàs i Vallicrosa 1940: 142). To achieve this return, the soul must deserve it. It must not be so highly corrupted as not to deserve to become again one with God. For that reason, there will be a judgement on the soul once it has left the material body and before allowing it to enter in the *vaults of the King*, the sphere of divinity. This is Kabbalah for Nahmanides: a way back to God.

3. VIOLENCE AND CULTURAL BLEND

According to Gershom Scholem, modern Jewish philosophy and historiography filtered the myth of Shevirath Ha-Kelim through the history of nineteenth and twentieth centuries. The Lurianic perspective of sixteenth and twentieth centuries was a reaction to the exodus of the late fifteenth centuries (Funkenstein 1993: 204-205). From the Girona School to after Luria Hassidism, the individual understanding to assume and reconstruct history would have been reached. Communion with God (*Devekut*) is internalized. Sholem established the thin nexus between the school of Girona in 13th c. and modern hassidism based on the texts of this school, especially on those by Azriel of Gerona:

> Hasidic *devekut* is no longer an extreme ideal, to be realized by some rare and sublime spirits at the end of the path. It is no longer the last run in the ladder of ascent, as in Kabbalism, but the first. Everything begins with man's decision to cleave to God. *Devekut* is a starting point and not the end. Everyone is able to realize it instantaneously. All he has to do is to take his monotheistic faith seriously. (Cfr. Sholem 1971: 208)

[5] For Nahmanides' hermeneutical methods and their relation with his comment on the Genesis, see. Wolfson 1989.

Coping with disgrace becomes an essential attribute of Jewish identity, for it entails the acceptance of the breach of tradition and the risk of destruction. As stated by Gershon Greenberg, "Shevirat ha-kelim represents not only the breakdown in the nineteenth century of traditional structures in both philosophy and Jewish life, but also the possibility, in the absence of such structures, of pluralistic and dynamic responses to the cataclysms of the twentieth century" (Greenberg 1996: 111). In the interpretation recently made by artist Anselm Kiefer (2007), the shattering of the vessels is linked to the events of *Kristallnacht* (9-10 November 1938) and the prior bonfires of books in Austria and Germany. *Shevirat Ha-Kelim* inspired *SternenFall*, a sculpture work made of lead, glass and steel which results from the Jewish tradition of self-reconciliation and forgiveness in order to cope with memory of the extreme violence of the twentieth centuries.[6]

We have already shown that this resumes a past and long story. There is a wide memory including both pain and joy, which allows resilience and internal resistance to adversity. There is both conflict and harmony between the individual and the community, which builds the necessary bridge between the soul and God. Iṣḥaq ben Sheshet Perfet (1326-1408) from Barcelona, who was also rabbi of the *aljamas* of Saragossa and Valencia, wrote in his sacred lamentation:

לְשַׁד עִירִי / גָּדוֹל כַּיָּם שִׁבְרִי, / וְלַחְמִי רֹאשׁ וּתְלָאָה.
(...)
שְׁבִי נֶאְנָחָה, / בַּת עַמִּי, וְשַׂק חֲגֹר,
וְגַם קָרְחָה / הַרְחִיבִי כְּמוֹ נְשָׁרִי,
וּלְשִׂמְחָה / מַה זֹּה עוֹשָׂה, אִמְרִי, /הֲתִקָּרֵב וְתָבוֹאָה?

תְּהִי מִסְעָד / וְעֶזֶר אֵל גּוֹלָתִי
לְבַל תִּמְעַד, /וְשׁוֹבָבָה אֵל נַחֲלָתִי,
וּמִגְלָעָד / הָבִיאָה נָא הַצֳּרִי / לִשְׁאֵרִית הַנִּמְצָאָה.[7]

As deep as the sea is my pain
And I feed myself with weariness and sorrows.
Now my city is desolated.

Cry, daughter of my people,
And dress for mourning,
Pull your hair up

Until you become bald like a vulture.

Which is the benefit of happiness?
Maybe the day in which God will make a decision is coming?

Hold me, Lord,
And protect me in my exile,
Make my legacy not to totter nor tear.

[6] Kiefer, A. *SternenFall/ Shevirath Ha-Kelim (Falling Stars/ Destruction of the Vessels, 2007)*. MONA, Hobart.
[7] Cfr. שירמן [Schirmann] (1954-1956, II : 559-561).

Make the balm of Gilead come
For whom still remain[8].

Let`s develop a bit more the "baldness of the vulture". Actually, this poem is the *quinà* (lamentation) that the rabbi Sheshet Perfet wrote after his flight to Alger, just after the anti-Jewish disorders of Valencia and Barcelona of July and August 1391 (Hershman 1943: 30-31). On July 9th 1391, around two hundred and fifty Jews (out of an estimated population of 2,500[9]) were murdered. Sheshet, then the leading rabbi of Valencia, converted to Christianity to save his life, taking the name of Jaume de Valencia and joining the Dominican Order. We are quoting at length the hypothesis of Jaume Riera about this issue, because it shows how the royal power had to proceed to restrain the riots[10].

> When prince Martí and his officers realized that the best way to calm down the popular riot in the city was to convince the Jews not to resist to baptism, and that the best argument for that was to convince the Rabbi first, they caught Issach Perfet,, and asked him to convert, trying to make him understand that this was the best way to stop the confrontation and to avoid the massacre of his co-religionists. Rabbi Issach Perfet declined the offer. Once all the available mechanisms to convince him to convert failed (bribes, threats, etc.), they made him one last offer: some paid witnesses would declare he committed an ignominious crime—such as having sexual relations with a Christian woman—, and the General Attorney would write the indictment according to which he would be condemned to die in a bonfire… unless he accepted to be publicly baptised. In front of such a horrible and unfair death, and for non-religious reasons, Rabbi Issach Perfet abandoned this attitude and embraced baptism, for which he was liberated and this parody of summary prosecution was dismissed. Once they had accomplished their objective, prince Martí and his officers spread the news about the baptism of the Rabbi—in which he was given the name of the cardinal and bishop of Valencia, Jaume of Aragon, who was living in Avignon by the time and was praised as exemplary.[11]

The legend tells that Isaac Perfet, while in prison, drew with coal a ship on the wall, and God made it land in Alger. As a matter of fact, he reached the city more than a year later, and approximately at that time he composed the *quinà* (Riera i Sans 1986: 48).

Jewish culture has had to learn how to get along with danger, disappointment and death. But there is something else: cultural blending. Moshe Remos, who was born in Majorca and was a doctor in Sicily, was falsely accused of poisoning and forced to accept conversion. He didn't do so. He was executed at the age of twenty-four in the central square of Palermo in 1430. The day before his execution, he wrote:

שָׂח שַׂר הַצּוֹרֵר לְהַצִּיל רֹאשִׁי,
אִם כָּבוֹד אָמִיר לַעֲבֹד אֵלּוֹ.
עֲנִיתִיו: טוֹב מוֹת גּוּפִי מִמּוֹת נַפְשִׁי,

[8] Our own translation (MM).
[9] According to Gampel (2016: 24-26).
[10] This interpretation has been recently challenged and corrected by Roth (2011). According to him, it cannot be inferred from the documents that Sheshet converted or was even accused of sexual crimes. But Roth also confirms and stresses the strong measures set by the prince to protect the Jews and find and punish the murderers.
[11] Riera i Sans (1986: 47) (our own translation, PC).

חֶלְקִי - הַצּוּר הַחַי, וְהַמֵּת יִהְיֶה לּוֹ![12]

The tyrant's vizier offered to save me
if I would abandon my Lord for his;
but better to die in body than spirit
and give my portion to the God who lives.

(Translated by Cole 2007: 328)

There is sufferance, but also anger and pride in this reply. What we mean is that inner blended social cognition underlies narration, account and speech, and plays an important role in the creation and transmission of *cultural identity*. Hence, identity becomes *hybrid* and *personal*, and a result of transmission through contextual written, spoken, heard and visual natural languages. But identity is a bit more complex than just language, because its matrix cannot easily be parametrized. Cultural flows define individuals, but these are autonomous individuals that can decide by themselves how to use the linguistic materials that they have at hand. Experiences are fed by this blending process, and the result is not always foreseeable.

Dialogue and interaction—and also dispute, controversy and conflict—are essential to understand the tension between tradition and innovation that we addressed at the beginning of this article. Cultures originate and stay, survive or disappear in multiple ways, and can reawaken and develop new ethos and idiosyncrasies. And they can do so foregoing the circumscription of the space and the chronology of time. We can compare this with Christian apologetics, the counterpart of Kabbalah and Jewish culture.

4. ROOTS OF THE INTELLECTUAL INCOMPATIBILITY

We should start at the beginning, at the origins of Catalan anti-Judaism. But when did it begin? We can only rely on facts and ideas, though the inner gestation of people's convictions always remains unknown. Those blurred origins had probably to be sought in Saint Paul's *Epistle to the Romans*—"the most important political theology"[13]—and in the eschatological seeds of Western political constructions, as Karl Löwith (1949) and Jacob Taubes (2009) suggested. Augustine of Hippo (1890: Book XI onwards) rationalized this eschatology in a symmetric and hierarchical correlation of worlds: if the Kingdom of Heaven represents justice and perfection, the earthly government ought to be its reflection. This notion was an immovable axiom for medieval political theology. The initial statement in Catalan legal compilations referred to those seeds: "*En nom de la Sancta, e individual Trinitat, la qual lo món en son puny continent, als imperats impera, y mana, e als senyorejants senyoreja*" ["In the name of the Holy and individual Trinity, which holds the world on its hand, and rules and commands over the ruled, and lords over the lords"][14]. In this ideal Christian society, Jews must be respected and guided to the true faith with words and love, because they are living witnesses to the price that the infidel has to pay for his heresy: exile, poverty and marginalization (Augustine 1995: 180-183).

[12] Cfr. שירמן [Schirmann] (1954-1956, II : 646-647).
[13] Jacob Taubes (2013), in a letter to Carl Schmitt (18 September 1979).
[14] *Constitutions y altres drets de Cathalunya* (1973: 7, our own translation, MM).

The patristic approach to Paul set a limit to physical violence but encouraged hate. In a society built upon eschatological bases, in the desire of judgement and salvation, evil forces are real and proactive. The infidel is by definition an embodiment of those forces, a threat both to earthly and spiritual Christendom. Ramon Martí noted: "*Nullus autem inimicus Christianae fidei magis sit familiaris, magisque nobis ineuitabilis, quam Iudoeus*" ["No enemy of the Christian faith is greater, more familiar or more inescapable to us than the Jew"][15]. Violence somehow contributed to accomplish the mystical role assigned to Jews as witnesses to the truth in Christ.

The lay legal development inspired by the Augustinian thesis attests to this fluctuating trend between tolerance and hate. The Visigoth *Liber Iudicorum* (7th c.) contained perhaps the harshest rules ever enacted against Jews in Western Europe until the Laws of Nuremberg[16]. The principles of *Ius Commune* set by Justinian and Canon Law virtually excluded Jews from public and social life[17]. These rules were inherited by Catalan law and inspired posterior legislation, but they cannot explain the generalized outbreaks of violence of the 14th c.. Catalan monarchs attempted to protect their Jewish subjects because they were a large source of incomes for the royal treasury.

Christian violence had deeper intellectual roots. They were progressively provided by scholastic theology throughout the 13th c.. Aristotelian logic and dialectics, as well as the study of Hebrew sources, were placed at the service of apologetics. Reason was used to demonstrate the veracity of Christian faith; thereby Jews could not be considered erring passive witnesses anymore, but liars who persisted in their perfidy (Cohen 1983). In the recently published multidisciplinary work *The Talmud in Dispute During the High Middle Ages* (Fidora and Hasselhoff 2019), Alexander Fidora, Görge K. Hasselhoff and the rest of participating authors[18] have proved that the discovery of the Talmudic corpus became a cornerstone in the history of Christian-Jewish relations. The theological depth of the Talmud and its commenters implied that the Jews were a serious theological depth. The anthological translations of Talmudic passages contained in *De articulis litterarum Papae*[19] (1238) and the *Extractiones de Talmud*[20] (1248) ushered the new apologetic approaches of the Church.

The compilation of the feudal Catalan law, the *Usatges de Barcelona* [Usatici Barchinonae], written between 1035 and 1076, and many times interpolated and republished until the 18th c., contained many references to Jews, under the protection of the Crown. *Usatges* [Uses] 11, 51, 64, 75, 129, 164 and 171 refer directly to Jews (Gonzalvo i Bou 1996). Number 171, known as *Hec est forma* is unusually long. It was in fact added in 1241, and James I laid it down for the whole country. It described in detail the compulsory (and humiliating) oath that Jews had to perform before the Courts in lawsuits and litigation with Christians, who were exempt (Cfr. Muntané i San-

[15] Raymundi Martini *Pugio fidei,* 1651. Paris, 1651, 2. (Our own translation, MM)
[16] *Liber iudicum popularis*, 2003, Book XII.
[17] *Code of Justinian* Book I, 9, in *Corpus Iuris Civilis (Vol. II)*. Consilium Lateranense IV (1215), at http://www.internetsv.info/Lateranense4.html . Decretals of Gregory IX V, 6, at http://www.canonlaw.info/canonlaw_IUSDECR.htm
[18] Ursula Ragacs, Piero Capelli, Ulisse Cecini, Óscar de la Cruz, Federico Dal Bo, Eulàlia Vernet, Enric Cortès, Wout van Bekkum and Moisses Orfali. The book has been produced within the framework of the ERC project The Latin Talmud and Its Influence on Christian-Jewish Polemic (LATTAL).
[19] Thirty-five accusations against the Talmud submitted by the convert Franciscan friar Nicholas Donin to Pope Gregory IX. A critical edition was prepared by Óscar de la Cruz and Ulisse Cecini in Fidora and Hasselhoff (2019: 59-100).
[20] A translation of 2,000 Talmudic passages by request of Pope Innocent IV. A critical edition of the text has also been published as part of the outputs of the LATTAL project (Cecini and de la Cruz 2018).

tiveri 2014). Usatge n.164, on murder, equates Jews with criminals, adulterers, thieves, murderers, Muslims, heretics and the excommunicated. They were equally prevented from giving testimony in criminal cases against Christians, as *contra omnes Christianos semper sint alieni.*

However, we should not succumb to the temptation of looking for a single culprit in the shadows or falling in a comfortable Manichaeism. Attempting to attribute the entire responsibility of Late Medieval anti-Jewish violence to intellectual and legal subtleties would be a burlesque, and even absurd, simplification. Hate and appetite for violence can be rationalized in so many ways with philosophical elegance and incontestable logical arguments; but its most elementary foundations, the primal willingness to materialize this aversion in physical violence, do not require epistemologies or metaphysics.

The history of medieval violence against Jewry cannot be properly understood if one does not look at the total picture. Both Jews and their persecutors were not alien to the complex and changing economic, social and political dynamics of the thirteenth, fourteenth and fifteenth centuries. The embryo of violence in Catalonia was persistently molded by an unmanageable and sometimes unnoticeable set of factors until its final explosion in 1391. It cannot be a coincidence that the wave of anti-Jewish riots in Catalonia since 1348 overlapped with the increasing popular unrest that culminated in the general peasant uprisings of the second half of 15th c.[21]. Apologetics and the missionizing zeal just contributed to chart a way that people were already prone to follow. We are not going to discuss the proper origins of violence here, but the foundations of its ideological coverage.

The disputation of Barcelona in 1263 was the first manifestation of the new missionizing strategies in Catalonia. For four days Pau Crestià [Pablo Christiani] (?-c.1269) a convert who had joined the Dominican order, and the leading Jewish scholar Moshe ben Naḥman discussed exegesis and messianism. This disputation was not a mere private discussion between two men of faith. It had been carefully organized, aiming to demonstrate the falsities and incoherencies of Jewish doctrines and interpretations on messianism. In other words, the target was to prove rationally the veracity of Christianity through Jewish sources (Caputo 2007: 91). The list of attendees to the Disputation of Barcelona gave evidence as to its significance: King James I *the Conqueror* presided over the event in the royal palace and Ramon de Penyafort, one of the main leaders and ideologists of the Dominican order, guided the discussion (Nahmanide 1984: 26-27).

Nahmanides probably realized how delicate his situation was, as well as the necessity for diplomacy. Although the king guaranteed his right to speak freely, his integrity and the security of the *aljamas* depended on his skills to deal carefully with his exposition. King James I as well as his son Peter *the Great,* regularly appointed Jewish officials and often relied on their knowledge and advice. In addition, he maintained a relative political line of tolerance toward Judaism (Baer 2001, I: 138-147). However, he was a pious Christian King; thus, he was biased. He had to be. These circumstances converted the debate into a farce. It was impossible for Nahmanides to expose their arguments freely in such a threatening political ambiance. According to the Hebrew report of the debate, on the last day, the Jews themselves and some Christian friars begged

[21] The relationship between the Black Death and the fifteenth-century peasant revolts in Catalonia has been widely studied and accepted since the beginnings of the 20th c.. For a bibliographical survey, see Salrach i Marés (1989).

Nahmanides to leave the debate, requesting him to prioritize his personal security and the security of the community (Nahmanide 1984: 51-52). James I did not allow such a course of action. The next day Nahmanides was forced to surrender and to accept the king's verdict which declared Pau as the winner of the debate. In intellectual terms, the disputation ended up in an unsolvable stalemate.

The consequences that followed the dispute were catastrophic for Jewish communities (Chazan 1992). The victory legitimatized the Dominicans' fight against the enemies of the True Faith. Several royal edicts and papal bulls were promulgated for that purpose. Some of the repressive measures included the censoring of Jewish books, mandatory Christian sermons and prayers in the synagogues, and the creation of a commission (composed of Raymond Martí, Raymond of Penyafort and Pau Crestià, among many others) in charge of enforcing these decrees. In fact, one of the first tasks conducted by this commission was the legal prosecution of Nahmanides for his report of the disputation. However, James I denied all the accusations, alleging that Nahmanides acted under royal consent and protection[22]. The king maintained his decision despite the protests of the Pope, who demanded the execution by dismemberment of the Ramban[23]. Regarding this type of experience, it does not come as a surprise that Nahmanides considered Rome and the Church the embodiment of the fourth beast of the prophecy of Daniel (Daniel 7:7), the one that will be defeated by the arrival of the Messiah.[24]

Perhaps the most remarkable lesson we should learn from the Dispute of Barcelona is the virtual impossibility of dialogue. Obviously, the social and political preponderance of Christian authorities in front of the weak and delicate situation of Judaism hindered any dialogue in an equality of conditions. We now refer to the intellectual background of the dispute, to the differences between the theological methods of both religions. In the 13th c., Jewish and Christian theology in West Europe were opposites poles within the traditional philosophical spectrum. While Judaism was immersed in a mystical renaissance close to esotericism (Kabbalah and the rejection of Maimonides' works give evidence to this trend), Christianity was rediscovering Aristotle and his logic and rationalism.

The debate between Nahmanides and Crestià evidenced these philosophical discrepancies. Pau Crestià based his statement on the literacy of Hebrew sources. His analysis of biblical times and events was rational, almost historiographical. For his part, Nahmanides' kabbalistic understanding of the Hebrew sources was rather allegorical. He kept the platonic dualistic division between the material world and the spiritual world. According to his exegesis both worlds coexist in a sort of parallelism (Wolfson 1989: 111-112) and both converge in the Torah: the divine substance is hidden within the sacred text. Words can be mathematically decomposed and composed again in order to reveal mystic secrets about God and His nature. In the Torah nothing is casual, nothing can be literally read, but every word, every narration or date has an esoteric and symbolical value (Ramban [Nahmanides] 2004: 11-14). Biblical time is a fluctuating line that links both worlds. The time in the Torah is also metaphorical, it reflects deeper mystical conceptions. The

[22] "Documentos", Nº CXXI in *Summa Iuris,*1945, p. 157-158. The letter was written the 12 of April of 1265.
[23] Nahmanide (1984: 95). The letter was written the 15 of July of 1267.
[24] משה בן נחמן [Mosheh ben Naḥman] (1964: 283/ רפג)

interpretation of time by Crestià, which was one of the main pillars of the discussion, had nothing to do with Nahmanides' conception (Caputo 2007: 59ff).

Intellectual incompatibilities, however, were not limited to metaphysics. They were much deeper. Discrepancies in mathematics and on the processes of logical constructions largely hindered mutual understanding. Mathematics relies upon an agreed set of axioms and inference rules for deriving new knowledge from the axioms. For thirteenth-century Christian theology, the religious dogma accomplished this immovable axiomatic function (for example, the Sun goes around the Earth and the world cannot be eternal), and those who disagreed with this axiom were punished.

On the other hand, Domènech *et al.* (2018), delving on the neoplatonic principle of the identity of the multiple (*coincidentia oppositorum*) and the Kabbalah, note that Paraconsistent logic admits contradiction. In paraconsistent logic the truth values are roots of the equation $p^2 - p + 1 = 0$. This equation has no real roots but admits complex roots. This is the result which leads us to develop a multivalued logic of complex truth values. They note that sum of truth values is isomorphic to the Cartesian plane R x R. The general theory of complex numbers requires an understanding of Cartesian coordinates. And Descartes lived in the 17th c.—we will adopt as valuations the norms of vectors. So whilst Domènech establishes a theory of truth-value evaluation for paraconsistent logics with the goal of using them in analysing ideological, mythical, religious and mystic belief systems, 13th c. Catalans did not have access to such logics. However, the notions were there. Nahmanides (and his mentor, Azriel of Gerona) argued that truth was not an absolute concept. These notions are conceptual and have formalisms for understanding rationality. Therefore, both participants and both religions were destined to not comprehend each other.

The intellectual confrontation was not, nevertheless, binary. It was not as simple as a confrontation between Jews and Christians. The situation was more complex since medieval Jewry was not a homogeneous group with central authorities and well-defined hierarchies. Unlike the Catholic Church, whose dogma was unitary and politically institutionalized, Judaism lacked—and still lacks—those elements. The religion set in the Mount Sinai and enlarged by the prophets was a state religion. The Israelites were not only members of a religious community, but the subjects of a Jewish political structure erected over four pillars: a kingdom, a king, a priestly caste, and a temple as a central political, social and religious symbol of the Jewish state. All elements ended abruptly with the destruction of the Second Temple (70 c.e.). These traumatic events led to the dispersion of the people of Israel across three continents and to the beginning of a process of cultural, social, exegetical and political decentralization.

Decentralization was always present in all aspects of diasporic Jewish history. Each community became a sort of small state within another state (Baron 1942, I: 208; Elazar 1977: 19), in which its members were to communal ruling institutions *"*as all Israel to the High Court and to the King*",* according to the Jewish doctrine in Catalonia[25]. The relative isolation of these population groups contributed to the individual development of communal self-government models. Throughout the Middle Ages, some influential Jewish scholars succeeded in achieving a certain degree of homogeneity among the communities within delimited geographical and cultural areas.

[25] רשב"א (Rashba [Shlomo ben Adert]), II, Responsum III: 411 [ג:תיא], pp. 223-224 [רכד-רכג]. Our own translation.

This is the case of the Geonic period (7th to 11th c.), when the scholars of the Babylonian—Iraqi—academies enjoyed an almost undisputed authority among the Jewry of the Islamic world; the *Tosafists* (eleventh to fourteenth centuries) in Central Europe; or some renowned scholars in the Iberian Peninsula, such as Meir Abulafia (1170-1244), Asher ben Jehiel (1250-1327), Shlomo ben Adret (1235-1310), Sheshet Perfet (1326-1408) and Isaac Abravanel (1437-1508).

Lack of homogeneity was a predominant feature. Political, legal and intellectual formulations were as diverse as the social, political, cultural and economic contexts of the communities (Freeman 1981). Context was an essential generative element for the definition and development of legal, political and intellectual systems. The specific economic necessities and structural particularities of each neighborhood required local solutions and precluded unitary responses. Also the politics and intellectual trends of the host kingdom had great impact on communal political life and organization.

The gestation of Kabbalah and the response to Christian apologetic onslaughts in Catalonia and Provence clearly attest to this phenomenon. The first schools of the Kabbalah in the late 12th c. arose at the same time that Jewish rationalistic philosophy reached its peak. Cultural blending played a major role in those apparent paradoxical situations. Maimonides was born in the Andalusian city of Cordoba (1138) in a moment of great fascination for the works of Aristotle, *the first master*. In this period, Muslim thinkers such as ibn Tufayl (1105-1185) and ibn Rušd (1126-1198) developed philosophical systems based on Aristotelian orthodoxy. Maimonides' rationalism was, to some extent, a product of his times. In Catalonia and Provence, Jewish scholars were formulating their first mystic-philosophical systems relying on Neo-Platonism (Scholem 1987: 403; Dan 1985: 59).

The Maimonidean controversy (c.a. 1230-1235, and then almost to 1310) indicated the level of clashes between Jewish intellectual trends. The confrontation involved almost all the communities of Germany, France and the Iberian Peninsula. It opened a breach not only among communities, but also within the communities. The community of Girona in Catalonia is a clear example. While some of its members, such as Jonah Gerondi (1200-1263), were fierce critics of Maimonides, some others—especially in the case of Nahmanides—attempted to keep pacifying postures for the sake of unity (Twersky 1983; Scholem 1987: 403-404; Dan 1985: 42). In Barcelona, the virulence of the dispute led Shlomo ben Adret to issue a ban against the study of philosophy for minors under 25 years[26].

To this example of confrontation and dissension, we could add many others: the schism between Karaite and Rabbinic Jews (ca. 7th c.); the messianic heresy of Abraham Abulafia (1240-1291), his confrontation with Shlomo ben Adret, and his hypothetical—though unlikely—influences on Franciscan spirituality[27]; the posterior messianic pretensions of Shabbatai Zvi in 1665, perhaps the largest messianic outbreak since the rise of Christianity (Sysyn 1992: 141); the aversions between *Maskilim* and *Hasidim* since the 18th c., etc. The list is virtually unmanageable.

[26] רשב"א (Rashba [Shlomo ben Adert]), I, responsum I: 415 [תטו:א], pp. 200-201 [רא-ר].

[27] On that issue, we should remark some works by Carreras i Artau (1949), Clifford R. Backman (1990, 2000) and Hames (2007).

Decentralization and inner conflicts have always conditioned the social and intellectual interaction of the Jewish communities with their coreligionists and their environment. Within the scope of medieval Catalonia and religious violence and dialogue, it implied that there was little agreement amongst prominent Jewish scholars about Kabbalah and messianism. There was no way that they could provide a united front to Catholic theologians, nor to reach an agreement with the said theologians. Nor was there any agreed mechanism for how to determine truth or common ground on the nature of God.

Social and interfaith violence is an essential feature of Jewish identity (Abulafia 2001). Its traces have been perused in Western medieval tradition by twentieth century historiography (Moore 1921). The Holocaust stirred consciences and fostered scholarship far beyond academics. However, discrimination towards Jews, understood as violence and official hostility (Funkenstein 1993: 201-202), was not always an inseparable part of Christian-Jewish relations during the Middle Ages, but a phenomenon that arose after the year 1000. Jeremy Cohen (1984), Robert Chazan (1989, 1992), Anna Sapir Abulafia (1998), David Nirenberg (2015), among many others, have been consistently writing on the role of the Catholic orders—mainly the Dominican and the Franciscan orders—in the increasing intolerance in thirteenth and fourteenth centuries Europe. The Hebrew tradition in South Europe, the disputation of Barcelona and the fate of Hebrew sacred poetry are well-trodden paths. Why the Catholic dogma moved away from the Augustinian interpretation to embrace the Aquinas' views has been a recurrent question, related to the increasing power of the Church, the building of early medieval monarchies, and the homogenization of Christians as political subjects. Besides, the Kabbalah, the so-called Latin Cabala, political theology, and messianism beyond Hebrew sources have gained political philosophers' attention, and raised many controversies stemming from the seminal works of Gershom Sholem, Hannah Arendt, Leo Strauss and Carl Schmitt. The renaissance of Protestant, Catholic and Jewish theology in the interwar period was not alien to this kind of discussions.

5. THE CHRISTIAN CANNON AND THE CATALAN MATRIX

There is a new turn in historiography that profiles and adds complexity to the interpretations already in place. It focuses on pictures, images, technologies, situated local knowledge, life stories, and everyday life and practices (Brentjes and Fidora 2014). The approach that is often mentioned as a general Christian cannon based on documentary, epigraphic, textual, and translation studies is being completed with keen attention to the inner dynamic of interrelations, perceptions, and intellectual specific references as collective facts. There are ongoing critical editions of classical works—e.g. of Marti's *Pugio Fidei* and Llull's complete works—that can shed light on the epistemic and ontological dimensions of these works, their authors, their social impact, and the political and ideological landscape to which they contributed. The study of translations from natural languages (Greek, Hebrew, Arabic, Aramaic, Latin) needs to be more precise (Szpiech 2011 and 2014).

There is an emerging specific legal Catalan tradition on dialogue and violence that clarifies the legal and political innovations. Following the conquest of Valence, Murcia, Majorca, Sicily and Sardinia, these theologians and philosophers *created* this tradition. It is both partially coincident with the canon of the Catholic Church and equally non-compliant with it because it is

grounded on a plurality of epistemic and practical reasons. There is no absolute power, nor absolute right to exercise violence, but there is a space for violence when fundamental values and beliefs are violated (see Fig.1 below). We think that this early legal mold of the Catalan public law of the Crown of Aragon, based on covenants, pacts and principles—*pactisme*, pact-driven models—which was also used to plot commercial and international relations—e.g. *Llibre del Consolat de Mar* (1320)—furnished the stencil or pattern for the policy that was used to foster and eventually force the conversion of Jews and Muslims to Christianity.

Considering the inception of this legal pattern, the vertical axis is certainly the physical rule over the population held by the Prince, legitimated by the *Decretals* of Gregory IX, ran by the Inquisition under the Dominican order, and developed by the revival of Roman Law taught at the University of Bologna. The second horizontal axis is sustained by dialogue and reason. This kind of reasoning could eventually lead to the innovative way represented by the formal semantic graph and combinatorial techniques figured out by Ramon Llull's *Ars* of logic. In this latter sense, dialogue is not conceived as authority, but as formal reasoning. This extends and deepens the function of talking and reasoning (giving reasons)—in Catalan *enrahonar*—against the rule of using authorities to dispute: *Disputar per autoritats no ha repòs,* as advanced by Llull. Disputing on the grounds of authority never finishes (Cfr. Bonner 1990: 383). It is worth noticing that Llull's conception makes the semantics of theological attributes compatible with calculus, in the same way as the Kabbalah harmonised theological content and mystical form in a graded scale of knowledge. His probabilistic calculus had an impact on Leibniz[28] and anticipated some of the graph-driven contemporary Artificial Intelligence solutions (Sierra 2011). We will come back to this issue later.

In the following centuries, the Catalan conception of law contended that the Prince had the *summa potestas* as the head of the mystical body constituted by the *General of Catalonia* within constitutional boundaries, but not *plenitudo potestatis* (Palos 1995; on the construction of Catalan Public Law, see Ferro 1987). This tendency to covenants and agreements in Catalonia was not a natural trend, but the result of a specific longstanding situation in which no group—noblemen, royalty, church or peasants—could prevail over the others, and this particular balance contributed to shape the institutional mold (Casanovas 2019) through the notion of *jurisdiction* (Montagut 1989). The recent discovery of the first official general compilation of Catalan public laws in the fifteenth century has confirmed this interpretation (Ripoll Sastre 2018).

According to this tradition, political power entails agreements, negotiations, balanced judgments, and civil institutions, as represented by the painter Lluis Dalmau in the *Mare de Déu dels Consellers* (Madonna of Council's Members, 1476), a realistic portrait of the Council's members. Athens, Jerusalem and Constantinople are similarly represented in the painting: The Council de Barcelona is kept equidistant from disputes and conflicts, ruled and inspired by the grace of the Holy Mother and Son. This civil projection of the mystical body of Christ helped to design the legitimation for the Catalan doctrine of legal *pactism*. "*In Cathalonia rex solus non condit leges, sed rex cum populo*" ["In Catalonia, the king alone does not enact any laws, but with the people alike" (Our own translation)], according to the public law tradition of Catalan jurists such as Joan

[28]See "Calculemus… " Leibniz 1682,; A VI 4 443; DA 216-217. In his manuscripts, The German philosopher also reflected on the immediate intuitive knowledge on God elucidated by the Kabbalah. See Foucher de Careil (1861: 5).

de Socarrats (c.1426-1483-84) and Joan-Pere Fontanella (1576–1649) (Maspons i Anglasell 1932).

Yet, in the thirteenth-century Catalonia, pact does not appear under this mature legal form to balance social groups and conflicts. God is nested in the human mind, and the unknown remains under His sovereignty and the uncertainty ensued from the seeking of the truth. As Anthony Bonner notices, framing the dialogue on faith and worship is a strategy that relinquishes the sphere of reason to the adversary, but the final purpose of conversion is not forgotten (nor forbidden) (Bonner 1989). We could depict the argument schemes that lie behind these goals. According to the work by Douglas Walton and Chris Reed, argument or argumentation schemes are the forms of argument (structures of inference) that enable one to identify and evaluate common types of argumentation in everyday discourse (Reed and Walton 2001). Shaping the molds of being, reasoning and feeling for the Christendom was precisely one of the objectives of the Gregorian reform when the pope commissioned in 1230 the harmonization of Canon law to his chaplain and confessor, the Catalan Dominican Friar Ramon de Penyafort. He carried it out in four years, establishing the revealed faith and the pope' authority as the basic pillar of his Compilation (*Decretales Gregorii IX)*. From this perspective, dialogue cannot be symmetric, and any theological argument carries on a pragmatic force as an adversarial speech act:

[1] I know that you believe that I am wrong
I know that I am right
I am right

Or directly:

[2] I know that I am right
I am right
You are wrong

This could be deemed as belonging to a more general scheme, as drawn by Douglas Walton (1996: 62; also Reed and Walton 2001: 3), called the *Argument from Position to Know* with the following structure:

[3] Major Premise: Source *a* is in a position to know about things in a certain subject domain
S containing proposition *A*.

Minor Premise: *a* asserts that *A* (in Domain *S*) is true (false).
Conclusion: *A* is true (false)

The *Appeal to expert opinion argument*, is a subtype of the first one, a fallible form of argument that carries probative weight. However, in this case, we think it is intertwined with an *ad baculum* argument, because of the implicit assumptions and entailed consequences of the conclusions. i.e. *A* is deemed naturally true, and *a* is in a position of imposing it by other means. Walton has pointed out that this implicit appeal to force—*ad baculum* arguments—requires three levels of analysis to conclude that they are fallacious: (1) an inferential level, (2) a speech act level, where conditions for specific types of speech acts are defined and applied, and (3) a dialectical level where the first two levels are linked together and fitted into formal dialogue structures (Walton 2014). The latter layer matters: pretending to advise while making a thread is a fallacy.

Likewise, pretending to be fair in a dialogue while making a thread invalidates the dialogue itself. Fear and threat arguments share the same structure (Walton 2013).

We can add that in our view (1) and (2) operate in fact as counter-performatives: the mere *utterance* of any kind of argument against the conclusion invalidates the argument and the force of the argument, as the framework is asymmetric and does not guarantee the equal value and balance of both positions. Moreover, they are personal arguments, self-reflective arguments in the first person. This pragmatic paradox cannot be resolved by logical means, as well as the violence it contains and triggers. At the dialectical level, the type of speech acts and discourse selected in medieval disputes was not a common inquiry or an intellectual controversy. It was the first act of an inquisitorial play, and the Jews were very aware of it. They understood that the essential truth was supposed to belong *only* to one political community, i.e. to *res publica christiana*, as opposed to Jews, Muslims and heretic movements.

Jewish communities were the only ones that were allowed to live inside the Christian world, co-existing with Christians. As already stated in the past section, the theological justification goes back to Paul of Tarsus and the theological Augustinian justification based on the interpretation of Psalm 59.12 in his *Tractatus adversus Judaeos*:

> Do you not rather belong to His enemies referred to in the psalm; 'My God shall let me see over my enemies: slay them not, lest at any time they forget your law. Scatter them by the power'? That is the reason why, not unmindful of the Law of God, but bearing that same Law about for a covenant to the Gentiles and a reproach to yourselves, you unknowingly are ministering the Law to a people that has been called from the rising to the setting of the sun.[29]

Jews are witnesses, guardians of the Christian faith. The role of Scholastics and specifically Dominicans—the Black friars—in the evolution of this perspective between the 12th and 15th centuries has been extensively explored by contemporary historiography. Regarding Mediaeval polemical literature and disputations, Ora Limor has aligned the typology proposed by Amos Funkestein in 1968 with the one drawn one generation later by Jeremy Cohen (Limor 2010). The former identified four basic patterns: (i) the older pattern—a stereotypical repetition of biblical arguments; (ii) rationalistic polemics—demonstration of the philosophical superiority of the Christian dogma; (iii) the attack against the Talmud and the whole corpus of post-biblical literature; (iv) the attack from the inside, using the Talmud and post-biblical literature to demonstrate the veracity of Christian theological positions. Cohen proposes a functional typology and, as observed by Limor, shifts from the twelfth to the thirteenth century attributing the change to the polemical and missionary activity of the new mendicant orders (Cohen 1992).

Ramon Martí stated in his work *Pugio Fidei* (1278) that "there is no more *familiar* an unavoidable enemy for Christian Faith than the Jews"[30], the dagger should be used to finish off "their impiety and shameless perfidy" ("*impietatem atque perfidiam jugulandam*") (Bonner 1989: 177).

[29] Augustin of Hippo (1955: 387-417). Accessible at Roger Pearse's blog: https://www.roger-pearse.com/weblog/2015/06/11/augustines-treatise-against-the-jews/

[30] See footnote 15.

Jews are intentionally deceiving themselves. Hence, should they be accepted as members of the political community? Only if they convert.

[4] You know the truth
You know that you know the truth
You are *intentionally* lying

Assigning intentions to the adversary and reifying them is entering into a meta-pragmatic discourse that is beyond any rational possibility of dialogue. This lies at the core of the apologetic Christian canon. As asserted by Ryan Szpiech on Martí's use of Hebrew and Arabic languages, "he puts the text itself in display as a proof in service of his Christian polemic argument" (Szpiech 2016: 187). Hebrew sources are not only treated as authorized sources, but as imagined enemies.

> In his translation to Latin into Hebrew characters and his transliteration of Arabic text into Hebrew characters, he does not only proffer the imagined knowledge of his polemic enemy. By giving these non-Jewish authorities a Hebrew garb, a form that is implicitly non-Christian but still comprehensible, he also aims to approximate the imagined perspective of the imagined Jewish enemy by simulating the authority of an 'original' (in this case non-Latin) text. (Szpiech 2016: 187).

The dynamic scalation from respect to enmity can be captured by the following matrix:

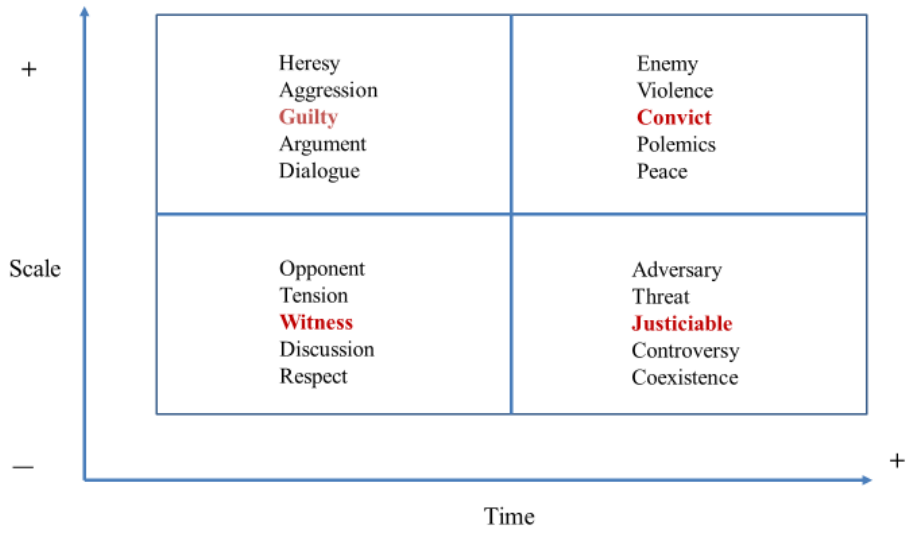

Fig. 1. Catalan matrix of dialogue and conflict

Fig. 1 plots the different outcomes along the two axes of time and the scalation of violence. It starts with the four quadrants of respect, dialogue, coexistence and peace, at the bottom. These properties figured out in the interaction of working social forces (the so-called *braços*) and fleshed out and constructed while scholastic philosophy was developing, were soon reserved for the Christian society. The initial purported dialogue with internal minorities (Jews and Muslims) turned them quickly into opponents, adversaries, heretics and eventually enemies. The matrix

draws a conceptual idealization. This process occurred differently in time and space all along the Catalan territories and it is not exclusive to Catalonia. Other European and Mediterranean countries experienced a similar trend. However, because of the features of their internal conflicts and balances, Catalans friars could elaborate and think within this mindset in a more complete way than under other mediaeval monarchies, and the balance of dialogue, negotiations and concessions over rights and duties framed Catalan law and shaped the public space against the inside-out movement of exclusion that was increasingly applied to those who resisted conversion. The stereotype advanced during the thirteenth and fourteenth centuries, and entered into an everyday moral scheme, setting the context of what Gigerenger has been termed *fast and frugal heuristics* for the average Christian use of moral common sense: ever since, up to the end of the 15th century, the Jews were increasingly be considered liars, guilty, heretics and enemies, by default (Gigerenzer, II: 2008).

Unconverted Jews were also targeted by the Inquisition (Tartakoff 2012). Yet, the most relevant anti-Jewish riots in Catalonia and the Kingdom of Aragon in the fourteenth century were not exclusively addressed against Jews. Rich Christian patricians were also targeted, and we have already mentioned rulers' efforts to quell the riots and punish the culprits, although their efforts often were fruitless—for example, after the Black Death, King Peter *the Ceremonious* (1319-1387) had to absolve the greatest part of the culprits due to the material impossibility of trying them all[31]. Also, the bishops and other high territorial ecclesiastical authorities played an important role in the attempts to stop popular anti-Jewish uprisings. Violence had social origins. But the question about the hatred remains. David Nirenberg links it to the comprehension that both communities had of themselves, i.e. to the messianic identity of an accomplished future (Nirenberg 2007). Identification and segregation, including family and sexual relations (especially between Christians, those Jews who converted to Christianity, and Jews) constituted a problem during the 14th c. and 15th c. until the definitive expulsion of Jews in Spain 1492. Nirenberg also warns against the use of dichotomies such as tolerance vs. intolerance or construction vs. destruction of social bonds. It was a bit more complex than that, as violence could be considered as a component, a systemic aspect of the coexistence of majority and minorities in mediaeval Spain. Our matrix is an idealized abstract way of ordering the "punctuated" (Nirenberg 2002) or "pluralistic equilibrium" (Nirenberg 2015) of the dynamics of conflict and coexistence between Christians, Muslims and Jews in Catalonia. It cannot be interpreted in a linear temporal way.

There are two other relevant aspects to be considered. First, the asymmetry between Christianized Muslims and Jews. The former were mainly peasants, often enslaved, subjected to the jurisdiction of feudal lords (*barons*). The second group, the Jews, lived in towns, and showed a different degree of organization, literacy and culture, reflected in their bonds to the King's administration. Violence against peasants was a constant from the 11th to the 15th centuries and was legal, reflected into the so-called *mals usos, ius maletractandi* against the serfs, e.g. *intestia, cugucia, eixorquia, arsia.*

[31] Arxiu de la Corona d'Aragó [Archive of the Crown of Aragon, henceforth *ACA*], reg. 1321, f. 116r-v.

6. THE CATALAN MATRIX: DISCUSSION

Let's describe how this conceptual scalation could take place after the failure of Crusades in the 12th c. and the increasing intolerance against heresies in the first half of 13th c. First Jews and Christian heretic movements were set apart. Jews had an old religion which had to be respected. In his casuistic compilation, Ramon de Penyafort chose not to address this issue into a sole section, but he distributed prohibitions and allowances regarding their relationships with Christians along the five books of the *Decretales Gregorii* (1234) (Watt 1992). He summarized them in Book I, Title 4th, of his *Summa de casibus poenitentiae* (1224-26) entitled *De Iudeis, Sarracinis et eorum servis* [On Jews, Saracens and their serfs]. He defended eloquently their right not to be converted against their will—the classical Augustinian view—but adding the Scholastic perspective on reason that the Aquinas would develop a little later:

> As Gregory says, both Jews and Saracens must be called to the Christian faith with arguments, reasons and flattery, and they must never be compelled to do so, because coerced services do not please God (SdCP, I,4,2).[32]

This general advice was enacted at the expense of a full apartheid at the social level. The III Lateran Council had prescribed in 1179 separate neighbourhoods. The IV Lateran Council had imposed the wearing of a batch on clothes. Thus, at the community level—in Catalonia: *calls* (neighbourhood), *qehillot* (political communities), *aljamas* (royal division of Jewish neighbourhoods) and *taqqanot* (ordinances)—Jews should be respected and integrated. However, by the same token, individual Jews should be segregated and could not interfere with Christians in their regular social life in any sphere (acquaintances; family; religious liturgy; public appearances; public honours, roles and charges, etc.). The only two tolerated exceptions were (i) the market; (ii) the political dependence on the monarchy, as subjects or serfs of the King.

Moneylending and usury were a common topic since the early Church. The positions against avarice and greed held by Basil of Caesarea, Gregory of Nyssa, and most notably John Chrysostom were well-known. For the early Church authors any interest was to be condemned (Llewellyn 2004). Scholastic theology was more flexible. How was the question of Jewish lending addressed in the Middle Ages?

Economic practices and the creation of business communities led to new conditions that challenged the general prohibition, and Jews were positioned to bridge them as the Old Testament prohibits interest among the Jewish people but allows it with foreigners (Deuteronomy 23.19-20). One may think that kings benefited from such a situation. However, Stowe contends that the formation of mediaeval 13th c. monarchies in France and England around the concepts of *patria, crown and kingdom* brought the kings to "allow matters of a purely spiritual nature to blunt their good economic sense". They would set out to suppress Jewish lending in all its manifestations while "the popes explicitly and purposefully condoned and promoted the practice of Jews who lent at a controlled rate of interest" (Stow 1981). As already mentioned above, the *Usatges of*

[32] "*Debet autem, sicut ait Gregorius tam Judei quam Sarraceni auctoritatibus, rationibus et blandimentis potius, quam asperitatibus ad fidem Christianam de novo suscipienda provocari; non autem compelli; quia coactia servitia non placent Deo dist qui sincera*". *Summa Sti Raymundi di Penniafort, Barcinonensis, Ord. Praedeicator, de Poenitentia et Matrimonio, cum Glossis Ioannis de Friburgo.* Roma, Ioannis Tallini (1703: 32-33).

Barcelona prevented a balanced treatment of Jews and Christians in the frequent lawsuits that followed money lending, as Jews were deemed to be naturally prone to deceive.

Ramon de Penyafort was one of the most influential legal scholars of his time, confessor of Gregory IX, Master of the Dominican order, special advisor of James the Conqueror, king of Aragon, and teacher and friend of Thomas of Aquinas. He articulated the idea that Jews, as outsiders, could not be under ecclesiastical jurisdiction directly but indirectly, i.e. by way of pressure on Christians—i.e. on rulers who were held to enforcing ecclesiastical rulings and on Christians, who could be excommunicated for wrongful conduct (Watt 1992). The Church only could bring action against non-Christian in a scarce number of cases. The production of inquisitorial manuals attests the evolution of the Ecclesiastical jurisdiction over the Jews. The fist manual, written in 1249 by the Dominican friars Bernard of Caux and John of St. Peter in the midst of the anti-Cathar fervor, did not even mention the Jews[33]. In 1267, four years after the disputation of Barcelona, Clement IV issued the bull *Turbato corde*, which entitled Dominican and Franciscan friars to prosecute Jewish proselytes and blasphemers. Bernard Gui's *Practica inquisitionis heretice pravitatis* (1331), one of the most important guidebooks for inquisitors, included a number of sections deascribing how to proceed against Talmudic falsities, false converts, Jewish preachers and slanderers of the Catholic dogma[34]. In Zanchino Ugolini's treatise *De haereticis tractatus aureus* (c. 1330), those prerogatives are represented as a matter of self-defense against the infidel threat[35]. The *Directorium inquisitorum*, by the Catalan (and convert) inquisitor Nicholas Eymerich (1376), offered a clearer systematization of the Jewish offences against the Church, reducing the casuistry to three criminal typologies: proselytes, false converts and blasphemers[36].

The jurisdictional bulk remained, nevertheless, in the hands of kings and the rest of lay territorial powers. Despite every Christian earthly lord theoretically owing blind loyalty to the Church, their relationship with the Jews was often conditioned by further political considerations, and the Crown of Aragon was not an exception.

Catalan-Aragonese kings proved to be reluctant to implement canonical rules. For example, they often appointed Jewish officials for leading administrative posts, especially during the reigns of James I (1213-1276) and Peter *the Great* (1276-1285). This openly contravened what had been decreed in Lateran IV. Jewish functionaries were particularly appreciated for the office of *batlle*, a sort of local or regional royal administrator with some jurisdictional functions (in modern Catalan *batlle* means *mayor*). This practice was not abolished until 1283, when a baronial rebellion encouraged by the excommunication of Peter *the Great* and the threat of a crusading invasion forced the king to accept a number of demands in order to appease the nobility and the Church[37]. And even then, Jews were still unofficially employed to carry out the same functions (Romano 1983). Until the consolidation of an urban, educated Christian social class (towards the end of the thirteenth and first half of the fourteenth centuries), the Jews provided the only opportunity for

[33] *Processes inquisitionis*, translated and edited by Wakefield (1974: 250ff).
[34] Bernard Gui (1886: 35-36, 67-71, 289-292, for exemple). See also Yerushalmi (1970).
[35] Zanchino Ugolini, *De haereticis.* Rome, 1579, pp. 220-221.
[36] Nicholas Eymerich, *Directorium inquisitorum.* Rome, 1587, pp, 352-359.
[37] *Cort* of Barcelona of 1283: *Cortes de los antiguos reinos de Aragon y de Valencia y del principado de Cataluña, Tomo 1, Primera parte.*.

the monarchy to gain full administrative independence from the clergy and escape from its intellectual monopoly.

The triangle composed by monarchy-Jews-Church was complex, voluble and prone to unexpected and contradictory manifestations. The Jews were a royal property and a valuable source of intellectual and monetary resources. They could be taxed without legal ceremonies, exhausting negotiations and difficult concessions. As often noted by Catalan documentation, they were *the treasure of the king*[38].The monarch was the greatest protector of the Jewry, but his commitment was often challenged by the necessity of satisfying the clergy. The royal policy was a juggling act. Also, the Jewish and Ecclesiastical response and coexistence rules were subject to practical considerations, in which their natural animosity could be interrupted by the needs of the moment. This was the case, for example, of a number of Jews from Tarragona who, after having been accused of usury by royal authorities, took refuge in the lands of the bishop[39]. Hence, the interactions of the Jewry with Christian powers were far from monistic, a situation that probably hampered the Jewish reaction to the rising hostility of the Church and the plebians.

In the *Decretales*, Penyafort adopted the following view, as summarized by Watt (1992: 96):

> Jews and the practice of Judaism are to be protected from abuse by Christians; Christians and Christianity are to be protected from abuse by Jews; Jewish converts to Christianity are to be protected from abuse by both Christians and Jews.

Apparently, the solution, based again on Augustin, was equity and fairness, i.e. *justice*. Penyafort constructed the canon theory on the concept of justice, and he applied it in a nuanced way to economics and warfare (*just price, just war*). Interest could be acceptable *per accidens*; war could be legitimised per *persona*, *objectum, causa, intentio, auctoritas* (Valls i Taberner 1996: 229ff). He set the conditions for the acceptability of lending and of making war. But in both cases, he first set the difference between Christians, on the one side, and Muslims and Hebrews, on the other. Justice and the will to comply with agreements should stand in the middle, in a kind of universal balance. But first and for all, *conversion* should also stand above the framework as the ultimate end of all actions. As the first anonymous fourteenth-centuries Lullius' biographer put it in the *Vita Coetanea*, the notion of crusade was giving way to the idea of *mission*: *Pro quorum conversion procuranda totus erat caritatis incendiis inflammatus.*[40] This also was the sense and metaphor of the Christian integration—a blazing, burning flame. To achieve this purpose all means could be used.

The flame of the faith consumed all kinds of cultural knowledge—cultural, social, political, philosophical and theological. The Mendicant Orders turned Arabic and Hebrew texts into interpretable goods for their own consumption. Ramon Llull, Lullius, adopted another strategy. He extended the baton of faith a little further. Even today, his *ars combinatoria* remains interesting and difficult to analyse. So was his attitude. He took seriously Hebrew and Arabic philosophy without manipulating it and he dissociated himself from Scholastics. He especially disliked Dominican

[38] On the status of the Jews, see Assis (2008: 9-18).
[39] ACA, Cartes Reals [Royal Letters], Jaime II, c. 114, n 500.
[40] Anonymus, *Vita Raimundi Lulli, Opera Latina*, ed. Balme / Paba n, Raymundiana (Anm. 6), 33-32 , p. 19 as quoted at length by Tischler 2019.

methods and had no interest in Ramon Martí's works, who exerted a direct influence on other Catalan thinkers such as Arnau de Vilanova and Francesc Eiximenis (Fidora 2012). Dominican policy became official Church dogma. According to it, certain things such as the Trinity, the Incarnation or the creation of the world can only be known through revelation and are unprovable by rational means. Llull opposed this notion, for as if there was not some way to prove the Trinity and the Incarnation by other means, Muslims and Jews would never be convinced (Bonner 1990). It is worth noting here that this is why Pope Gregory XI condemned Llull and Lullism in 1376.

However, his *mission*—a notion he received personally from Penyafort—remained the same: obtaining as many conversions as possible. But by other means. Penyafort commissioned Llull to start training centres to evangelize the Muslim world in Majorca. He devoted his entire life and philosophy to this movement.

Lull is a major and original thinker, whose works in Catalan, Latin, French and Arabic, have never been out of print. We are interested in mentioning him here, first, because of his notion of interreligious dialogue; second, because there is an active debate about his Jewish influences. Some of his technical work shows, beyond Greek and Arabic philosophy, a direct knowledge of the early mystic Kabbalah in Catalonia. His ontology, logic and idea of rationality are all connected to the notion of God, and this links to the way he understood Godhead. Kabbalah *resonates*, but only resonates, into it.

One of the first scholars to advocate for the direct influence of Kabbalah on Llull was J.M. Millàs Vallicrosa (1958). Millàs realised that the essence of the ten Sefirot were mainly coincident with the nine Dignities of the first Lullian circle*: Bonitas, Magnitudo, Aeternitas seu Duratio, Potestas, Sapientia, Volun tas, Virtus, Veritas* and *Gloria.* Harvey Hames strongly asserts such an influence. We can discuss whether these are to be interpreted as principles, axioms or attributes. Why Llull specifically chose them over other possibilities has not yet been resolved. His truth-finding procedure (*ars inveniendi* in Latin, *art de trobar veritat*, in Catalan) formalised binary and ternary relations and used (and figured out for the first time) several logical techniques—e.g. the argument from equivalence (*per equiparantiam*)—to support the processing.[41] But what we would like to highlight here is not the practical use of the art through logical and rhetorical means, but the practical syllogism that underlies his whole intention. As noticed by many scholars, his religious belief, the conversion of the "infidels" ranked first (Colomer 1995; Ruiz Simon 1997; Crossley 2005).

Philosopher and former Wittgenstein's student G. Henrik von Wright, following Aristotle and the revival of his tradition after WWII, called the means to an end reasoning 'practical inference' (von Wright 1963). This kind of inferences are not logically conclusive and relate intention and actions. He studied many variants in the third and first persons with a deontic conclusion:

[5] X intends to make it true that E
Unless does A , he (i.e. X) will not achieve this
Therefore, Y must do A wants to attain x (Wright 1963: 41)

[6] I intend to make it true that E
Unless I do A, I shall not achieve this

[41] On the post-Art period and the logical techniques, see Bonner (2012: 211ff).

Therefore, I must do A

(von Wright 1972)

Von Wright qualified [5] as *practical necessity*: "the necessity of doing something under which an agent is, if he is to attain some end of his own" (Wright 1972: 43). He also observed that in a practical inference in the first person [6] where the second premise is false, it may still be the case that 'I' believes it (mistakenly) true, and then it will be valid for him: "this is a peculiarity of a practical inference in the first person" (von Wright 1972: 44).

At first sight, [5] and [6] could be applied to describe Llull's reasoning. It would not be wrong, as the action is triggered by the necessity to obtain the goal. He distinguishes first (goals) and second (means) intention (Soler 2017). However, a closer look shows that we should turn towards a dialectic argument to endorse the speaker's position, i.e. an argument in which both agents display their opponent in the premises. [7] would be an attempt to capture the situation:

[7] Faith can be reached rationally
The Art displays all rational arguments
You must convert

From a pragmatic point of view, inside out, the conclusion is in fact assumed as a first premise: it is *not* the case that I infer that you must convert, because this is the explicit and most important aim of the whole discussion. 'You must convert' *is* the case. Under a prescriptive form (an imperative, a command), the first premise can also be transformed into a deontic assumption: 'it is the case that you must convert'. The final generalization is an inductive conclusion reached through a middle ground argument about the foundation of rationality. But it is naturally inferred from the first prescription, which is deemed to be the self-evident truth from which the speaker is departing:

[8] You *must* convert
The Art displays all rational arguments
Faith can be reached rationally

Llull's notion of dialogue is certainly not based on the Scholastic tradition. It displays the tactic of leaving the initiative to the opponent: test it, the Art will 'demonstrate' rationally the veracity of Christian faith. There is a difference between seeking for *true* conversions as a rational act and imposing the Christian faith at any cost. But the situation depicted by [8] is not a symmetric situation either. It entails already an imposition with a certain degree of violence that can escalate. When applied, it advances in time and escalates in intensity: Jews are not deemed to be witnesses any more, but *justiciables*, as there is an implicit judgement in [8] that Llull made explicit many times. There are necessary reasons that demonstrate the truth and superiority of the Christian faith. The unity of a Christian faith, a Christian doctrine, a Christian science, lies in his *credere per intelligere*, as he put it in *El llibre del gentil e dels tres savis* (1272-74).[42] According to him, this also holds for Christians themselves, who were not living up to their commitment with their own faith.

[42] "*credere pro credere, sed credere pro intelligere*", cfr. Domínguez (1987).

7. CONCLUSIONS AND FURTHER WORK

In this paper we have discussed imprints, traditions, violence and dialogue between Catholics and Jews in medieval Catalonia. The medieval mind was, to a large extent, a result of attempts to conjugate and rationalize traditions, violence and dialogue. The Late Middle Ages was a period in which an almost childish enthusiasm was combined with the coldest rationalism. Idiosyncrasies, hopes, philias and aversions relied on intellectual matrices where social, religious and political dimensions cohesively converged. Nothing was casual. Spirituality was the ultimate resort that embraced everything, the seminal tie. The medieval legacy, whatever its manifestations, can only be understood in light of those premises.

We started by referring to the case of Jewish mysticism as a social phenomenon and as a response against suffering. Kabbalah emerged in a moment in which the rising anti-Jewish hostility was turning into a real and noticeable threat. The myth of the *Shevirat ha-Kelim* for example, became a referential point when violence and pain appeared to push the limits of rationality, such as in the Holocaust. The confrontation between good and evil (which is no more than a deformation of divine goodness) and the close relationship between pious men and God, to whom they might return, constituted a narration of hope and strength.

Literature is another door to the personal and collective impact of tragedy and persecution. The poems by Iṣḥaq Sheshet Perfet and Mosheh Remos we quoted, show how the Catalan Jews tried to cope with an incomprehensible but unescapable brutality. Their verses express desperation and horror, but also resilience and determination.

Our major aim has been the study of the gestation of the hostility that prompted this mystical response and led to the massacres of 1391—among many others. Its origins have been found in a tension between hatred and dialogue or, more precisely, in the impossibility of dialogue. The rise of the Scholastics challenged the traditional approaches to Augustine and his claims for tolerance. Despite his theses having advocated for the physical protection of the Jews and a proselytizing model based on love and arguments, they set the grounds for marginalization and religious hate. The emergence of the mendicant orders, the fight against heretical movements and the incorporation of Aristotelian logic revitalized the missionizing zeal of the Church and molded a new sense of spiritual and political Christian unity. The Jews started to be perceived as an internal enemy that challenged the unicity of Christendom.

The new apologetic movements resulting from this process departed from the assumption that the Jews were mistaken; thus, their errors could be demonstrated through reason. If the truth was logically proved and despite this they persevered in their false beliefs, they would not only have erred, but would be evil and perfidious, a threat that should be physically eradicated.

Public disputations between rabbis and friars became the elementary tool in order to pursue this goal. However, the conception of those debates and the syllogistic argumentation by the Christian side virtually precluded dialogue on equal terms. The friars were always in a position of political power that contrasted with the delicate and dangerous situation of the Jewish spokesmen. The Christian arguments were considered true and irrefutable beforehand, while the counterpart was mistaken by default. The rabbis had no chance to defend their arguments. Our use of modern

theories of discourse analysis and informal logic to the study of medieval disputations gives evidence of these limitations.

The disputation of Barcelona, on which we have focused at length, is paradigmatic. It was organized as a political event by the highest spiritual and lay authorities in the Crown of Aragon. Nahmanides had to moderate his argumentation on behalf of his life and the security of the Catalan communities. Although he was allowed to freely present his points, he had to flee from the Crown after the debate. This example also evinces that the elementary metaphysical and logical approaches to theology of both sides were irreconcilable, which also hampered mutual understanding in purely philosophical terms.

The political and theological evolution of the Church since the 12th c., including its consequences for the Jewish population, was also reflected in the construction of Catalan society. Catalonia had always been a land of dialogue and violence. The absence of political actors who could monopolize power and authority resulted in a constant necessity of reaching agreements. Not even the king was capable of enforcing his will by force.

We drew a simple matrix—a matrix of conflict and dialogue—to mark the escalation of violence and its intensity over time. This should be developed a bit more and be populated with data. The Catalan matrix is in fact a double matrix. The four quadrants could have been ordered around the two axes of power (*juridictio*) and covenant (*pactum*) that organise the structure of old Catalan public law. We did not attempt to carry this out in the present article. It is the subject matter for a follow-up article.

There is a growing literature on the persistence of cultural traits in continuity flows to explain the persistence and survival of antisemitism in some places more than others. Starting from the Black Death in 1348-50, Voigtländer and Voth (2012) have used plague-era pogroms in nine-hundred German cities as an indicator for medieval anti-Semitism. They contend "that the same places that witnessed violent attacks on Jews during the plague in 1349 also showed more anti-Semitic attitudes more than half a millennium later: their inhabitants engaged in more anti-Semitic violence in the 1920s" (Voigtländer and Voth 2012: 1385). Tolerance and hatred of Jews has persisted at the local level in a consistent way over six-hundred years. At a normative socio-cultural level, the existence of long-term flows can be explained.

Likewise, at an intellectual level the persistence of some argumentation schemes and cultural (or folk) models through philosophies and educational institutions (such as universities) can and should be described and explained. The emergence and appearance of knowledge is never neutral. Authors correctly refer sometimes to their intellectual heritage when they quote their precedents and genealogies of thought. They explicitly go back to Plato, Aristotle, Paul or Augustin. However, sometimes, quotes, citations, and the roots of thinking are also blurred. Authors protect themselves from persecution not directly quoting their real sources and even hiding or enveloping their ideas into other more palatable forms. Leo Strauss convincingly showed that this was the case with Maimonides, Spinoza and many other thinkers of the Jewish tradition. They mastered the art of "writing between the lines", as writing and thinking were dangerous activities (Cf. Strauss 1988).

Persistence and transmission also relate to the art of translation and the building of libraries and repositories (and now, in the digital era, metadata and ontologies). Authors might not recognise the origins of the arguments they are using. This is also related to the way traditions are shaped. Carl Schmitt, for instance, an influent anti-Semitic jurist and political thinker, referred to mediaeval monarchies and the development of what he called the *Ius Publicum Europeum*. He never referred to Ramon Martí and the Dominican Catalan tradition he was undoubtedly replicating. He knew it through the Canonists, Thomas Aquinas, the 16th c. Spanish Second Scholastics, and lately, through the 19th c.. thinker Donoso Cortés, a political thinker who repeated many of the theological arguments of the Counter-reformation against the heresies. However, we might consistently find the components of the matrix in the Schmittian notions of *complexio oppositorum* and political theology. This research will have to wait for another occasion.

8. BIBLIOGRAPHY

Abulafia, A. S. 1998. *Christians and Jews in Dispute: Disputational Literature and the Rise of anti-Judaism in the West (c. 1000-1150).* Farham: Ashgate Publishing.

Abulafia, A. S. (ed.). 2001. *Religious violence between Christians and Jews: medieval roots, modern perspectives.* Dordrecht: Springer.

Alturo, J., Bellès, J., Fonts i Rius, J. Mª., García, Y. and Mundó, A. M. (ed.). 2003. *Liber iudicum popularis*. Barcelona: Generalitat de Catalunya, Departament de Justícia i Interior.

Anonymus. *Vita Raimundi Lulli, Opera Latina.* Ed. Balme / Paban, Raymundiana (Anm. 6).

Assis, Y. T. 2008. *The Golden Age of Aragonese Jewry.* London: The Littman Library of Jewish Civilization.

Augustin of Hippo. 1955. "Tractatus Adversus Judaeos". In *Treatises on Marriage and Other Subjects, Fathers of the Church (vol. 27)*. Eds. Roy J. Deferrari. Washington: Catholic University of America Press, pp. 387-417. Accessible at Roger Pearse's blog: https://www.roger-pearse.com/weblog/2015/06/11/augustines-treatise-against-the-jews/

Augustine. 1995. *De Doctrina Christiana*. Oxford: Clarendon Press.

Augustine of Hippo. 1890. *City of God.* New York: The Christian Literature Publishing Co.

Backman, C. R. 1990. "Arnau de Vilanova and the Franciscan Spirituals in Sicily". *Franciscan Studies,* 50: 3-29.

Backman C. R. 2000. "Arnau de Vilanova and the Body at the End of the World". In *Last Things. Death and the Apocalypse in the Middle Ages.* Eds. Caroline Walker Bynum and Paul Freedman. Philadelphia: University of Pennsylvania Press, pp. 140-155.

Baer, Y. A. 2001. *History of the Jews in Christian Spain.* Skokie (Illinois): Varda Books.

Baron, S. W. 1942. *The Jewish Community: Its History and Structure to the American Revolution (Vol. 1).* Philadelphia: Jewish Publication Society of America, 1942.

Bernard Gui. 1866. *Practica inquisitionis heretice pravitatis*. Paris: Alphonse Picard.

Bonner, A. 1989. ”L'apologètica de Ramon Martí i Ramon Llull davant de l'Islam i del judaisme”. *Estudi General,* 9: 171-185.

Bonner, A. 1990. “Ramon Llull and the Dominicans”. *Catalan Review,* 4 (1-2): 77-392.

Bonner, A. 2012. *L’Art i la lògica de Ramon Llull. Manual d’ús.* Barcelona: Universitat de Barcelona and Universitat de les Illes Balears.

Brentjes, S., Fidora, A. and Tischler, M. M. 2014. “Towards a New Approach to Medieval Cross-Cultural Exchanges”. *Journal of Transcultural Medieval Studies,* 1 (1): 9-50

Caputo, N. 2007. *Nahmanides in Medieval Catalonia: History, Community and Messianism*. Notre Dame (Indiana): University of Notre Dame Press, 2007.

Careil, L. A. 1861. *Leibniz, la philosophie juive et la Cabale: Trois lectures à l'Académie des sciences morales et politiques avec les manuscrits inédits de Leibniz*. Paris: Durand.

Carreras i Artau, T. 1949. ““La "allocutio super tetragrammaton" de Arnaldo de Vilanova”. *Sefarad* , 9 (1): 75-105.

Casanovas, P. 2019. "Catalan Identities: Language, Power and Political Pactism from a Historical Perspective". *In The Rise of Catalan Identity: Social Commitment and Political Engagement in the Twentieth Century.* Eds., Pompeu Casanovas, Montserrat Corretger and Vicent Salvador. Cham: Springer, pp. 19-48.

Cecini, U. and de la Cruz Palma, O. (eds.). 2018. *Extractiones de Talmud.* Turnhout: Corpus Christianorum, Brepols Publishers.

Chazan, R. 1989. *Daggers of Faith: Thirteenth-Century Christian Missionizing and Jewish Response.* Los Angeles and Berkeley: University of California Press.

Chazan, R. 1992. *Barcelona and Beyond: The Disputation of 1263 and its Aftermath.* Los Angeles and Berkeley: University of California Press.

Cohen, J. 1983. “The Jews as the Killers of Christ in the Latin Tradition, from Augustine to the Friars”. *Traditio,* 39: 1-27.

Cohen, J. 1984. *The Friars and the Jews: the Evolution of Medieval anti-Judaism*. Ithaca (NY): Cornell University Press.

Cohen, J. 1992. “Toward a Functional Classification of Jewish anti-Christian Polemic in the High Middle-Ages”. In *Religionsgespräche im Mittelalter. Eds. Bernard Lewis, Friedrich Niewohner and Friedrich N. Harrassowitz,*. Wiesbadn: Wolfenbütteler Mittelalter-Studien, pp. 93-114.

Cole, P. 2007. *The Dream of the Poem. Hebrew Poetry from Muslim and Christian Spain 950-1452*. Princeton: Princeton University Press.

Colomer, E. 1995. “El Arte luliana y la moderna informática”. *Catalònia*, 43: 20-23.

Consilium Lateranense IV (1215) in http://www.internetsv.info/Lateranense4.html

1896. *Cortes de los antiguos reinos de Aragon y de Valencia y del principado de Cataluña, Tomo 1, Primera parte.* Madrid: Real Academia de la Historia.

Crossley, J. N. 2005. "Raymond Llull's contributions to computer science". In *Ramon Llull: From the Ars Magna to Artificial Intelligence.* Eds. Alexander Fidora and Carles Sierra. Barcelona: CSIC, pp. 39-59

Dan, J. 1985. "Gershom Scholem's Reconstruction of Early Kabbalah". Modern Judaism, 5 (1): 39–66.

Decretals of Gregory IX http://www.canonlaw.info/canonlaw_IUSDECR.htm

Doménech, J. L. *et al*. 2018. "Dialectical logic for mythical and mystical superstructural systems". *Kybernetes* 48 (8): 1653-1680.

Domínguez, F. 1987. "Idea y estructura de la Vita Raymundi Lulii". *Estudios Lulianos,* 27: 1-20.

Elazar, D. 1977. "The Kehillah". *Workshop in the Covenant Idea and the Jewish Political Tradition*, Bar-Ilan University, Working Paper n. 6.

Ferro, V. 1987. *El dret public català. Les iastitucions a Catalunya fins al Decret de Nova Planta.* Vic: Eumo Editorial.

Fidora, A. 2012. "Ramon Martí in context: The Influence of the" Pugio Fidei" on Ramon Llull, Arnau de Vilanova and Francesc Eiximenis". *Recherches de Théologie et Philosophie médiévales*, 79 (2): 373-397.

Fidora, A. and Hasselhoff, G. K. (eds.). 2019. *The Talmud in Dispute During the High Middle Ages.* Bellaterra: Servei de Publicacions de la Universitat Autónoma de Barcelona.

Freeman, G. 1981. "The Rabbinic Understanding of Covenant as a Political Idea". In *Kinship and Consent: The Jewish Political Tradition and its Contemporary Uses.* Ed. Daniel Elazar. Ramat Gan: Turtledove Publishing, pp. 59-86.

Funkenstein, A. 1993. *Perceptions of Jewish History.* Los Angeles and Berkeley: University of California Press.

Gampel, B. R. 2016. *Anti-Jewish Riots in the Crown of Aragon.* Cambridge: Cambridge University Press.

Gigerenzer, G. 2008. "Moral intuition= fast and frugal heuristics*?". In Moral Psychology (Vol. 2): The cognitive science of morality: Intuition and diversity.* Eds. Walter Sinnott-Armstrong. Cambridge (Mass.): MIT Press, pp. 1-26.

Gonzalvo i Bou, G. 1996. "Els jueus i els Usatges de Barcelona". *Barcelona: Quaderns d'Història*, 23: 117-124.

Greenberg, G. 1996. "Nineteenth Century Jewish Thought as Shevirat Ha-Kelim". In *Jewish Philosophy and the Academy.* Ed. Emil L. Fackenheim and Raphael Jospe. Madison and Teaneck: Dickinson University Press, pp. 100-114

Hames, H. J. 2007. *Like Angels on Jacob's Ladder. Abraham Abulafia, the Franciscans and Joachimism.* Albany: State University of New York Press.

Hershman, A. M. 1943. *Rabbi Isaac ben Sheshet Perfet and His Times.* New York: The Jewish Theological Seminary of America.

Idel, M. 1988. *Kabbalah: New Perspectives.* New Heaven: Yale University Press.

Krueger, P. (ed.). 1892. *Corpus Iuris Civilis.* Berlin: Weidmannos.

Lewis, C. S. 1964. *The Discarded Image*. Cambridge: Cambridge University Press.

Limor, O. 2010. "Polemical varieties: Religious disputations in 13th century Spain". *Iberia Judaica*, 2: 55-79.

Llewellyn, B. (2004). *They Who Give from Evil: The Response of the Eastern Church to Moneylending in the Early Christian Era*. Toronto: Thesis submitted to the Faculty of Theology at the University of St. Michael's Collegeand the Department of History of the Toronto School of Theology.

Löwith, K. 1949. *Meaning in History.* Chicago and London: The University of Chicago Press.

Martí, J. P. and Llopis Estampers J. (eds). 1973. *Constitutions y altres drets de Cathalunya.* Barcelona: Editorial Basa.

Maspons i Anglasell, F. P. 1932. *L'esperit del dret públic català*. Barcelona: Barcino.

Millàs Vallicrosa, J. Mª. 1940. *La poesía sagrada hebraicoespañola.* Madrid: CSIC.

Millàs Vallicrosa, J. Mª. 1958. "Algunas relaciones entre la doctrina luliana y la Cábala". *Sefarad*, 18 (2): 241-253.

Montagut i Estragués, T. de. 1989. "Pactisme o absolutisme a Catalunya: les grans institucions de govern (s. XV-XVI)". *Anuario de Estudios Medievales*, 19: 669-679.

Moore, G. F. 1921. "Christian writers on Judaism". *Harvard Theological Review*, 14 (3): 197-254.

משה בן נחמן (Mosheh ben Naḥman). 1964. "ספר הגאלה" ("The Book of Redemption"). In כתבי רבינו משה בן נחמן *(Writings of Moshe ben Nahman).* Ed. Charles ben Chaver. Jerusalem: Mosad ha-Rav Ḳuḳ, 1964.

Muntané i Santiveri, J.X. 2014. "Anàlisi de l'estructura del jurament de les malediccions dels jueus catalans: usatge 171". *Revista de Dret Històric Català*, 13: 9-48.

Nahmanide, Rabbi Moïse ben Nahman. 1984. *La dispute de Barcelone.* Lagrasse: Verdier.

Nicholas Eymerich. 1587. *Directorium inquisitorum*. Rome.

Nirenberg, D. 2002."Conversion, sex, and segregation: Jews and Christians in medieval Spain". *American Historical Review* 107, 4: 1065-1093.

Nirenberg, D. 2007. "Une société face à l'altérité". *In Annales. Histoire, Sciences Sociales* 62 (4) : 755-790.

Nirenberg, D. 2015. *Communities of violence: Persecution of minorities in the Middle Ages*. Princeton: Princeton University Press.

Palos, J.-L. 1995. "Estrategias de control y limitaciones del poder real en los siglos XVI-XVII". *Manuscrits. Revista d'Història Moderna*, 13: 143–154.

Processes inquisitionis, translated and edited in Wakefield, W. 1974. *Heresy, Crusade and Inquisition in Southern Frace, 1100-1250.* Berkeley and Los Angeles: University of California Press, pp. 250ff.

Raimundo de Penyafort. 1945. *Summa Iuris.* Barcelona: Universidad de Barcelona.

Ramban [Nahmanides]. 2004. *The Torah: with Ramban's Commentary Translated, Annotated and Elucidated (Vol. 1, Genesis)*. New York: Mesorah Publications (English and Hebrew).

רשב״א (Rashba [Shlomo ben Adert]). 1997. שלות ותשבות (Responsa). Jerusalem: Makon Aor ha-Mizrah.

Raymundi Martini. 1651. *Pugio fidei adversus mauros, et iudaeos*. Paris.

Reed, C. and Walton, D. 2001. "Applications of argumentation schemes". *University of Windsor, OSSA 4*.

Riera i Sans, J. 1986a. "El Baptisme de Rabí Ishaq ben Seset Perfet". *Calls*, 1: 43-52.

Riera i Sans, J. 1986b. "Estudis sobre el judaisme catala. Anys 1970-1984". *Calls* [Tàrrega], 1: 93-132.

Riera i Sans, J. 1987. "Estudis sobre el judaisme catala. Anys 1929-1969". *Calls* [Tàrrega], 2: 181-209.

Riera i Sans, J. 2014. "Moixè ben Nahman, Bonastruc de Porta". *Tamid: Revista Catalana Anual d'Estudis Hebraics*, 10 (2014): 7-33.

Ripoll Sastre, P. 2018. *Llibre dels vuit senyals (15th century): An Edition, Legal and Comparative Study*. Doctoral Dissertation. Barcelona: Universitat Pompeu Fabra.

Romano, D. 1983. *Judíos al servicio de Pedro el Grande de Aragón: 1276-1285.* Barcelona : Universidad de Barcelona.

Roth, N. 2011. "1391 in Aragón, Catalonia, Valencia and Majorca". *Iberia Judaica*, 3: 49-75.

Ruiz Simon, J. Mª. 1997. *L'Art de Ramon Llull i la teoria escolàstica de la ciencia.* Doctoral dissertation, Universitat Autònoma de Barcelona.

Salrach i Marés, J. Mª. 1989. "La Pesta Negra i els orígens del problema remença". In *Pere el Cerimoniós i la seva època.* Barcelona : Consell Superior d'Investigacions Científiques, pp. 13-34.

חיים שירמן (Schirmann, H). 1954-1956. השירה העברית בספרד ובפרובאנס (*Hebrew Poetry from Sefarad and Provence*). Jerusalem: Mosad Byalik.

Scholem, G. 1941. "The Zohar. I. The Book and its Author". In *Major Trends in Jewish Mysticism*. Ed. Gershom Scholem. Jerusalem: Schocken Publishing House.

Sholem, G. 1971. “Devekut or Communion with God”. In *The Messianic Idea in Judaism, and Other Essays on Jewish Spirituality*. Ed. Gershom Sholem. New York: Shoken Books, pp. 203-227.

Scholem, G. 1987. *Origins of the Kabbalah*. Princeton: Princeton University Press.

Sierra, C (ed.). 2011. *Ramon Llull: From the Ars Magna to Artificial Intelligence.* Barcelona: Artificial Intelligence Research Institute.

Soler, A. 2017. “Ramon Llull: escriptura, lectura i reordenació del món”. *Setè centenari de Ramon Llull: el projecte missional i la pervivència de la devoció: actes del congrés d'obertura de l'Any Llull (Palma 24-27 de novembre de 2015),* Universitat de Barcelona, pp. 317-337.

Stow, K. R. 1981. “Papal and royal attitudes toward Jewish lending in the thirteenth century”. *AJS Review*, 6: 161-162.

Strauss, L. 1988. *Persecution and the Art of Writing* (1952). Reissued Chicago: University of Chicago Press.

1703. *Summa Sti Raymundi di Penniafort, Barcinonensis, Ord. Praedeicator, de Poenitentia et Matrimonio, cum Glossis Ioannis de Friburgo*. Roma, Ioannis Tallini.

Sysyn, F. 1992. “The Khmelnytsky Uprising and Ukrainian Nation-Building”. *Journal of Ukranian Studies*, 17 (1-2): 141-170.

Szpiech, R. W. 2011. “Arabic Citations in Hebrew Characters in the Pugio Fidei of Dominican Raymond Martini: Between Authenticity and Authority”, *Al-Qantara*, 32 (1): 71-107.

Szpiech, R. W. 2014. “The Aura of an Alphabet: Interpreting the Hebrew Gospels in Ramon Martí’s Dagger of Faith (1278)”. *Numen*, 61 (4): 334-363.

Szpiech, R. 2016. “Translation, transcription, and transliteration in the polemics of Raymond Martini”. In *Translating the Middle Ages*. Eds. Karen L. Fresco and Charles D. Wright. Ashgate: Routledge, pp. 171-187.

Tartakoff, P. 2012. *Between Christian and Jew: Conversion and Inquisition in the Crown of Aragon, 1250–1391*. Philadelphia: University of Pennsylvania Press.

Taubes, J. 2009. *Occidental Eschatology.* Stanford: Stanford University Press.

Taubes, J. 2013. *To Carl Schmitt*. Letters and Reflections. New York: Columbia University Press.

Tischler, M. M. 2019. "Die Dominikanermission unter den Muslimen im 13. Jahrhundert: Warum der mallorquinische Laie, Universalgelehrte und Missionar Ramon Llull zum Fundamentalkritiker des Dominikanerordens wurde." *Zeitschrift für Missionswissenschaft und Religionswissenschaft* 103 (1/2): 34-52.

Twersky, I. 1983. “’Open Rebuke and Concealed Love’: Nahmanides and the Andalusian tradition”. In *Rabbi Moses Naḥmanides (Ramban): Explorations in His Religious and Literary Virtuosity*. Ed. Isadore Twersky. Cambridge (Massachusetts): Harvard University Press, pp. 11-34.

Vajda, G. 1963. “Recherches récentes sur l'ésotérisme juif: II (1954-1962) (Suite)”. *Revue de l'histoire des religions,* 165 (1): 49-78.

Vajda, G., 1977. “Recherches récentes sur l'ésotérisme juif (Troisième série, années 1963-1975) (suite)”. *Revue de l'histoire des religions*, *192* (2): 165-198.

Valls i Taberner, F. 1996. *Sant Ramon de Penyafort*. Barcelona: La Formiga d’Or.

Voigtländer, N. and Voth, H.J. 2012. "Persecution perpetuated: the medieval origins of anti-Semitic violence in Nazi Germany". *The Quarterly Journal of Economics,* 127 (3): 1339-1392.

Walton, D. 1996. *Argumentation Schemes for Presumptive Reasoning. Mahwah*. N.J.: Lawrence Erlbaum Associates.

Walton, D. 2013. *Scare tactics: Arguments that appeal to fear and threats (Vol. 3).* Dordrecht: Springer Science & Business Media.

Walton, D. 2014. "A dialectical analysis of the ad baculum fallacy". *Informal Logic* 34 (3): 276-310.

Watt, J. A. 1992. “Jews and Christians in the Gregorian Decretals”. *Studies in Church History* 29: 93-105.

Wolfson, E. R. 1989. “By Way of Truth: Aspects of Naḥmanides' Kabbalistic Hermeneutic”. *AJS Review,* 14 (2): 103-178.

Wright, G. H. Von. 1963. "Practical inference.". *The philosophical review,* 72 (2): 159-179.

Wright, G. H. Von. 1972. “On so-called practical inference”. *Acta sociològica,* 15 (1): 39-53.

Yerushalmi, H. Y. 1970. “The Inquisition and the Jews of France in the Time of Bernard Gui”. *The Harvard Theological Review,* 63 (3): 317-376.

Zanchino U. 1579. *De haereticis*. Rome.

Journal of Catalan Intellectual History (JOCIH)
Online ISSN 2014-1564 DOI: 10.2478/jocih-2019-0006

Received 30/11/2020 / Accepted 15/11/2020 / Published 31/12/2020

MAPPING *SHARI'AH* NORMATIVE REASONING CONCEPTS

Mustafa Hashmi
(La Trobe University, School of Law, Melbourne, VIC, Australia; Data61,CSIRO, Sydney, NSW, Australia, Federation University, Brisbane, QLD, Australia)
mhashmi@latrobe.edu.au

ABSTRACT

Within the context of a larger project, in this paper, we discuss one-to-one mapping of the *Shari'ah* normative concepts of *wajib, haram, Sunnah,* etc., with conventional normative concepts of obligation, prohibition, and permission. The goal of the mapping to gaining a better understanding of the *Shari'ah* normative concepts and what deontic effects they generate when applied, and what consequences can be attained through the actions as compared to the Western normative concepts. Existing literature lacks such understanding of the correspondence between the two normative systems. The mapping shows conceptual overlapping between the concepts, yet the two types of systems should be separated from each other in terms of the philosophy, context, and the consequences of the Islamic normative systems as the expression of the divine will.

Keywords: Shariah sources, normative concepts, norms classes, Islamic normative reasoning

Acknowledgements: Project IEC PRO2018-S05. *Models del dret i la filosofia política catalanes: semàntica de les doctrines jurídicopolítiques del pactisme en les seves diferents fases* [Models of Catalan political philosophy and law: Semantics of pact-model driven political and legal doctrines at their different stages].
Disclosure statement: No potential conflict of interest was reported by the authors.

Suggested citation: Hashmi, M. (2019-2020). "Mapping Shari'ah Normative Reasoning Concepts", *Journal of Catalan Intellectual History* 12: pp. 97-108 DOI: 10.2478/jocih-2019-0006

1 INTRODUCTION

In the past few decades several scientific studies have been conducted on *Shari'ah* normative system and expressing the opinion about the possibilities of *Shari'ah* norms in a contemporary Islamic state. Such as Al-Qaradawi (2003), Ramadan (2009) broadly investigated the *Shari'ah* normative systems touching upon the basis of normative concepts, their properties and concepts prescribing *Shari'ah* punishments. Whereas Mukhametzaripov and Kozlov (2017) studied the *Shari'ah* functioning in the system of law from the point of view of potential negative consequence from use of *Shari'ah* norms. They relate the concept of 'law' and *Shari'ah* recognizing the significance of *Shari'ah* norms as the social regulator. Alwazna (2016), on the other hand, investigates the Islamic law and its sources to translate into comparative law written in English. He focuses on five different concepts of Islamic legal reasoning—obligatory, permitted, abominable and other concepts deduced from the *Shari'ah* and other sources which jurists confront for legal rulings (Hallaq 2009). An-Na'im (2011) studies the nature of *Shari'ah* as religious normative system, and civic law of the state—and at the same time the normative similarities between *Shari'ah* and the civic law regulating the actions and behaviour of subjects, and indicate the relationship and possible interactions, and for various reasons—cross-fertilization between the two normative systems.

Rather similar studies (Badr 1978, Soper 1995, Liebesny 1985, An-Nacim 2010, Asariwarni & Jandra 2018) compared the religious Islamic law with civil, common, and customary laws focusing on the concept of the legal systems, legal sources from historical, moral, philosophical, political, and social perspectives. However, limited understanding exists on the common concepts in the Islamic and Western normative systems controlling and guiding the socio-political and economic behavior. In the context of a larger study, in this paper, we investigate which common concepts in the Islamic normative systems are comparable to the Western legal normative systems and study their characteristics according to the deontic consequences and effects they produced when applied.

The remainder of the paper is structured as follow: next in Section 2 we precisely revisit normative concepts from conventional systems following which basic Islamic normative concepts are mapped with conventional normative concepts in Section 3. The paper is concluded with some remarks and pointers for future work in Section 4.

2 NORMS CLASSIFICATION: AN INFORMAL INTRODUCTION

The scope of norms is to define concepts to regulate their subjects, and to define what is legal and what is not. They are created to serve for different purposes and can be found in both normative provisions and recitals (Amantea *et al.* 2019). Essentially, all legal norms should contain information under which the norms become applicable and the (normative) effects that they produce when applied under different situations. These codes of actions can come in various forms, capturing different intuitions, prescribing or informing people how to act in a proper way; or the penalties or sanction for a person (or an organisation) who violates a norm (Peczenik 2009).

Over the years, various research efforts have been delved towards the classification of legal

norms and different classification schemes have been proposed. For instance, von Wright (1963) classified legal norms into three different types, namely: (i) determinative (or constitutive) norms, which define the concepts or activities that need to be defined or explicitly specified by legal norms, (ii) prescriptive norms, which prescribe the actions and the deontic effects produced by means of: (a) obligations, a legally binding set of actions that must be followed by the subject, (b) prohibitions, a legally binding situation that the subject must avoid, and (c) permissions, situations when neither obligations to the contraries nor prohibition hold, after performing the actions, and (iii) directive or technical norms, which prescribe what needs to be done in order to attained a certain end.

Following a functional approach, Waltl *et al*. (2019) have classified legal norms that appear in German laws into nine different categories, namely: duty, indemnity, permission, prohibition, objection, continuation, consequence, definition, and reference; whereas de Maat (2012) has divided legal norms into seven different types, namely: obligations, rights, application provisions, penalisation, calculations, delegations, and publication provisions, and have provided definitions to each of these. Besides, from a structural perspective, Amantea *et al.* (2019) has classified legal norms into 5 different types, namely: objective, constitute, deontic, scope, and meta-norms (procedural and contextual), and have studied their inter-relationships in the EU directives.

In addition to the above, Hilty *et al*. (2005) provide a characterisation of obligation based on its temporal structure and distributed life cycle, which provides a useful mapping from the requirements to enforcements with respect to their temporal boundaries and invariance properties. Whereas Hashmi *et al.* (2013, 2016) have classified the legal norms according to their temporal validity (Palmirani *et al.* 2011) and post-violation effects, and further divided the three basic normative classes (i.e., obligations, permissions, and prohibitions, as mentioned before) into 11 different subcategories, such as persistent vs non-persistent, achievement vs maintenance, preemptive vs non-preemptive, perdurant vs non-perdurant, etc., as illustrated in Figure 1. Hence, as can be seen in the figure, legal norms can be classified differently according to the legal force and binding effect (Kovacs *et al.* 2016), and from different aspects. Nevertheless, in its essence and at the highest level of abstraction, it is widely accepted that norms in legal documents can be largely divided into two categories, namely: constitutive norms and regulative norms, where constitutive norm, also known as count-as norms or count-as rules, are norms that regulate the creation of (institutional) facts and define concepts that are specific to a legislation; whereas regulative norms are norms that prescribe the actions and the deontic effects, such as obligations, prohibitions, and rights and permissions, produced after applied them. To be able to properly verify whether a particular action of the subject complied with the regulations it is constrained with—one has to determine whether the conceptual model of the actions align with the formal specification of norms by means of different deontic effects. In this context, the regulative (norms) can be deemed as a qualifier for an action of the subject or state of affairs as stipulated by the regulation (Peczenik 2009).

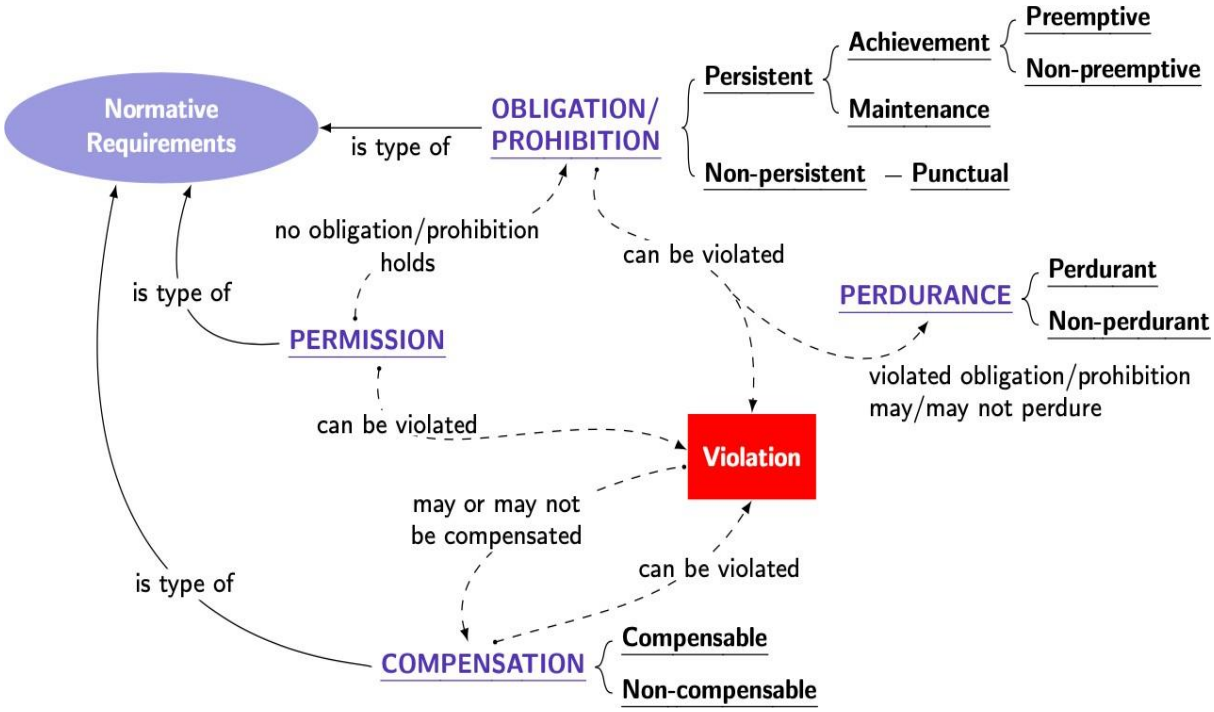

Figure 1: Classes and Relationships of different normative types (adopted from Hashmi *et al*., 2016)

In this regard, in the following sections, we are going to use the classification proposed in Hashmi *et al*. (2016) as a template for mapping the Islamic normative concepts with the conventional normative concepts, i.e., the deontic effects they produce when applied.

3 ISLAMIC NORMATIVE REASONING CONCEPT

The two primary sources of divine law in Islamic legal system are Holy *Qur'an* and *Sunnah* (literally, traditions)[1]. Both of these sources provide the guiding principles that explicitly establish Islamic legal rulings (Arabic: sg. *hukam*, pl. *ahkam*) to be applied to all believers (Alwazna 2016; Hallaq 2009). Certain legal rulings pertaining religious admonitions, salvific histories, instructions and eschatological cases communicated through these sources are definitive and require no personal reasoning or interpretations (e.g., the words of God (hereafter, Allah)) (Alwazna 2016). However, there is still a large corpus of legal rulings, from both *Qur'an* and *Sunnah*, that need to be interpreted before rulings can be applied. Such interpretations, in essence, are generally based on human apprehension of the divine law, called *Fiqah*, and is generally carried out by learned scholars (sg. *Alam*, pl. *Ulama*) having the knowledge and understanding of commandments, traditions, and practices transmitted through *Qur'an* and *Sunnah*.

Figure 2 illustrates the legal reasoning and law that has been emerged from *Fiqah*, namely: *ijma*, *ijtihad*, *taqlid*, and *qiyas*. *Ijma* (scholarly consensus) is a legal method of interpretation and reasoning by which scholars reason on an issue and derive conclusions in accordance with the

[1] *Sunnah* narrated at the authority of the companions of prophet Muhammad(pbuh) about his saying, actions or approvals collected over centuries through a complex but a rigorous and authentic process.

revelations of the *Qur'an* and narrations of the *Sunnah* (Esack 2009; Hallaq 2009). The basic requirements for *ijma* are the stringent narrations, i.e., the commandments of Allah cannot be altered and must be followed exactly. According to Rippin (2005), *ijma* is the most regarded element in the Islamic legal system as all Muslims agree that Qur'an's verses are explicit not allegorical such that only Allah knows the actual meanings and are not uttered by any others. Since *Qur'an* comprises around five hundred legal rulings applicable to Muslims (Alwazna 2016), only a small portion of *Shari'ah* rules is actually based on *ijma*.

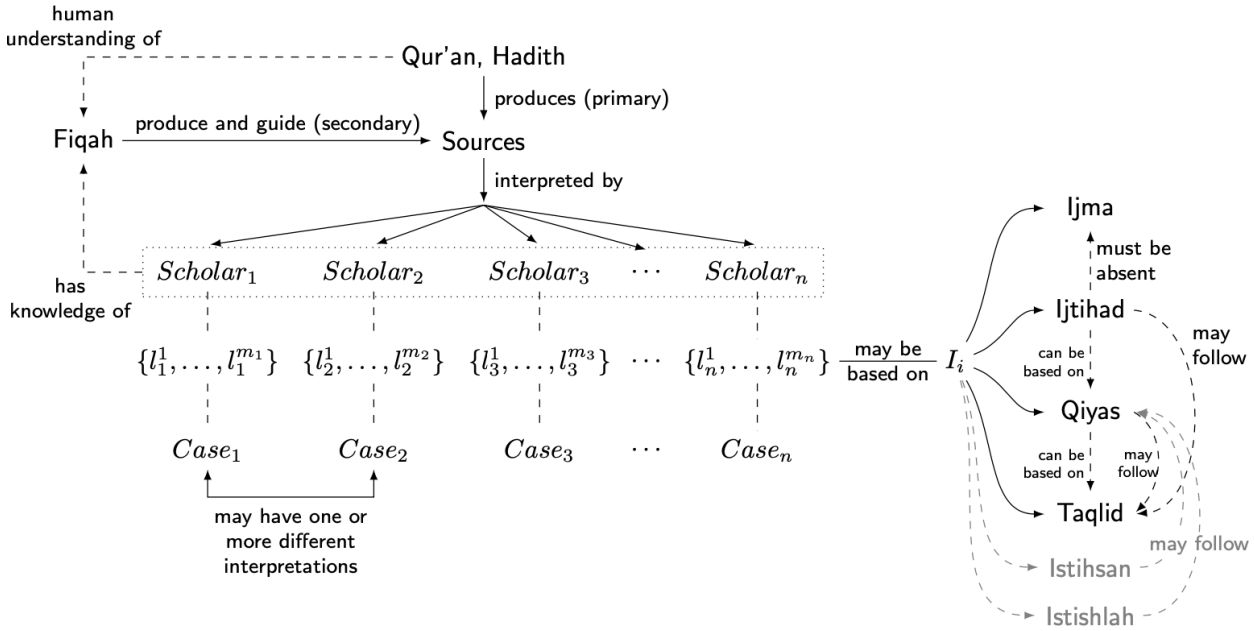

Figure 2: Sources of Shari'ah and Reasoning Methods

Ijtihad (personal reasoning),[2] on the other hand, is a reasoning method in which master-jurist (or *mujtahid*[3]) exert his maximum efforts in seeking knowledge and deriving the principles and legal rules by interpreting the holy scripture (Codd 1999). Islamic scholars (Albarghouthi 2011; Hallaq 1986, 1984; Hashish 2010; Kamali 2003) view *ijtihad* as the most important instrument and source of legal rulings after the holy scripture. It is used to explain the position of *Shari'ah* on ruling certain cases when *Qur'an* and *Sunnah* are silent, unclear, orindecisive.

Despite being the most pristine method, *ijtihad* was considered obsolete as during the 10th century as there was prevailing understanding amongst the jurists that most questions regarding *Shari'ah* had been answered and it was no longer needed for scholars to practice *ijtihad* (Codd 1999; Hallaq 1984; Kesgin 2011; Smock 2004), which lead to closing the door of *ijtihad*.[4] Con-

[2] Linguistically originated from an Arabic word "*al-juhud*", *ijtihad* means exertion, effort, trouble or pain. From an Islamic jurisprudence perspective, it refers to the attempt of a scholar to extracting legal rules based on evidence found in sources of *Shari'ah*. From a technical and legal jurisprudence perspective, various definitions of the term have been proposed. For example, Amidi (1984) viewed *ijtihad* as the "total expenditure of effort in the search of opinion about any legal rule in a manner that there is no further possibility to expanding the effort."

[3] A *mujtahid* is a qualified person of high ranks capable of managing the entire range of *ijtihad*, i.e., reasoning about the law through applying complex methods and principles of interpretation. See Hallaq (2009). Given the significance of *ijtihad*, there are differing opinions on the qualification of a *mujtahid*, see Codd (1999) and Weiss (2010) for details.

[4] Several reasons for closing the doors of *ijtihad* have been given including autocratic behaviour of Muslim caliphs, rationalist movements, preservation of the values and traditions, confinement of the practice to the explanation, application, at the most, interpretation of the doctrine, to name but a few, see Javed & Javed (2011); Schacht (1964) for details. Also, there is ongoing debate on whether the doors of *ijtihad* are permanently closed or there is possibility of reinstating the practice of *ijtihad*. This topic is out of the scope of this paper; however, interested readers are pointed to Smock (2004) for details.

sequently, this created a vacuum and fear of deterioration and religious distortion of the Islamic doctrine. Besides, this also created problems for laymen and non-specialist people to get detailed knowledge and understanding of complex issues and seek guidance on Islamic legal system to make informed decisions in accordance with the *Shari'ah* laws (Kesgin, 2011). This necessitated the scholars to practice *taqlid* (a.k.a. *ittaba*, to imitate or to copy), i.e., another reasoning method in which scholars follow the actions or views of (often) other scholars without questioning the veracity or demanding the proof of action or situation thereof. Al-Zuhayli (1986) defined *taqlid* as "indiscriminately accepting the opinion concerning the legal rule(s) without the knowledge of its bases". Historically, the permissibility of *taqlid* comes directly from *Qur'an* and narrated as:

> . . . to whom We revealed [Our message]. So, ask the people of the message if you do not know.
>
> — Surah An-Nahl [16:43] and Surah Al-Anbya [21:7]

And can be practised in two ways: (i) an ordinary person acts upon the opinions of a qualified person, and (ii) an expert scholar (from a specific area of law) seeks guidance from a high ranked scholar (Ghazala 2013). However, regardless of which form, the core of *taqlid* is that one should give up his personal judgments and follows the understanding and interpretations of earlier scholars without any prejudice to seek guidance in the absence of clear rulings (Abdul Karim 2015). Despite the ruling process is opposite to that of *ijtihad*,[5] both notions have a strong relationship as muqallids, i.e., person who practice *taqlid*, may follow the rulings based on *ijtihad*. However, several Islamic scholars, such as Ibn Qayyim al-Jawziyya (died 751 H), Yusuf Ibn Abdallah Ibn Mohammed Ibn Abd al-Barr (died 1071 H), Ibn Hazm (died 885 H), have questioned the legitimacy of *taqlid* and expressed their concerns over blindly practising *taqlid* (Mustafa 2013; Rahim 2004) because there was a wider feeling that it had severe consequences for the Islamic jurisprudence system as it was just limited to explaining the works of other scholars, without consulting the holy scriptures, thus distancing the scholars from *Shari'ah* and the *Qur'an* (Abdul Karim 2015; Halstead 2004).

Last but not least, *qiyas* (deduction by analogy)[6] is the fourth and widely used method for extracting legal rulings on the issues that are not covered by *Qur'an* and *Sunnah*, nor experts' opinions. In this method, scholars consider the operative and effective characteristics (*illa*) of the precedent cases (*asl*) to deduce rulings about new cases (*far*). Here, *illa* is the set of characteristics, which often refers to the contextual conditions or situations related to the new case, indicating the similarities and differences between the new and precedent cases that are required to perform *qiyas* (Albadri 2016; Hallaq 2009). Despite differing opinions amongst Muslim jurists (such as Ibn Hazm[7] or Al-Ghazali[8]) on the need and credibility of *qiyas*, there is a common agreement

[5] In *ijtihad*, a consensus is developed amongst jurists for some specific cases; whereas in *taqlid*, the opinions and understanding from various scholars is gathered (called *Talfiq*) into one definitive case dissimilar to all. See Ghazala (2013).

[6] According to Hallaq (2009: 176) "syllogistic, relational, a fortiori, econtrio and reduction, ad absurdum arguments" are some other methods subsumed under *qiyas*.

[7] Ibn Hazm, Ebuˆ Muhammed Ali b. Ahmed b. Said (died 456 AH) is one of the main critics of practicing *Qiyas*. In this famous book Kitabu'l-Fasl fil-Milel ve'l-Ahva ve'n-Nihal, (Mısır: Matbaˆatu'l-Edebiyye) he surveyed different systems of philosophical thoughts with regards to religions and beliefs and criticised Muslim theologians and jurists. In his arguments about *qiyas*, he raised questions about the consecrated scripts only to address purely by human means. But he did not fully deny the significance of human reasoning since it is backed by *Qur'an* itself.

[8] Abu Hamid Muhammad Ibn Muhammad al-Ghazali (died 448 or 450 AH) in his book *Al-Mustafa Min Ilm Al-Usul* (Vol. II: 56)

that for *qiyas* to be valid, it must be grounded on the pronouncements of *Shari'ah* such the illa is based on *Shari'ah* text. Hallaq (Hallaq 2009) discusses four mandatory elements of *qiyas* namely: (i) a new case requiring rulings must exist, (ii) the precedent case which is mentioned in the *Qur'an* and *Sunnah* or it is accepted by scholars through *ijma* and *ijtihad* providing the legal evidence (*dalil*) in support of the new case, (iii) scholar must consider the characteristics (*illa*) of new as well as precedent cases, and (iv) legal ruling still valid for original case and applicable to a new case too. The departure from any of these components may invalidate *qiyas*.

Apart from the basic methods mentioned above, there are also other less commonly used approaches that Islamic scholars used to derive the Islamic legal ruling. For instance, *Istihsan* (juristic preference) is as an inferencing approach in which jurists prefer one matter or idea over another. It is a special practice that is exercised by the jurists and generally associated with *qiyas* within the Islamic juristic framework. Contrary to *qiyas*, in the *Istihsan* reasoning process, a less apparent judgment might be preferred over a strongly apparent judgment because of some other evidence (Alwazna 2016). *Istishlah* (public interest), on the other hand, is an inferencing method that is not directly based on *Qur'anic* verses. Instead, it presents rational arguments for a case that is not related to religious observances and uses five universals of law, i.e., mind, protection of life, religion, property and family, as the centre point of its reasoning process (Hallaq 2009). While independent, both these approaches can be derived from above-described reasoning methods, we do not discuss them any further, but point interested readers to (Ahmad *et al.* 2011; Hallaq 2009; Kamali 2003) for details.

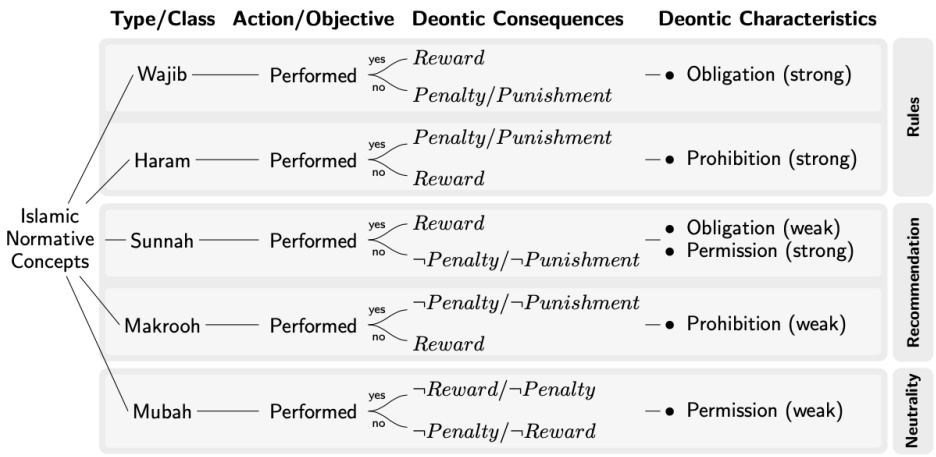

Figure 3: Basic Islamic normative concepts, deontic characteristics and consequences

Over the passage of time, a large corpus of legal rulings has been compiled based on the approaches described above. Figure 3 illustrates these normative concepts establishing the legal position of *Shari'ah* on various religious and societal issues, which can be classified as: (i) rules, that define whether a certain action is obligatory or prohibited based upon some context, (ii) recommendations, that define the permissibility of the action, and (iii) neutrality, that defines the situations of when not to carry out any retribution in case of violations or reward for carrying out the actions.[9]

disapproved *qiyas* on the bases that it is rationally impossible and legally prohibited.

[9] In the Islamic perspective, the notion of reward (or allowance) is an instrument of encouragement while punishment (penalty) is as a means of discipline. The reward is considered as receiving blessing and love of Allah for good deeds as well as receiving anger

Wajib[10] prescribes the minimum conditions that are obligatory to every Muslim, regardless of their societal and/or moral status of piety or saintliness. Failure to comply with these acts will lead to apostasy (Reinhart 1983). From the *Shari'ah* context, some wajib acts, such as the performance of prayers, the hajj (pilgrimage),and the payment of *zakat* (donation), are obligation on individuals. They are known as *wajib al-ayn* and cannot be excused in any situation or will be penalised in ignored.

Another type of *wajib* is known as *waajib al-Kafiyah*, which are obligatory to the entire community, such as burying the dead. The performance of *waajib al-Kafiyah* by one person removes the obligation from rest of the community. However, the entire community will be considered sinning if no one has performed the required action(s). Hence, in a classical sense, the avoidance of *wajib* will be punished while the performance of which isrewarded (Reinhart 1983).

Haram[11] refers to the set of taboo like acts that must be avoided under Islamic law, such as eating pork, drinking alcohol, uprooting trees, gambling, cheating, etc., and will be attributed as sin and punished accordingly. The prohibiting of such acts is directly come from the holy scripture and *Sunnah* of the highest statues and they mustbe avoided without any exception of nobility of cause or a good intention (Al-Qaradawi 1999). performing or legitimising the *haram* may constitute to apostasy.

Sunnah (a.k.a. traditions)[12] are acts that are based on the behaviour of prophet Muhammad(pbuh) and carry some virtue connotations from the Islamic moral system and are highly regarded. According to Esposito (2001), *Sunnah* acts can be classified as: (i) *sunnah al-qawliyah*, sayings or statements of the prophet Muhammad(pbuh), (ii) *sunnah al-filiyah*, actions of the prophet Muhammad(pbuh)'s actions, and (iii) *sunnah al-taqririyah*, the knowledge about something about prophet Muhammad(pbuh) remained silent or had no objection if practised by the companions. Reward will be given to those that carried out such acts, but no punishment will be meted to those that avoid it. Examples of *Sunnah* acts are performance of non-obligatory prayers, or removal of hurdles from the path which may hurt people on the way.

Makrooh are acts that are reprehensible or disliked by Islam but not haram. There is no punishment for doing these acts, but the avoidance of such acts will be rewarded. Essentially, *Makrooh* acts are not definitive of one's status in the Muslim community (Reinhart 1983). Based on the degree of severity, there are two main classes of *Makrooh*, namely: *Makrooh tahrimi* and *Makrooh tanzihi.*

Makrooh tahrimi[13] is strongly discouraged in Islam as its status is somewhat close to the unlawful haram. If one continuously doing a *makrooh tahrimi* act, he or she will be considered as

for bad deeds. They can only be come from the authority of the Gold and are subject to freedom. See Nazri *et al.* (2011).

[10] Some juristic have written *wajib* as "*fard*" and "*makoob*" which has same meanings in the sense of obligation—the omission of which leads of punishment (al-Lam' fi Usool al-Fiqh by Imam Ali al-Shiraazi (died 476) (Imam Abi Ishaq Ibrahim bin Ali al Shayrazi (1999)).

[11] The term "*Haram*" means "taboo, inviolable, sacred, wrongdoing, offence". See Baalbaki (1995: 460). It originates from the Arabic word "*harem*" which refers to women's quarters where men, except their husbands and relatives, are not allowed.

[12] "*Mustahabb*", "*Mandub*" and "Recommended" have also been synonymously used as *Sunnah*.

[13] "*Makrooh tahrimi"* can also be understood as being in diametrical opposition to "*wajib"*.

sinful and will be punished accordingly but without losing his/her status in the Muslim community. In contrast, *Makrooh tanzihi* acts do not account for any punishment and avoidance of such acts may earn the reward. Examples of *Makrooh* are the use of gold or silver utensils for men and women, fasting on the day of *Eid-al-Fitr*, delaying *Asr* prayer until the sun changes its color, wasting water whilst performing ablution or being miserly with it.

Mubaah are acts that are permitted and lawful. These acts often functionally mean indifferent, which is interpreted as act not involving Allah's judgment. Hence, there is no reward nor punishment for performing or neglecting such acts. From reasoning point of view, the legality of such acts has always been questioned as it is unclear whether they fall into the category of authorised acts, or whether they have any moral status (or legitimacy), or carry any moral consequences. This is ultimately a valid question because generally *Mubaah* acts are generally considered as permissible acts.

While these concepts prescribe obligatory actions, a set of certain pre-conditions, known as *rukan* (*tanet*), is necessary for determining the validity of actions to be punished or rewarded (Ahmad *et al.* 2011).

4 CONCLUSION

Shari'ah and other sources of Islamic divine law in the Islamic legal system provide various normative concepts as the code of life. Mostly these concepts are pivotal in Islamic normative reasoning and jurisprudence system, and indispensable in marking *fatwas* (or rulings) on various issues pertaining code of life for Muslims on what actions deem lawful—what is unlawful—and what is recommended. In particular, we have mapped Islamic normative concepts with the conventional civil normative concepts of obligation, prohibition, etc. The mapping shows that there is significant conceptual overlapping between the concepts in terms of deontic effects or consequences they produce; however, the two types of systems should be distinguished from the semantic understanding, philosophy, and the context in which they are applied, and the consequence of Islamic concept of law as the expression of the divine will. As future work, we plan to accumulate further understanding of complex normative and reasoning concepts such as *Istislah*, *Istihsan*, *rasm* (ritual practices), *an'an* (traditions), and create a comprehensive taxonomy of contemporary *Shari'ah* normatve concepts.

5 REFERENCES

Abdul Karim, A. 2015. "Overcoming Taqlid in Muslim Institutions Of Learning". *Islam and Civilisational Renewal*, 6 (1): 43–57. http://www.iais.org.my/icr/index. php/icr/article/view/462

Ahmad, A, Mustapha, A, Ahmad, MS, & Yusoff, MZM. 2011. "Analyzing The Prin- ciples of Islamic Jurisprudence for a Normative Framework in Multi Agent Systems". *International Journal of Quranic Research*,1(1): 51–72.

Asasriwarni & M. Jandra / UMRAN. 2018. *International Journal of Islamic and Civilizational Studies*, 5 (2-1): 1 – 11.

An-Nacim, A. 2010. "The Compatibility Dialectic: Mediating the Legitimate Coexistence of Islamic Law and StateLaw". *The Modern Law Review*, 73 (1): 1-29. Retrieved December 21, 2020, from http://www.jstor.org/stable/27755231

Al-Qaradawi, Y. 1999. *The Lawful and the prohibited in Islam*. Al-Falah Foundation.

Alwazna, R.Y. 2016. "Islamic Law: Its Sources, Interpretation and the Translation of It into Laws Written in English". *Int J Semiot Law*, 29: 251–260.

Al-Zuhayli, W. 1986. *Usul al-Fiqh al-Islami*. Dˆarul-Fikr.

Albadri, MFS. 2016. "Qiyas in IBN Arabi's Perspective". *International Journal of Scientific and ResearchPublications*, 6 (7): 127–136. http://www.ijsrp.org/research-journal-0716.php

Albarghouthi, A. 2011. "Authority and representation in north america: The ijtihad criteria and the constructionof new religious authority". *Journal of Islamic Law and Culture*, 13 (1): 18–33.

Alwazna, RY. 2016. "Islamic Law: Its Sources, Interpretation and the Translation of It into Laws Written in English. International Journal for the Semiotics of Law". *Revue internationale de Sémiotique juridique*, 29 (2): 251–260.

Amantea, I. A.; Caro, L. D.; Humphreys, L.; Nanda, R- and Sulis, E. 2019. "Modelling Norm Types and their Inter-relationships in EU Directives". In *Proceedings of the 3rd workshop on automated semantic analysis of information in legal texts*. Eds. Kevin D. Ashley, Katie Atkinson, Karl Branting, Enrico Francesconi, Matthias Grabmair, Bernhard Waltl, Vern R. Walker and Adam Zachary Wyner. Montreal: CEUR Workshop Proceedings.

Amidi, SaD. 1984. *Al-Ihkˆam fi Usul al-Ahkam (Vol. I-V)*. Beirut: Dˆar al-Kitab al-Arabi.

Al-Qaradawi, Y. 2003. *Fiqh of Muslim Minorities. Contentious issues and recommended solutions*. Cairo: Al- Falah Foundation.

Baalbaki, R. 1995. *Al-mawrid: A Modern Arabic-English Dictionary*. Beirut: Dar El-ilm Lilmayalin.

Badr, G. M. 1978. "Islamic Law: Its Relation to Other Legal Systems". *The American Journal of Comparative Law*, 26 (2): 187-198.

Codd, R. A. 1999. "A Critical Analysis of the Role of Ijtihad in Legal Reforms in the Muslim World". *Arab LawQuarterly*, 14 (2): 112–131.

de Maat, E. 2012. *Making Sense of Legal Texts (Ph.D. Thesis).* Amsterdam: University of Amsterdamhttps://hdl.handle.net/11245/1. 393055

Esack, F. 2009. *The Qur'an: A Beginner's Guide*. London: Oneworld Publications.

Esposito, J. L. 2011. *Women in Muslim Family Law*. Syracuse: Syracuse University Press.

Ghazala, G. K. 2013. "Application of Talfiq in Modern Islamic Commercial Contracts". *Policy Perspectives*, 10(2): 141-165.

Governatori, G. 2005. "Representing Business Contracts in RuleML". *International Journal of CooperativeInformation Systems*, 14 (2–3): 181–216.

Hallaq, W. B. 2009. *An Introduction to Islamic Law*. Cambridge: Cambridge University Press.

Hallaq, W. B. 1986. "On the Origins of the Controversy about the Existence of Mujtahids and the Gate ofIjtihad". *Studia Islamica*, 63: 129–141.

Hallaq, W. B. 1984. "Was the Gate of Ijtihad Closed?" *International Journal of Middle East Studies*, 16 (1): 3–41.

Halstead, J. M. 2004. "An Islamic Concept of Education". *Comparative Education, Special Issue (29): Philosophy, Education and Comparative Education*, 40 (4): 517–529. https://www.jstor.org/stable/4134624

Hashish, A. A. 2010. "Ijtihad Institutions: The key to Islamic Democracy Bridging and Balancing Political and Intellectual Islam". *Richmond Journal of Global Law and Business*, 9 (1): 61–84. https://scholarship.richmond.edu/global/vol9/iss1/4

Hashmi, M.; Governatori, G. and Wynn, M. T. 2013. "Normative Requirements for Business Process Compliance". In *Proceedings of 3rd Australian Symposium on Service Research and Innovation*. Eds. Joseph G. Davis, Haluk Demirka and Hamid R. Motahari-Nezhad. Sydney: Springer International Publishing, pp. 100– 116.

Hashmi, M.; Governatori, G. and Wynn, M. T. 2016. "Normative Requirements for Regulatory Compliance: An Abstract Formal Framework". *Information Systems Frontiers*, 18 (3): 429–455.

Hilty, M.; Basin, D. and Pretschner, A. 2005. "On Obligations". In *Proceedings of the 10th European Symposium on Research in Computer Security, ESORICS 2005. Milan, Italy*. Eds., Sabrina de Capitani di Vimercati, Paul Syverson and Dieter Gollmann. Berlin and Heidelberg: Springer, pp. 98–117.

al Shayrazi, I. I. A. 1999. *Al-Luma' Fi Usul Al-Fiqh*. Beirut: Dar Al-Kotob Al-Ilmiyah.

Javed, A, and Javed, M. 2011. "The Need of Ijtihad for Sustainable Development in Islam". *IIUC Studies*, 9: 215–224.

Kamali, M. H. 2003. *Principles of Islamic Jurisprudence.* Islamic Texts Society. https://islamland.com/uploads/books/en Principles of Islamic Jurisprudence2.pdf

Kesgin, S. 2011. "A Critical Analysis of the Schacht's Argument and Contemporary Debates on Legal Reasoning throughout the History of Islamic Jurisprudence". *The Journal of International Social Research*, 4 (19): 157–166.

Kovács, A.; Toth, T., and Forgacs, A. 2016. "The Legal Effects of European Soft Law and Their Recognition at National Administrative Courts". *ELTE Law Journal*, 2016 (2): 53–70. https://eltelawjournal.hu/the-legal- effects-of-european-soft- law-and-their-recognition-at-national-administrative-courts/

Liebesny, H. 1985. "English Common Law and Islamic Law in the Middle East and South Asia: Religious Influences and Secularization". *Cleveland State Law Review*, 34: 19-33.

Mustafa, A. R. 2013. *On Taqlid: Ibn al Qayyim's Critique of Authority in Islamic Law*. Oxford: Oxford Univeristy Press.

Mukhametzaripov, A. I.; Kozlov, V.E. 2017. "The Problem of Shariah Norms Functioning in the Legal System of a Modern Secular State". *European Research Studies Journal*, 20: 46-54.

Nazri, M.; Ahmad, M.; Yusoff, A. M.; Amin, F. M.; Ishak, M.; Nor, M.; Sidik, M. A.; Hambali, K. M. K. and Suliaman, I. 2011. "The Concept of Rewards and Punishments in Religion: A

Special Reference to Kitab al- Adab of Sahih Bukhari". *World Journal of Islamic History and Civilization*, 1 (4): 249–254.

Palmirani, M.; Governatori, G. and Giuseppe, C. 2011. "Modelling Temporal Legal Rules". In *Procedings of the 13th international conference on artificial intelligence and law*. *ICAIL 2011*. Pittsburgh: ACM Press, pp. 131– 135.

Peczenik, A. 2009. *On Law and Reason*. Dordrecht: Springer.

Rahim, R. A. A. 2004. "The Concept of Taqlid in the Reformist's Point of View". *Jurnal Fiqah*, 1: 1–28.https://ejournal.um.edu.my/index.php/fiqh/issue/view/380

Ramadan, T. 2009. *Radical Reform. Islamic Ethics and Liberation*. New York: Oxford University Press. Reinhart, K. A. 1983. "Islamic Law as Islamic Ethics". *Journal of Religious Ethics*, 11 (2): 186–203.

Rippin, A. 2005. *Muslims: Their Religious Beliefs and Practices*. London: Routledge. Schacht, J. 1964. *An Introduction to Islamic Law*. Oxford: Clarendon Press.

Smock, D. 2004. *Ijtihad: Reinterpreting Islamic Principles for the Twenty-first Century.* Technical Report,United States Institute of Peace. https://www.usip.org/sites/default/files/sr125.pdf

Soper, P. 1995. "Legal Systems, Normative Systems, and the Paradoxes of Positivism". *Canadian Journal ofLaw & Jurisprudence*, 8 (2): 363-377.

von Wright, G. H. 1963. *Norm and Action: A Logical Enquiry.* London: Routledge and Kegan Paul.

Waltl, B.; Bonczek, G.; Scepankova, E. and Matthes, F. 2019. "Semantic types of legal norms in German laws: Classification and analysis using local linear explanations". *Artificial Intelligence and Law*, 27 (1): 43–71.

Weiss, B. G. 2010. *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Din al-Amidi.* University of Utah Press.

Journal of Catalan Intellectual History (JOCIH)
Online ISSN 2014-1564 DOI: 10.2478/jocih-2019-0007

Received 30/06/2020 / Accepted 07/08/2020 / Published 12/12/2020

REVIEW

JORDI SALES I CODERCH. *ESCRITS SOBRE FILOSOFIA CATALANA. ESTUDI INTRODUCTORI I EDICIÓ A CURA DE JOSEP MONSERRAT, EPÍLEG DE XAVIER SERRA*. CABRERA DE MAR: GALERADA, 2019.

Joan Cuscó i Clarasó
(Universitat de Barcelona)
joancusco@ub.edu

Volume: Jordi Sales i Coderch. *Escrits sobre filosofia catalana. Estudi Introductori i Edició a cura de Josep Montserrat. Epíleg de Xavier Serra*. Cabrera de Mar: Edicions Galerada, 2019, 208 pp., ISBN-10: 849678687, ISBN-13: 978-8496786875.
Acknowledgements: Project IEC PRO2018-S05. *Models del dret i la filosofia política catalanes: semàntica de les doctrines jurid-icopolítiques del pactisme en les seves diferents fases* [Models of Catalan political philosophyand law: Semantics of pact-model driven political and legal doctrines at their different stages].
Disclosure statement: No potential conflict of interest was reported by the authors.

Suggested citation: Cuscó, J. (2019-2020). "Ressenya de Jordi Sales Coderch. *Escrits sobre filosofia catalana. Estudi introductori* , edició a cura de Josep Monserrat, epíleg de Xavier Serra. Cabrera de Mar, 2018, 205 p.", *Journal of Catalan Intellectual History* 12: pp. 109-111 DOI: 10.2478/jocih-2019-0007

In recent years, in reviewing their intellectual biography, neurologists Oliver Sacks, first, and Joaquim Mª Fuster, later, explain and underscore the importance of the links they created from a very young age with their own intellectual environments; or rather, with the discipline and topics that over the years shaped their work. Joaquim Mª Fuster—despite the poor philosophical atmosphere of the city of Barcelona during the Franco regime—can rediscover the spur of the works of Joan Lluís Vives and Ramon y Cajal. Progressively, in addition to his familiarisation with the work of these authors, he traces their way of embracing the concerns and challenges of those who have preceded him in the task of working on human consciousness around the world. He feels connected to it and recognises its merits because, as he says: "Memory is, in fact, essential for learning, retaining experiences, imagination, remembrance, reasoning, emotion, education, the arts and social life with other human beings".

The book collects the works on the history of Catalan philosophy by Professor Jordi Sales and in doing so, it shows three relevant facts: first, the importance of recognising those who have preceded us; second, the reason why the study of the history of philosophy is essential for any Catalan philosopher and third, why Catalan philosophy is the one that, as in the case of Fuster,

allows him to place himself in a space and a time. There is, in this sense, a double goal: to know the philosophy of one's own culture in the most rigorous possible way and to incorporate these authors into one's intellectual background. Furthermore, as the work of Jordi Sales is the result of an academic philosopher, it has a clear pedagogical vocation. His work *La captivitat inadvertida* (2013), which has been published by the same publishing house *Galerada*, shares a similar tone and also follows a similar intellectual vein.

The collection of texts contains a prologue written by Josep Monserrat (also in charge of the edition) and an epilogue by Xavier Serra, which highlight Jordi Sales' constant dedication to the research of philosophy in Catalonia and to the role that, according to him, it must play in Catalan society. Besides elaborating historiographic studies, Jordi Sales is interested in active learning, intending to reflect on philosophy, within contemporary Catalonia, and with the support of the inherited philosophical baggage. An approach which he practised during his teaching years at the University of Barcelona and as president of the *Societat Catalana de Filosofia*.

Jordi Sales has always been aware of the lack of continuity within the Catalan philosophy of the twentieth century, due to political and institutional reasons, and he has said that for this reason it must be done with the utmost thoroughness and from the grass-roots up, with a broad vision but without aiming to pass it off as what it has not been nor as what it could not and did not want to be. The important thing, we are reminded in the book, is the construction of a firm philosophical thought within Catalan culture, and this cannot be accompanied by merely erudite or pompously hagiographic history of philosophy. Besides, as is explained in the first chapter, it is necessary to develop the possibility of an institutional framework in which both history and philosophical thought can be based and have continuity within contemporary Catalan culture, and be done with seriousness and independence. He suggests associations, universities, periodicals, conferences... It is a matter of being aware that the past, the present and the future are inseparable and that in any philosophical tradition, continuity, dialogue, research and reflection are necessary. We cannot think that we start from scratch and that projection and dialogue with the outside world and historical knowledge are two necessary opposing paths, especially because, although many times it is thought that Catalan philosophy has been isolated within European culture, this is not true and it needs explaining.

The authors that Sales analyses are diverse: Pere Coromines (1870-1939), Jaume Serra Hunter (1878-1943), Carles Cardó (1884-1943), Francesc Mirabent (1888-1952), Joaquim Xirau (1895-1946) and Eduard Nicol (1907-1990). Most of them were linked to the University of Barcelona and made a coherent work which had an influence on various areas of Catalan culture in the twentieth century. Sales reads the work of these authors directly and also studies what they have meant for Catalan academic philosophy. He scrutinises its projection outside Catalonia, its successes and in search of those contributions that can serve us in today's philosophical works. Sales' gaze is lucid and ironic. Aware of the political situation established by a dictatorship that banned the Catalan language and caused the exile of many of these authors is a fact that we cannot overlook and that has distorted its reception and projection.

Sales offers a plural, diverse and enriching perspective of the Catalan philosophical thought of the twentieth century, which also serves as an introduction to some of its main authors and some of its main problems. He allows every author to talk with their own voice and reviews

some of their most recent studies on them and their work. Sales deploys analytical and critical scrutiny at the same time.

These are some of the merits of the book that collects disseminated works and yet has a strong internal consistency, showing a way of doing things appropriate to the object of study and to its purposes. As Jordi Sales writes in p. 81: "Eliminating the predecessors themselves in each step of history is to condemn each generation from heroism of adventure. A resource that, however commendable it may be, and it is very, it cannot fail to condemn us to great intellectual poverty."

English version by Antoni Abat i Ninet

Journal of Catalan Intellectual History (JOCIH)
Online ISSN 2014-1564 DOI: 10.2478/jocih-2019-0008

Received 20/02/2020 / Accepted 23/04/2020 / Published 27/12/2020

REVIEW

JOAN CUSCÓ. *SUBJECTIVITAT I CREATIVITAT. TEMPS, MEMÒRIA I CREACIÓ.* BARCELONA: PUBLICIA, 2018

Bernat Torres
(Universitat Internacional de Catalunya)
btorres@uic.es

Volume: Joan Cuscó. *Subjectivitat i Creativitat. Temps, Memòria i Creació*. Barcelona: Publicia, 2018, 392 p., ISBN 10: 6202430737, ISBN 13: 9786202430739.
Acknowledgements:*Project IEC PRO2018-S05. Models del dret i la filosofia política catalanes: semàntica de les doctrines jurídicopolítiques del pactisme en les seves diferents fases* [Models of Catalan political philosophy and law: Semantics of pact-model driven political and legal doctrines at theirdifferent stages].
Disclosure statement: No potential conflict of interest was reported by the authors.

Suggested citation: Torres, B. (2019-2020). "Joan Cuscó. Subjectivitat i Creativitat. Temps, memòria i creació. Barcelona: Publicia, 2018", *Journal of Catalan Intellectual History* 12: pp. 112-114 DOI: 10.2478/jocih-2019-0008

Joan Cuscó's work *Subjectivitat i Creativitat. Temps, memòria i creació* (*Subjectivity and Creativity. Time, memory and creation*) is an attempt to comprehend creativity through the filter of subjectivity. The epigraph of the book already anticipates the trajectory and logic of the research presented by the author, who, in the form of an erratic movement—various authors, apparently heterogeneous—explores and discovers, as an explorer in an unknown land, a clear image, elaborated in a solid and disciplined project: the nature of human subjectivity. As the author tells us, subjectivity will be the way to approach or try to understand human creativity; and this approach will be done—as if it were a composition of a musical chord, constituted by four notes—through the comprehension and mutual relationship between mind, brain, consciousness and language. The research presented by Cuscó is based on a plural and multifocal approach between scientific knowledge, philosophy and art, always avoiding reductionist views and encouraging unconditional dialogue between these disciplines or perspectives. Throughout his composition, the author progressively reveals a certain conception of human thought or of human nature in general terms. Human nature, Cuscó defends, must be understood from the dialectic between necessity and possibility, that is, from the double perspective of understanding our existence as organisms attached to certain necessities and possibilities open up by our symbolic capacity. It is in this manner that the author tries to capture the space that sep-

arates biology from artistic creation; and he does this by avoiding at all times to fall into any kind of reductionism, mainly in the idealism that considers humans as singular beings in the bosom of creation; and also avoiding various forms of dualism, such as the one between biology and culture, between body and mind, and ultimately between philosophy and science. The whole work shows an extraordinary mastery of specialized literature on the issues addressed, from biology to philosophy, through art and artistic creation. Especially noteworthy is the attention to Catalan thinkers and scientists, often neglected by the academic research done in Spain itself—an element that shows how Cuscó's work has a clear international aspiration and remains rooted in the fruitful production of his homeland.

The thesis is structured in three major blocks, which together aim to achieve an "upward process of concretion", ranging from the theoretical side of the issues addressed, to its concretion in the field of artistic creation. Thus, after an introductory chapter, the second chapter ("The Brain, Consciousness, and Mind") deals with the notions of brain, mind, and consciousness in order to see how subjectivity is shaped in various ways. Understood from the notion of the three worlds of Karl Popper, reinterpreted by Roger Penrose, and placed in the context of the Theory of Living Systems, Cuscó defends the need for a pluralistic paradigm that includes the various perspectives mentioned above and to recover the way of understanding how the creative process takes place through thinking subjectivity. The third chapter ("creation and creativity"), the longest of all, clarifies in detail the notions of mind and brain, indicating their mutual relations, in order to access a certain idea of subjectivity. Following authors like Ilya Prigogine, Cuscó clarifies how subjectivity must be understood as a process, which is dynamic and open to change, which happens thanks to a time that is both duration and creation, "Time—Cuscó tells us—is important because from the perspective of the time of evolution we grasp the process that has allowed the establishment of the cognitive and productive conditions of the human being and, from the perspective of time—as a creation—we observe the processes that allow us to capture the creativity". (p. 337). Thus, creativity is presented in this work as the element that connects the double human root in biology and culture, as that which connects the brain, consciousness and mind; thus, creativity appears as a result and as a creation of life in a biological sense, but also as a result and constitutive element of the mental and consciousness processes that constitute our subjectivity. In the words of the author, "in subjectivity, there is a reunion between what is quantitative and what is qualitative (through time), and a co-implication between order and disorder and balance and imbalance ('creation' and 'creativity'), which is established in different levels of creativity." (p. 330).

The fourth chapter ("On artistic creation") parts from the already developed notion of subjectivity and adds to it research done on language and creativity. Indeed, language, which like the mind, consciousness and the brain, should not be seen as closed systems but as processes, must be understood from the perspective of creativity, as a dynamic and procedural reality, like a *llenguar* (using the expression of Albert Bastardas). This chapter therefore serves as a concretion of all the previous elaborations, and also has the function of showing the cultural, educational and political centrality of creativity, in order to guide or think effective educational policies that can face this human reality. Following Eduard Nicol, Cuscó examines the act of creating as arising from a dialectical discontinuity between being and time, between the subjectivity that moves and lives and the ontological need. Also in this chapter, Cuscó analyses the relationship between crea-

tivity and madness, introducing a reflection on the figure of the genius and the relevance of dreams and memory. Throughout the description, the nervous system, understood as a living and plastic system, allows us to see, again, the close link between biology and human subjectivity.

In the conclusions ("From hypotheses to conclusions"), the author re-explains the whole of his work, adding summaries and diagrams and synthesizing all the achievements of the work. Creativity is closely linked to (although not limited to) cognitive activity, which as a reality that is both inherent in life and in human beings, implies the presence of time in all its dimensions. Through a series of diagrams, Cuscó finally shows how the elements exposed throughout the work interact with each other, the set constituted by the mind, consciousness, brain and language, as constituents of subjectivity, allow us to think about the concept of creativity. The work closes by adding two appendices, the first clarifying through a series of diagrams and figures which the author calls the citizen model; the second opens a new way of interpreting creativity as an "intelligence style". Joan Cuscó's book as a whole is a first-rate exercise of philosophy understood, as Jordi Sales has, as an effort to understand, an effort to understand in this case creativity through the understanding of subjectivity. Cuscó's reflection clarifies and generates at the same time many questions and introduces a fruitful dialogue between scientific, literary and philosophical perspectives, but also and above all a dialogue with himself, as a creator, as a musician and as a thinker.

Indeed, music, which always accompanies Cusco's work as a paradigmatic example, is shown as a model of a creativity that is both life and intelligence, that is both madness and order-building, that opens us to the reality of the human being, because it allows us to recognize, through what we are not, what we are or what we want to be.

Journal of Catalan Intellectual History (JOCIH)
Online ISSN 2014-1564 DOI: 10.2478/jocih-2019-0009

Received 03/07/2020/ Accepted 15/09/2020 / Published 23/12/2020

REVIEW

ALEXANDER FIDORA AND GÖRGE K. HASSELHOF (EDS.). *THE TALMUD IN DISPUTE DURING THE HIGH MIDDLE AGES.* BELLATERRA: SERVEI DE PUBLICACIONS DE LA UNIVERSITAT AUTÒNOMA DE BARCELONA, 2019

Mario Macías
(Institute of Law and Technology, Universitat Autònoma de Barcelona)
mario.macias@uab.cat

Volume: Alexander Fidora and Görge Hasselhoff (Eds.). *The Talmud in Dispute During the High Middle Ages*. Col. Documents, vol. 116. Bellaterra: Servei de Publicacions de la Universitat Autònoma de Barcelona, 2019, pp. 282, ISBN-10: 8449089468, ISBN-13 : 978-8449089466.
Acknowledgements: *Project IEC PRO2018-S05. Models del dret i la filosofia política catalanes: semàntica de les doctrines jurídicopolítiques del pactisme en les seves diferents fases* [Models of Catalan political philosophy and law: Semantics of pact-model driven political and legal doctrines at their different stages].
Disclosure statement: No potential conflict of interest was reported by the authors.

Suggested citation: Macías, M. (2019-2020). "Alexander Fidora and Görge K. Hasselhof (eds.). The Talmudin Dispute During the High Middle Ages. Bellaterra: Servei de Publicacions de la Universitat Autónoma de Barcelona, 2019, 282 p.", *Journal of Catalan Intellectual History* 12: pp. 115-117 DOI: 10.2478/jocih- 2019-0009

The Talmud in Dispute During the High Middle Ages has been produced in the framework of the ERC project *The Latin Talmud and Its Influence on Christian-Jewish Polemic* (LATTAL). The aim of this project, which finalized in 2019, was the study of the use of Jewish sources by Christian scholastics as apologetic materials to probe the veracity of the Catholic dogma and the falsities of Judaism. Alexander Fidora, principal researcher of the project and ICREA research professor at the Autonomous University of Barcelona, is also the editor of this exhaustive book composed by ten independent contributions on the Disputation of Paris and the Latin translations of the Talmud in the mid-thirteenth century.

Throughout its lifetime, the LATTAL project has addressed several apologetic works and authors of that period. In this sense, the wide range of publications resulting from the project—like the collective book *Ramon Martí's Pugio fidei: Studies and Texts* (2018), for example—have contributed to enlarge our knowledge on the anti-Jewish missionizing zeal that characterized the Late Middle Ages.

Nevertheless, the main—and now accomplished—goal of the project has been the study and edition of the *Extractiones de Talmud*, an anthological Latin translation of 2,000 Talmudic passages terminated ca. 1245. This text was the culmination of a process initiated in 1238, when the convert Franciscan friar Nicholas Donin submitted to Pope Gregory IV the *De articulis litterarum Papae*, a list of thirty-five accusations against the Jewish faith based on Talmudic materials. These accusations motivated the Disputation of Paris (1240), the first public large-scale theological disputation relying on Jewish sources. This event, and the subsequent burning of the Talmud, soon became a cornerstone in the history of Christian-Jewish relations.

As evinced by all the participating authors, the discovery of the Talmud was culturally groundbreaking for Western Christendom. Donin's accusations were the very first Latin translation of Talmudic passages. Innocent IV, aiming to consummate the process initiated in Paris, entrusted the task of expanding the translations to Cardinal Odo of Châteauroux. His team, which probably had already taken part in the elaboration of the *De articulis*, produced the *Extractiones.* This compilation was soon followed by additional materials and translations gathered in the so-called *Dossier*, whose composition is discussed by Ulisse Cecini and Óscar de la Cruz in their contribution.

The edition of the *Extractiones de Talmud*, elaborated by Cecini and de la Cruz, became available in 2018. On its part, the *Talmud in Disptue* can be seen as an exhaustive companion to this edition. The rich overall background of the participating authors contributes to offer a multidisciplinary approach covering all the relevant aspects surrounding the *Extractiones.* Textual and linguistic analyses, as well as contextualizing historical research, converge in this essential work.

The first noteworthy input of this book is the critical edition of several Latin translations of Talmudic texts and other Jewish sources. Perhaps the most relevant of these works is the edition of the *De articulis litterarum Papae* prepared by Professor Piero Cappeli. This new version, thanks to the meticulous reconstruction of all the available manuscripts, largely improves the edition published by Isidore Loeb in 1880-1881.

Equal attention must be paid to the appendixes to the chapters by Enric Cortés and Wout van Bekkum. Cortes focuses on the predilection of Christian authors for the *Sanhedrin* treatise—also addressed by Eulàlia Vernet—, which was believed to contain clarifying elements on the judicial process against Christ. The chapter finishes with the Latin translation of *Sanhedrin* 96a-97a. On his part, van Bekkum examines the obscure *Liber Krúbot*, one of the few Latin translations of Hebrew hymns and liturgical poems, and includes an edition of this compilation conducted by Professor Hasselhoff.

Textual and comparative studies—especially the chapters written by Ursula Ragacs, Eulàlia Vernet and Görge Hasselhoff, as well as those by van Bekkum and Cortés—evince the biased character of the Christian approaches to the Talmud. Translations were not motivated by a sincere intellectual interest; their objective was to become apologetic weapons against the enemies of the true faith. They are full of deliberate omissions and misinterpretations highlighting the negative aspects and lies of Judaism. On the other hand, it was commonly believed that Jewish sources, though false and blasphemous, could contain theological evidences on the veracity of the Catholic dogma. These were, in fact, the two rationales behind the study of the Talmud. In ad-

dition to these manipulations, dal Bo and Cortés point out the difficulties inherent to a cross-cultural translation of such a complex legal and theological code.

But beyond linguistic and philological considerations, the greatest achievement of *The Talmud in Dispute* is its historiographical contribution to the study on the origins of the rising anti-Jewish hostility, which culminated in dramatic events like the massacres of 1391 in the Iberian Peninsula. The discovery of the Talmud shook the traditional perceptions on Judaism based on the Augustinian theses. If once considered a stagnant and anachronistic people incapable of producing new theological material, the existence of the Talmud evinced their intellectual depth. Thus they were not ignorant, as Augustine alleged, but heretics and blasphemers, a real threat for the Catholic dogma. In his contribution, Federico dal Bo describes the Disputation of Paris and the burning of the Talmud as an emotional reaction to this discovery.

The chapters written by Federico dal Bo, Alexander Fidora and Moises Orfali target the impact of these translations in the aggressive apologetic activity of the Late Middle Ages. Dal Bo deals with the immediate consequences of the breakthrough of the Talmud in West Europe. He also discusses how its complex internal structure and transmission process prevented Christian scholars from penetrating in the richness of the Talmud. Fidora traces the influence of the *De articulis* and the *Extractiones* in the polemic literature of the second half of the thirteenth century and earlier years of the fourteenth century. Finally, Orfali's contribution closes the list of chapters with a study on the influence of these translations in Hieronymus of Sancta Fide and the Disputation of Tortosa (1413-1414).

This book, therefore, sheds light on the enigmatic process that led Christianity to move forward from a tense tolerance towards Judaism to intellectual conflict and then to physical violence. Dozens of bright previous publications have provided deep insights on this conundrum, like the works of Jeremy Cohen and David Nirenberg, among many others. Nevertheless, the rich range of scholarly approaches offered in this book proves that the study of such a social evolution requires wider academic perspectives. There are still many questions claiming for an answer and many research lines that need to be explored, but the *Talmud in Dispute*—as well as the other outputs of the LATTAL project—might be regarded an important milestone in this historiographic path.

Journal of Catalan Intellectual History (JOCIH)
Online ISSN 2014-1564 DOI: 10.2478/jocih-2019-0010

Received 30/01/2020 / Accepted 07/03/2020 / Published 23/12/2020

ALEXANDRE GALÍ AND THE HISTORY OF INSTITUTIONS AND THE CULTURAL MOVEMENT INCATALONIA

Josep Monserrat
(Faculty of Philosophy, Universitat de Barcelona)
jmonserrat@ub.edu

ABSTRACT

In the historiography of Catalan culture, both the external continuity of the historiographical reflection and the internal discontinuity of such "reflections" are surprising. The History of institutions and the cultural movement in Catalonia (1900-1936) by Alexandre Galí is perhaps a good example of this.

Keywords: Alexandre Galí, Catalan Cultural History (1900-1936), Culture Concept

Acknowledgements: *Project IEC PRO2018-S05. Models del dret i la filosofia política catalanes: semàntica de les doctrines jurídicopolítiques del pactisme en les seves diferents fases* [Models of Catalan political philosophy and law: Semantics of pact-model driven political and legal doctrines at their different stages].
Disclosure statement: No potential conflict of interest was reported by the authors.

Suggested citation: Monserrat, J. (2019-2020). "Alexandre Galí and the History of Institutions and the CulturalMovement in Catalonia", *Journal of Catalan Intellectual History* 12: pp. 118-125 DOI: 10.2478/jocih-2019-0010

1 ALEXANDRE GALÍ (1886-1969)

Alexandre Galí's work has not elicited a great deal of academic reflections, despite his undisputed importance and the extent and quality of his written work. Although more often debated than quoted, and with some of it still unpublished, a comprehensive evaluation of his work remains to be done. He is often studied within the field of the history of education, in which he rightly features as one of the principal figures in the revival of Catalan pedagogy who has been the perfect role model throughout the twentieth century. However, he has not attracted much attention until now, not in the field of historiography (despite his undeniable contribution) nor philosophy, although there are signs that that will change. Alexandre Galí was part of the "political structures" of Enric Prat de la Riba's political project and he remained completed marginalised when he returned from exile in the 1940s. His clandestine intellectual endeavour was not published, in part, until the 1980s but it did not reach beyond the personal connections which he had at the time.

Alexandre Galí was born in the mountain village of Camprodon on 11th April 1886, the second of seven siblings. His family worked in the livestock trade and politically speaking they were liberalists. When he was eleven years old his father died and he went to live with his uncle Bartomeu in Barcelona. This event had a decisive impact on his career. His uncle was married to one of Pompeu Fabra's sisters, and the two brothers-in-law managed an educational establishment in Barcelona, called the "Escola Politècnica" ("Polytechnic College"), a prestigious centre renowned for its commitment to innovation. His links with this family introduced the young Alexandre to the world of the Catalan *Renaixença*. He was the protégé of his uncle and Pompeu Fabra until he was 14 years old. Although on the one hand his parentage allowed him to become personally acquainted with artists, writers, painters and the turmoil in the world of cultural "modernism", his financial status made it necessary for him to immediately start earning a living from 14 years of age, initially as a shop assistant. From that time on, he began teaching himself—on the one hand thanks to the access that his adoptive family afforded him to the immerging cultural world of Barcelona, and on the other hand thanks to the cultural work of the CADCI union. His pedagogical work began at Joan Bardina's "Escola de Mestres" (1909-1910), where he intended to enrol as a student and was ironically put in charge of teaching Spanish grammar and literature. After that, he took charge of the Escola Vallparadís in Terrassa (1910-1915) where his teaching genius came to the fore. Galí devised a "live school" where children were not driven by prizes or punishments but rather they were taught to be responsible for their actions. His methodology shocked so-called "decent people": it was the school of natural discovery, of a liberal and responsible framework within which Catalan was naturally the language used. Special importance was also given to the physical and artistic education of the pupils.

As a result of this innovative endeavour, a crucial turning point occurred in his life story. It was in 1913 during a visit to his pioneering educational establishment that the then President of the Province of Barcelona, Enric Prat de la Riba, noticed him and later requested him as "Consell de Pedagogia" for the *Mancomunitat de Catalunya*. In the "Consell de Pedagogia" Galí held the post of secretary from 1915 until the beginning of dictatorship of Primo de Rivera (1924).

The Mancomunitat pedagogy, a civil servant of the Generalitat. At the peak of his career, he

married Josefa Herrera, a primary school inspector, and they had the first four of his five children. Also during this stage of his life, he formed a close partnership with Eugeni d'Ors. Given his position and capabilities, Galí collaborated vigorously in the educational work of the Mancomunitat, as Director of "L'Escola d'Estiu", Director of "Estudis Normals" and Director of the Mancomunitat of Catalonia's "Escola Montessori". He also served as general manager of the "Universitat Industrial". All of these posts were in addition to that of "Consell de Pedagogia" and with no salary increase. Overall, his organizational skills were engaged on all fronts where the Mancomunitat had jurisdiction, namely in primary and professional education. His work from this period continues to fuel pedagogical renewal and polytechnic teaching in the University to this day. Galí founded and managed the *Butlletí dels Mestres*, and he took over the management of all pedagogical publications in the Mancomunitat, of the *Minerva collection* and of the *Quaderns d'Estudi* magazine after the d'Ors crisis. It is from this period that his relationship with the Faculty of Sciences at Geneva University can be dated, as well as his participation in the Moral Education Congress of 1922 and his long ongoing relationship with Jean Piaget.[1]

With the emergence of the dictatorship of General Primo de Rivera a purging of the Mancomunitat's civil servants was undertaken. Taking advantage of the civil servants' collective complaint over the unlawful attack against psychology professor Georges Dwelshauvres, Alexandre Galí, who then stood down from his post, began the quest to rescue the pedagogical experience of the Graduate School and, in agreement with the pupil's parents who funded the new school, Galí would preside over the Technical Commission of the "Associació Protectora de l'Ensenyança Catalana" and direct the recently founded "Escola Blanquerna", the best scholastic experience in primary education of the first half of the century (1924). His role as director was not merely one of management: his passion was education and he dedicated a large portion of his time to teaching. His direct contact with the profession fuelled his scientific work on teaching in general, his manuals on language teaching, used to this day, and his investigation of bilingualism and of school work assessment which warranted translation into French in Geneva[2]. He attended various conferences and in Lyon he presented his work on children's theatre using pieces that children had written themselves. He organised "Cursos Tècnics de Pedagogia" affiliated with the Faculty of Sciences at Geneva University which were conducted until 1930, and subsequently under the name of the Province of Barcelona's "Seminari de Pedagogia".

With the declaration of the Republic, he was named secretary general of the Province of Catalonia's "Consell de Cultura", a post which he held without stepping down from managing the "Escuela Blaquera". During those years, his work was out of the limelight, staved off by the new left-wing politicians of the day due to the prominent role he had played in the Mancomunitat. Branded a conservative, they took advantage nevertheless, of his calibre in multiple assignments, which saw him appointed as general secretary of the Council for Culture, but ousted from the directive core of the pedagogical organization. He was replaced by Joaquim Xirau, a lecturer at the University of Barcelona, which in turn organised a Pedagogical Seminar at the University. Xirau's political views put him in a better position to succeed in his determination to control the education system and Galí was relegated into the background. Without a doubt, the

[1] Alexandre Galí was one of the founders of the first Societat Catalana de Filosofia (1923).
[2] Galí participated in the International Commission on Bilingualism, which was drawn from international pedagogy congresses.

vicissitudes of that time were not to his liking, however, during the war he maintained a position of absolute loyalty to the legitimate government and as shown throughout his intellectual output, in his view it served to provide a certain continuity after 29th July 1936.

The revolutionary council disassembled the "Consell de Cultura" and Galí only remained in the Catalan language department and took up a professorship of Language Teaching Methodology at the University of Barcelona, which at that time operated under its own regulations as an autonomous university. Despite having his life threatened repeatedly, he did not run away, even when he had the opportunity to, for example when asked to carry out a visit to Paris in 1937. His wife was dismissed from her post as school inspector, a dismissal that would be repeated again after the war. Galí continued to practice his profession at the Blanquerna School until the day before the fall of Barcelona, when he then was forced to flee the country that same day. He sought exile in France where he could earn a living running a Quaker colony. His state of affairs is tragic: his wife and three small children return to Barcelona. The two eldest children find themselves taken to concentration camps in southern France for having served as reserve officers for the republican army. After that, they are taken to Cuba and then Mexico. Alexandre Galí finds himself alone. His wife, forcibly displaced to Huesca, stripped once again of her job as inspector, one child in the tuberculosis hospital in Puig d'Olena, and the two smaller ones with relatives in Barcelona or in a hostel. Eventually, he returns to Barcelona towards the end of 1943 but still on his own and living clandestinely. With no possibility of regaining his job as a civil servant, and an indefinite ban on any teaching position, he survives on translating work from English for various publishers, without taking a rest, and visiting his son who is suffering from tuberculosis at the weekends. He finally finds a job with the publisher Spes, and then Bibliograf, working on the mammoth task of dictionaries and encyclopedias, as well as the translations, working anonymously in most cases. His son Salvador dies of tuberculosis in 1945. Shortly thereafter, certain consciences are stirred and his wife is allowed to return to Barcelona, but without returning her to her position: it is now 1946. It is at this moment that a fortunate assignment will transform the defeated education system civil servant into an adventurous academic that has still not been properly recognised. An underground organisation gave Galí 30, 000 *pesetas* to work on a project to preserve the memory of institutions that had been destroyed.

Following the publication of a Latin-Spanish Spanish-Latin dictionary, Galí suggested to Spes publishers that they produce a Spanish grammar book in Catalan, using the monetary donations from the Minerva Foundation. In the words of his son: "A history of Catalonia's cultural struggles from 1900 to 1936. He was more qualified to carry it out than anyone else due to the positions that he had held, which had brought him into contact with all manner of cultural initiatives." It would not be far-fetched to say that with this commission, which extended over 5 years and gave rise to the material for twenty-three volumes of his *opus magnum*, Alexandre Galí brushed with greatness. We will go on to discuss this further.

His investigations into the field of philosophy from 1951 onwards were related to the superiority of human moral facts and he began a series of works on 18th century Catalonia from a historical perspective, beginning with a case study on Rafael d'Amat, baron of Maldà. This investigation into the causes of Catalan decadence tied in with other studies about painting and art in general. From then on, his connections with Jaume Bofill and Jaume Vicens Vives, lecturers at

the University of Barcelona on metaphysics and history respectively, were deepened.

In March 1954, he received a tribute from former pupils. From that time on, various new projects were started to develop educational facilities that tried to regain the renewed pedagogy from before the Republic. Alexandre Galí was in demand for all of these efforts and he collaborated decisively and freely gave of his time from his own home, but which crucially soon revealed that there was a profound lack of anthropological ideas sustaining the attempts to create new educational facilities. From 1959 to 1969, his records contain the preparation materials for almost two hundred sessions, courses, lessons, conferences and more than forty educational centres, in addition to the individual consultations and workshops held at his house. His academic work at that time, which deserves a much more in depth study, was concentrated on a sustained effort against mass education and in favour of education based on freedom and adult human responsibility. In the curriculum that he prepared himself for his entrance as a member of the "Institut d'Estudis Catalans" in 1969, he maintained that his recent pedagogical publications and his campaign had not been grasped correctly because they were beyond the scope of the present time.

Alexandre Galí continued his work at the Bibliograf publishers until March 1969. He died on March 29th of that same year. After his death, his poetic works were discovered, previously unknown up until that time even by his family. His family protected this wealth of material until such a time as circumstances could allow for its publication. Thanks to their efforts, from 1981 onwards the publication of his works began with the twenty-three volumes of *The History of Institutions and the Cultural Movement in Catalonia 1900-1936,* its final edition in 1985, and subsequently the four volumes of *Escrits polítics, Escrits històrics, Escrits pedagògics, Darrers escrits*.

2 THE HISTORY OF INSTITUTIONS

Alexandre Galí dedicated five whole years to the writing of his *magnum opus*. Circumstances did not allow him free access to the necessary information, which in more than one instance involved sensitive information. His former position had afforded him a privileged position from which to understand the cultural movement in its entirety. His intelligence and capacity for producing extraordinary work elucidate the workmanship of the results. A lot of information had to be researched in secret and, as can often be noted, oral reports from principal participants is used to substitute documentation that was destroyed in attempts at cultural destruction.

In the introduction to *The History of Institutions and the Cultural Movement in Catalonia 1900-1936*, the author defines what culture is, according to its origin. This definition guided the writing of all twenty thematic books as well as the three introductory volumes, and a further volume reserved exclusively for appendices.

After analysing the word 'culture' according to dictionaries in different languages and after outlining briefly the philological history of the term, Alexandre Galí concludes that in the reference works he consulted there is a tendency to define culture as an individual ornament and as something that is received and not something that is created, a definition applicable to people who, in neither Catalan nor Spanish have produced culture, being unaccustomed to collaborating

with others to create it but instead limiting themselves, with virtual greed and determination, to taking advantage or of making use of it as an individual addendum. Such definitions are, according to Galí, the poorest possible definitions of the term culture.

In contrast, for the author, culture is something that is created, individually and collectively, and which is created willingly. For that reason, culture is the result of a mentality which crafts a cultural programme from the very first wilful act and in line with its historical context.

Firstly, one must study what he calls "*cultura profunda*" which he defines as the capacity, the abilities and the way of reacting that people have when faced with major spiritual or moral issues which the western world is focused on. In other words, in this study culture is that which is acquired and assimilated from an active point of view, that which is put in accordance with. The creators and the creations are not the principal object of study but rather they are elements of demonstration or proof. It is not, therefore, a history project which Alexandre Galí proposes, but rather collective psychology based on the elements that constitute history.

Institutes should be studied from this perspective and evaluated according to an ideal or a model. Galí is extremely critical when evaluating movements and institutes and the ideas that they have given rise to. We frequently find categories such as 'advanced' or 'backward' in his work, indicating the successes and failures in terms of the overall framework of contemporary European problems and tendencies. Such grading assess how the institute, or the mentality which it has engendered, compares with the model to which it aspires: "In this way, when the reader sees that we criticise or insist on reporting deficiencies or errors in whichever activity we examine, we give them licence to suspect that on certain occasions we, in our innermost feelings, are capable of considering more humanly perfect and therefore happier, a nomadic community that has resolved the complex question of the meaning of life."

Index

Book XII: Music, theatre, cinema

Book XIII: General, technical and specialised libraries. Bibliography and Bibliophilia

Book XIV: Archives and libraries

Book XV: Technical-administrative services

Book XVI: Scientific academies and societies

Book XVII: The Institute of Catalan studies

Book XVIII: Foundations, prizes, scholarships and allowances

Book XIX: Conferences and scientific and philosophical movements

Book XX: The co-operation of the Church in the cultural movement in Catalonia during the 20th century.Epilogue of the entire work

This brief presentation of Alexandre Galí's greatest work has merely outlined his organizational structure. Perhaps it is enough to shown that he deserves more recognition. The task of preserving historic memories for a written work which is *sub specie aeternitatis* whilst undergoing a period of persecution, was carried out through costly and sensitive documentary research, focusing on oral testimony from the silenced main characters and the main character's own memory. He produced a masterpiece of language, adopting the most fitting style for his purpose: clarity and a vast array of nuances, as is appropriate for the task of studying culture and institutes: from harsh criticism to measured praise, from intelligent irony and a certain dose of humour, he remains mindful of the potential for improvement amongst his compatriots even after confirmation of defeat and more serious collapses.

3 REFERENCES

Casanovas, P. and Monserrat, J. 2004. "El projecte Philosophy and Catalan Intellectual History". *Comprendre*, 6 (2): 147-164.

Díez Garcia, M. 2016. *Alexandre Galí i la filosofia de la història. Estudi de materials inèdits*. Universitat deBarcelona: Tesi doctoral dirigida per Josep Monserrat Molas, setembre de 2016.

Galí, A. 1928. *La mesura objectiva del treball escolar*. Barcelona: Neotipia [reedited: Vic: Eumo, 1984].

Galí A. and Herrera, J. 1932. *Activitat i llibertat en educación*. Quaderns dels cursos lliures de pedagogia,Barcelona: Atenes.

Galí, A. 1954. *Rafael d'Amat. Baró de Maldà*. Barcelona: Aedos.

Galí, A. 1964. *Una hipotètica revolta d'uns mestres hipotètics*. Perpinyà: Proa.

Galí, A. 1967. *Mirades al món actual. Primera sèrie de vuit assaigs*. Barcelona: Arc.

Galí, A. 1980-1985. *Història de les institucions i del moviment cultural a Catalunya: 1900-1936* (23 Vol.).Barcelona: Fundació Alexandre Galí.

Galí, A. 1989. *Darrers Escrits (1967/1969)*. Barcelona: Fundació Alexandre Galí. Galí, A. 1990.

Escrits Pedagògics (1952-1966). Barcelona: Fundació Alexandre Galí.

Galí, A. 1990. *Escrits Polítics. Escrits Històrics (I).* Barcelona: Fundació Alexandre Galí. Galí, A. 1991. *Escrits Històrics (II): Art, luxe i esplai,* Barcelona: Fundació Alexandre Galí.

Galí, A. 2004. *Pensament i Filosofia a Catalunya (1900-1936).* Ed., Pere Lluís Font and Josep MonserratMolas. Barcelona: Societat Catalana de Filosofia-Institut d'Estudis Catalans.

Serra, X. 2010. *Història social de la filosofia catalana. La Lògica (1900-1980).* Barcelona-Catarroja: Afers. Serra, X. 2013. *La filosofia en la cultura catalana*. Barcelona-Catarroja: Afers.

Journal of Catalan Intellectual History (JOCIH)
Online ISSN 2014-1564 DOI: 10.2478/jocih-2019-0011

Received 15/12/2020. Accepted 23/12/2020. Published 31/12/2020

MEDIEVAL LEGAL REALISM

Pompeu Casanovas
(La Trobe Law School, Melbourne; UAB Institute of Law and Technology, Universitat Autònoma de Barcelona)
pompeu.casanovas@uab.cat
p.casanovasromeu@latrobe.edu.au

ABSTRACT

This is a Research Note about the ongoing Project on the semantics of pact-modelling or pactism (*pactisme*) in Catalan ancient law. *Pactism* is the name of the legal doctrine that grounds the validity of legal provisions upon a pact-based model. It was developed as a basis for Catalan Public law in the 13th, 14th and 15th centuries. We present it as a medieval realism. Looking at the concomitances of 20th century legal realism and the doctrine of *pactism* can shed light on the emergence of early states and the construction of legal doctrines stemming from the reception of Roman law, the wide use of *ius commune*, and the development of case-based law and Scholastic reasoning methods. The semantics of pact-modelling processes and outcomes has yet to be established. Thus, it is also contended that Digital Humanities can offer some technological solutions to unravel underlying linguistic, cognitive, and ontological patterns to understand the political culture that came out of it and developed until the 18th c. in Catalonia.

Keywords: legal realism, pactism, pact-based model, law as dialogue, Scholastics, Pragmatism, Digital Humanities, medieval law

Acknowledgements: Project IEC PRO2018-S05. *Models del dret i la filosofia política catalanes: semàntica de les doctrines jurídicopolítiques del pactisme en les seves diferents fases* [Models of Catalan political philosophy and law: Semantics of pact-model driven political and legal doctrines at their different stages].
Disclosure statement: No potential conflict of interest was reported by the authors.

Suggested citation: Casanovas, P. (2019-2020). "Medieval Legal Realism", *Journal of Catalan Intellectual History* 12: pp. 126-134 DOI: 10.2478/jocih-2019-0011

1. LEGAL REALISM

Talking about legal realism in the Middle Ages seems like making a historical mistake or a retrospective and undue projection of a legal doctrine of the 20th c. onto a distant past. 'Medievalism' is a common term used to discredit such attempts. However, I will contend that a closer look might help researchers and legal historians to better understand the social and political behaviour that led to the construction of Medieval monarchies as early states. I am not asserting that 'realism' in Pragmatism and Scholastics has an identical meaning. This was already contested by Peirce (1905) himself in his rejection of the scholastic doctrine of universals. What I am pointing out in this note is that some of the features of the so-called legal realists in the 20th c. can shed some light on the empirical attitudes of the legal scholars that built the political doctrines of medieval public law, standing on ancient Catalan law and the scholastic Canon law. And in doing so, this approach can help contemporary researchers to understand the emergence of the early Catalan legal language-making and toolkit elaborated in the 12th and 13th centuries known as *pactisme* (in the Catalan language) or *pact-based model*, according to the felicitous English translation of Wendy R. Simon (this volume).

In the USA, 'legal realism' is the common name for the legal doctrines developed between 1880 and 1940 by leading judges such as Oliver W. Holmes (1841-1935) and Jerome Frank (1889-1957), legal scholars such as Roscoe Pound (1870-1964) and Karl Llewellyn (1893-1962), and eventually the mainstream of American legal philosophers in the 20th century. In Europe, 'legal realism' denotes the Scandinavian legal school that stemming from Axel Hägerström (1868-1939) built the notions of law as fact, rights as an expectative of conduct, and legal belief. Alf Ross (1899-1979), Karl Olivecrona (1897-1980) and Vilhelm Lundstedt (1882-1955) are its main representatives.

Their political beliefs were quite diverse, stretching from totalitarianism to conservative liberalism and radical democracy. E.g., Olivecrona authoritative notion of the law contrasts with Ross's democratic stance[1]; and Pound's confidence on the construction of a 'civilised' legal order based on case-based law is opposite to Frank's direct confrontation with the supposed 'rationality' of legal decision-making.[2]

It is true that American realists leant on the figure and specific behaviour of judges and official officers, while Scandinavians were more interested in the inner cognitive process of generating expectations of conduct and decisions. To quote but one description by Max Radin (1931: 824), "law is what courts and partly irresponsible administrative agencies will do or say within the limits set by statutes and public opinion." Ross (1958) contended that legal rules—which cannot be neither true nor false—are directives, binding guidelines, addressed to judges to make decisions on specific cases. Either way, as stressed by contemporary research, both types of real-

[1] Olivecrona's *Law as fact* (1939, 1971) refers to the story of Tarquin (Lucius Tarquinius Superbus), who is said to have shown his son, Sextus, how to conquer the city of Gabii by cutting off the tallest poppies of his garden (i.e. beheading its leading men). This was more than an allegory, as Olivecrona defined law by means of power, and had shown some sympathies for the Germans in the inter-war period. On the contrary, Ross preferred a more nuanced approach, including legitimacy and, especially after World War II, human rights as necessary conditions.

[2] See Pound (1937) and Franck (1930, 1949). I highlighted Pound's link with Freud's psychological and cultural analysis in Casanovas (2013).

ism share empirical epistemic attitudes and the willingness to get things done considering all the consequences of the decisions made (Pihlajamäki 2004). Being a realist means being also aware of the social environment that law tries to shape, acknowledging both the limitations of the whole process and the need to explain the course, reasons and causes of the decisions.

Tuori (2007, 2014) has shown how legal realists "revolutionized the study of early law and society from the 1920s to the 1960s by shifting attention from the 19th century formalistic preoccupation with written law codes and legal systems to a social relations and culture based approach". Explaining 'law in action' instead of 'law in books' became paramount. Even more recently Ignasi Terradas, revamping the salience of reciprocity in ancient law, has suggested that "in vindicatory societies the idea of justice stems from the social institutions that produce it" (Terradas 2019: 63).[3]

In feudal societies—such as the Catalan in the 11th and 12th c.—feud, authorized vengeance, compositional procedures, and formal reconciliation were instruments of vindicatory justice. Attaining a reasonable balance and equipping itself with a judicial structure was crucial to guarantee a socially sustainable legal toolkit. We will contend that the emergence of an early state in the 13th c. entailed a complex institution-building process, in which pact-based models and patterns were also supported by case-based law, Roman common law and—not surprisingly—the intellectual preeminence of Scholastics.

2. MEDIEVAL LEGAL REALISM

The link between Pragmatism and medieval legal doctrines has recurrently been noticed in the literature so far (Warbeke 1911, Mulligan 1946, Palmer 1956). Leo Strauss (1953) made a cause out of it. In recent times, law historians and legal philosophers are also starting to point out the close relationship between contemporary and medieval perspectives on law as fact and a casuistic and normative approach (Thévenin 2020). Likewise, several years ago, I realised that Catalan *pactism*—the legal doctrine that grounds the validity of legal provisions upon a pact-based model—looked like an early legal realism (Casanovas 2007, 2011).[4]

The dimensions of such a realism are less related to the theological instances of natural law than to the boundaries of power. Contrary to what would happen later in Europe, authority could not be solely concentrated in the hands of a monarch (or a state) but distributed along a social chain whose links could only stand in a perched precarious balance between several social groups. From the 13 c. onwards, the so-called *Principality* of Catalonia developed as a medieval state—the clerical consisting in the clergy, the military consisting in the nobility, and the royal

[3] The vindicatory system observes a homogeneity between offense and harm, which puts justice, rather than the legislative or contractual agreement, as the organizer of responsibility, until its total effectiveness. This may evoke an ideal of greater equity versus those of civil / criminal regulations." (Terradas 2019: 62).

[4] Contrary to other notions (such as 'mystical body'), '*pactism*' is not a historical term that can be found in ancient official or doctrinal texts. It is a historiographical, not a historical notion, made up by the historian Josep Vicens Vives in the fifties, in the middle of Franco's dictatorship (Baydal Sala 2016). Baydal contends that it would be better to use concepts with a wider European scope, such as 'constitutionalism'. I don't think this is incompatible with the singularity of the Catalan case, which is comparable with other European regions which experienced similar social tensions and balances of power. See Pere Ripoll's comparative analysis on the Kortenberg Council of the Duchy of Brabant, the elects of the County of Venaissin, and the Deputation of the Kingdom of Navarra (Ripoll 2018).

consisting in royal towns and cities (*viles*) of the country. The underlying social covenant entailed that law had to be grounded on the tension created by this kind of friction—reason, not just power; and negotiated individual agreements any time funds were needed to sustain public endeavours (such as wars of conquest or defence). This situation made it so that powers, the legal capacity to rule—of the king (*princep*), earls (*barons*) and cities (*síndics*)—had to be instantiated any time medieval courts convened. A 'mystical' political body was created across time to support political institutions and public law. The Crown of Aragon was a "community of communities", as asserted in many documents dated in the 13th, 14th and 15th c. (Montagut Estragués 2012)[5], and collected and theorised by the doctrine of the most prominent legal scholars of the 16th and 17th c. (Ferro 2013).

Medieval constitutionalism entailed this kind of diverse and functional unity. The legal notions of *Universitas Cataloniae* or *General de Catalunya* (General of Catalonia) refer to the political dimension of the Catalan community (people, *populus*) through (i) legal *pactism* and (ii) a *dual notion* of Monarchy which, from the Courts held in Barcelona in 1283 onwards, was deemed to be the holder of *jurisdictio generalis* (Ripoll Sastre 2020; Montagut Estregués and Ripoll Sastre, 2020). What all this means is that the General's consent—i.e. the community's consent—was henceforth required to enact any general law. The legal motto spanned through the next centuries—"*In Cathalonia rex solus non condit leges, sed rex cum populo.*"[6] (Maspons i Anglasell 1932, quoting Joan de Socarrats, 15th c.)

The 'mystical body' also determined complex inner and external relationships. As for policies against heretics, while Jews and Muslims were increasingly aligned with the Canon law, the strategies for conversion figured out by the different orders of the Catholic Church (mainly Dominicans) grew increasingly. This implied the *tacit* construction of a matrix of dialogue and violence to deal with the religious outside through political and legal means (Macías, Casanovas and Zeleznikow 2020). As asserted by Halperin (1983: 466) some time ago, in medieval frontier societies silence was functional, as "silence about the implications of borrowing infidel institutions or respecting infidel customs was more effective in permitting such activity to continue than self-serving references to necessity or the circumscribed indulgences of Canon law or the Shar'ia".

It is worth mentioning the role of Scholastics and the casuistic led by crucial legal scholars such as Ramon de Penyafort (1175-1275), the Dominican who compiled the Decretals of Pope Gregory IX (1234) and exerted a great influence in the implementation of the brand-new Catholic

[5] T. de Montagut (2012: 112) quotes a direct excerpt of the *Cort General de Montsó* 1382-1384 [General Courts, Parliament] offered by Prince Martí to the Monarch Pere el Cerimoniós : "*no solament en lo cors místic lo qual es compost de cap et de diverses membres distants, ans encara en lo cors qui viu en unitat de spirit*" [not only in the mystical body which is made up of head and several distant members, but still in the body that lives in unit of spirit].

[6] In Catalonia the king alone does not make the law, but the king with the people. The traditional interpretation is the following: (i) *Constitucions*, laws proposed by the king, and approved by the branches; (ii) *Capítols de Cort (*Court Chapters), laws proposed by the branches and approved by the king; (iii) *Actes de Cort* (Court Acts), pacted acts with the acquiescence of branches. However, the most recent scholarship has shed light on the role of the branches: The legislative initiative always corresponded to them (*braços*), which normally presented it to the king as a *súplica* (supplication) in *capítols* (chapters). If the king enacted them only with the added formula of *placet—plau al Senyor Rei*, as it pleases the King—and nothing else was done, they became Court chapters. This clearly expressed the political dualism of the Catalan pactist constitution. Now, if these chapters were formally reworked in a unitary way, so that the resulting text was promulgated by the king himself using the Majestic *Nos* (We), then they were turned into *Constitucions*. (I am grateful to Tomàs de Montagut for providingme with this clarification).

legal toolkit. Penyafort was at the crossroads of the state and the Church, and elaborated several doctrines in between, especially relevant for the emergence of dialogue as a new tool for conversion and for the doctrines of Christian just war and commercial relationships. The legal and political doctrine of *pactism* would have not been possible without the extended preparatory work of the jurists of the King's court, mainly formed in the Roman doctrines of the University of Bologna.

3. THE PROJECTS ON PACT-MODELLING SEMANTICS

Let's enumerate some of the features of this early realism: (i) limitations of King's rule in favour of a balance of power (dual Monarchy), (ii) valuing of negotiations, agreements and social and political covenants; (iii) consequentialism (attention to the consequences of legal decisions), (iv) holism (attention to the general framework), (v) settlement of all stakeholders (attention to the subjects involved), (vi) judicialism (involving reason, doctrine, and not just legal provisions).[7] Another ancient brocard brought up by Maspons (1932) expresses the flexibility (and strength) of this pact-based model—*pactes rompen lleis* (agreements break laws).

Pactism is a legal technique based on *jurisdictions* and *sources of law*, with the double aspect of ancient legal norms and institutional organisation (Montagut i Estragués 1989). Historians of Catalan ancient law usuallyembrace a straightforward definition, meaning the political agreement by which kings were legally bound toconsider the consent and free will of their own subjects even if they could exert a jurisdictional power upon them (Ferro 2013: 22). Nevertheless, stemming from this technical notion, we deem possible to broaden it up.

We approach *pactism* from four different angles: (i) as a legal technique to build up the institutional structure ofthe state; (ii) as a legal technique of drafting public law (*lleis paccionades*); (iii) as a procedural technique to embed the Medieval Roman law—*ius commune*—into the structure of judicial reasoning (discretionary reasoning); (iv) as a strategy to extend Catalan merchant interests across the Mediterranean shores.[8]

We also can approach *pactism as a system*, i.e., as a set of rules, principles, values and evolving provisions that goes beyond the institutional structures to reach social objectives and create social bonds. From this latter point of view, we can understand it—as already said—as a conscious and reflective exercise of social engineering, i.e., as an early stage of legal realism.

The ongoing projects on dialogue as a source of law are focusing on this systemic and dynamic dimension, for the semantics of this pact-modelling processes and outcomes has yet to be established. Could we produce a systematic vocabulary, a lexicon, to be classified and reused in other researches? What kind of relationships could we discover? Are there some linguistic pat-

[7] The judicial oath of Catalan judges under Pere II (Const. vol. I ll. 1, ti. 48, llei 8, 1283) reads: « … *e los plets qui vendran en mon poder espatxaré, de mon poder, com pus tost poré*, segons Dret e rahó. » Case-based law was going to be issued "according to Law and reason".

[8] El *Llibre de Consolat de Mar* (1320-1330) *Book of the Consulate of the Sea* is a compendium of maritime law for governing trade in the Mediterranean and establishing permanent relations (consulates) in Mediterranean countries. This kind of networking and commercial bonds points at a cultural pattern that emerged much later as well, e.g., in the relationships with Latin-American countries in the 19th c. (Harrington 2019).

terns ready to be reused as cultural legal bricks? What are the ontological elements? Which pragmatic link can we establish between them and the practice of ancient Catalan law? And what is the role of the inner and outer environments, i.e., the internal relationships with subjects ruled by different personal and community laws—such as the Jews—, and the complex external relationships with the Roman Church, with the surrounding kingdoms, and with the Mediterranean Islamic countries?

It is our contention that Digital Humanities might have a prominent role in finding plausible answers to these research questions.[9] A fundamental question is "how humanities datasets can be represented digitally, in such a way that machines can process them, understand their meaning, facilitate their inquiry, and exchange them onthe Web" (Meroño-Peñuela 2017: 144). A research tradition in analysing Catalan Ancient Texts—mainly focused on Catalan medieval literature—does exist already (Torruella 1989, 2009).[10] CICA contains a section of legal and political texts that can certainly be used to test some of our preliminary hypothesis. E.g., one of the main documents about legal *pactism—El Dotzè del Crestià*, by Eiximenis—has been partially digitised.

In the annual Scientific Workshops held in 2018 and 2019 at IEC[11], researchers in Artificial Intelligence (AI), natural language processing (NLP), knowledge graphs (KG), the web of data (WD), and ontology building, pointed out some actions to be taken in the next future. The engagement of AI researchers with ancient Catalan thinking is not new. We may remember the studies published by Alexander Fidora and Carles Sierra on Ramon Llull's (Lullius) early graphs (Fidora and Sierra, 2011).

The recent discovery by Pere Ripoll of *El llibre dels Vuit Senyals* [The Book of Eight Signals] (LVS) in the Archives of the Crown of Aragon is helping us to get a sound starting point for a computer-based analysis. This book was compiled in the 15th c. between 1415 and 1425 as a summary of the ancient laws of the land before 1413-1423. It was the precedent of *El llibre dels Quatre Senyals* [The Book of Four Signals] (LQS) (Montagut i Estragués 2006), also compiled in the 15th c. to summarise the financial and political legislation of the Diputació del General. Both books reflect the structural rulings and organization of the institution in a time of change and political threat—i.e. first, the change of dynasty (the Trastámara house), and later the construction of the Spanish(absolutist) state based on Castilian's laws.[12]

Several analytical lines have been identified. Among others: (i) a description of old Catalan Language in *glottolog*[13] (and *lexvo*[14]); (ii) application of *word2vec*[15] (distributional semantics hy-

[9] See the survey of technologies and SW methods carried out by Meroño-Peñuela *et al.* (2015).
[10] Computerised Corpus of Old Catalan (*Corpus Informatitzat del Català Antic*, CICA), http://www.cica.cat/
[11] Researchers who participated and contributed to the discussions organised by J. Monserrat and P. Casanovas were, in alphabetical order, Joan Cuscó (UB), Jorge González-Conejero (IDT-UAB), Mario Macías (IDT- UAB), Albert Meroño-Peñuela (Vrije Universiteit Amsterdam-now at Kings's College, London), Tomàs de Montagut Estragués (UPF), Elena Montiel Ponsoda (UPM), Pablo Noriega (IIIA-CSIC), Nardine Osman (IIIA- CSIC), Enric Plaza (IIIA-CSIC), Marta Poblet (RMIT), Victor Rodriguez Doncel (UPM), Pere Ripoll Sastre (UPF), Vicent Salvador (UJI), Carles Sierra (IIIA-CSIC), Wendy R. Simon (UAO and IDT-UAB), Joan Tello (UB), Emma Teodoro (IDT-UAB), Joan-Josep Vallbé (UB) and Josep M. Vilajosana (UB).
[12] See Ripoll Sastre (2018, 2020) and Montagut Estragués (2006).
[13] https://glottolog.org/
[14] http://www.lexvo.org/
[15] https://en.wikipedia.org/wiki/Word2vec

pothesis), *Word2vec/embeddings* (distributed representation of words: continuous bag-of-words (CBOW) or continuous skip-gram); (iii) linguistic patterns discovery; (iv) generation of an *Ontology Design Pattern* (ODP)[16]; (v) *probabilistic topic models* application; (vi) *discourse analysis* to frame the possible interpretations. Comparative linguistic and historical work—Catalan forensic and court language—have also been planned. In the same vein, the conceptual analysis of legal Islamic, Jewish and Catholic texts is required to make full sense of the findings.

Pact-modelling semantics is an exciting research challenge, encompassing several types of relevant expert knowledge and analytical tools. At the time of writing this Note, we had thought we could offer some results. We are still slowly recovering our research pulse, after a difficult time. We will do better in the years to come.

4. REFERENCES

Baydal Sala, V. 2016. "Pactistes des de quan? Les arrels del concepte de «pactisme» en la historiografia catalana i l'obra de Jaume Vicens Vives", *eHumanista/IVITRA*, 9: 314-340.

Casanovas, P. 2011. "Catalan legal mind and the legal Catalan mind: a brief overview of legal and political principles." *Journal of Catalan Intellectual History* 1 (2): 161-177. The original text was written as an invited lecture to the *Symposium Mediterranean Mirror: Catalan Law in an International Context*, held at the Elmer Holmes Bobst Library, New York University, on April 27th, 2007.

Casanovas, P. 2013."Sobre la palesa insuficiència dels nostres mètodes per regular les relacions humanes." [On the obvious inadequacy of our methods for regulating human relations]. Lecture at UAB, 6 May. https://ddd.uab.cat/pub/estudis/2013/106749/sobpalinsmet_a2013.pdf

Casanovas, P. 2019. "Catalan Identities: Language, Power and Political Pactism from a Historical Perspective." In *The Rise of Catalan Identity. Social Commitment and political engagement in the 20th c.* Eds. Pompeu Casanovas, Montserrat Corretger, Vicent Salvador. Cham: Springer, pp. 19-48.

Ferro i Pomà, V. 2013. "El Dret català durant els segles XVI i XVII." *Revista de Dret Històric Català*, 12: 9- 108.

Fidora, A. and Sierra, C. (ed.). 2011. *Ramon Llull, from the Ars Magna to Artificial Intelligence*. Barcelona: Artificial Intelligence Research Institute.

Frank, J. 1930. *Law and the Modern Mind*. N.Y.: Transaction Publishers.

Frank, J. 1949. *Courts on Trial*. Princeton, NJ: Princeton University Press.

Halperin, C. J. 1984. "The ideology of silence: Prejudice and pragmatism on the medieval religious frontier". *Comparative Studies in Society and History*, *26*(3): 442-466.

Harrington, T. 2019. "When the Mediterranean Moved West: Catalan Social Networks and the Construction of Nineteenth-and Early Twentieth-Century Uruguayan Society and Culture" in *Transatlantic Studies: Latin America, Iberia, and Africa*. Eds., Cecilia Enjuto-Rangel, Sebastia An Faber, Pedro García-Caro and Robert P. Newcomb. Liverpool: Liverpool University Press.

[16] http://ontologydesignpatterns.org/wiki/Main_Page

Macías, M., Casanovas, P., Zeleznikow, J. 2020. "Shevirath Ha-Kelim. Jewish Mysticism and the Catalan Matrix for Dialogue and Conflict". *JOCIH*, 12: 59-92.

Maspons i Anglasell, F. de P. 1932. *L'esperit del Dret Públic català*. Barcelona: Barcino.

Meroño-Peñuela, A., Ashkpour, A., Van Erp, M., Mandemakers, K., Breure, L., Scharnhorst, A., Schlobach, S. and Van Harmelen, F. 2015. "Semantic technologies for historical research: A survey". *Semantic Web*, *6* (6): 539-564.

Meroño-Peñuela, A., 2017. Digital humanities on the Semantic Web: accessing historical and musical linked data. *Journal of Catalan Intellectual History*, *1* (11): 144-149.

Montagut i Estragués, T. de. 1989. "Pactisme o absolutisme a Catalunya: les grans institucions de govern (s. XV- XVI)". *Anuario de estudios Medievales*, 19: 669-680.

Montagut i Estragués, T. de (ed.). 2006 [1634]. *Llibre dels quatre senyals* (edició facsímil, 2 Vol.). Barcelona: Editorial Base i Enciclopèdia Catalana [1634].

Montagut i Estragués, T. de. 2012. "La constitució política de la Corona d'Aragó" in *El Compromiso de Caspe (1412), cambios dnásticos y Constituciones políticas en la Corona de Aragón.* Ed., María Isabel Falcón Pérez. Zaragoza: Cortes de Aragón, Gobierno de Aragón e Ibercaja, pp. 104-116.

Montagut i Estragués, T. de, Ripoll Sastre, P. 2020. "*Pactism* in Catalonia: a dual conception of the political community". *JOCIH*, 12: 17-29 (this volume).

Mulligan, R.W. 1946. "A Note on Legal Pragmatism", *Thought: Fordham University Quarterly*, *21* (3): 513- 522.

Olivecrona, K. 1971 [1939]. *Law as Fact.* London: Stevens & Sons.

Palmer, B.W. 2016. "The Natural Law and Pragmatism". *The Catholic Lawyer*, *2* (2): 150-160. Peirce, C.S. 1905. "What pragmatism is", *The monist*, *15* (2): 161-181.

Pound, R. 1937. "The Future of Law". *Yale LJ* 47 (1): 1-13.

Pihlajamäki, H. 2004. "Against metaphysics in law: The historical background of American and Scandinavian legal realism compared." *The American Journal of Comparative Law*, *52* (2): 469-487.

Radin, M. 1931. "Legal Realism " *Columbia Law Review*, 31 (5): 824-828.

Ripoll Sastre, P. 2018. *Llibre de vuit senyals (15th century): an edition, legal and comparative study*. Doctoral dissertation, Universitat Pompeu Fabra.

Strauss, L. 1953. *Natural Right and History*. Chicago: University of Chicago Press.

Terradas, I. 2019. *La justicia más antigua: teoría y cultura del ordenamiento vindicatorio*. Madrid: CSIC.

Thévenin., P. 2020. "Fact as Law. An Archeology of Legal Realism". In *The Discovery of the Fact*. Eds. Clifford Ando and William P. Sullivan. University of Michigan Press, p. 175-221.

Torruella Casañas, J. 2019. "Los ejes principales en el diseño de un corpus diacrónico: el caso del CICA". In *A survey of corpus-based research.* Eds., Pascual Cantos Gómez and Aquilino Sánchez Pérez. Online, p. 21-36, https://www.um.es/lacell/aelinco/contenido/pdf/2.pdf

Tuori, K. 2007. "Legal Realism and Early Law: The influence of American legal doctrine in the

study of non-Western law 1920-1960." 16 October, http://www.law.nyu.edu/sites/default/files/upload_documents/hrstuoripaper.pdf

Tuori, K. 2014. *Lawyers and Savages: Ancient History and Legal Realism in the Making of Legal Anthropology*.London: Routledge.

Warbeke, J. 1919. "A medieval aspect of pragmatism", *The Journal of Philosophy, Psychology and Scientific Methods,16* (8): 207-215.