

Review of Jacques Cujas (1522-1590). Jurisconsulte humaniste, by Xavier Prévost

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[82] Jacques Cujas (1522-1590). *Jurisconsulte humaniste*, by Xavier Prevost, Geneva, Droz, 2016), 592pp, €93.84 (hbk), ISBN 978-2-600-01814-2.

This book is a reworked thesis which was defended at the Sorbonne University in 2012. The hardcopy comes without appendices but these can be downloaded for free from the publisher's site. In this work, the author intends to reposition the thought of the legal humanist Jacques Cujas (1522-1590) within the context of sixteenth-century legal humanism (14). He aims to do so by a systematic study of the jurist's' entire work (12). This very ambitious project has resulted in a book divided into three parts: (i) a prolegomena which provides Cujas' biography and bibliography, (ii) a part which discusses Cujas' humanist approach to law, and (iii) the final part of the book which focuses on the practical dimensions of Cujas' legal writings.

Central to the book are two issues. First, the author intends to investigate to what extent Cujas' approach to law differed from that of his medieval predecessors. Though the long-held view that humanist scholarship presented a fundamental breach with medieval scholarship has already been dismissed as over-simplified, the author nevertheless sees its refutation as the main purpose of his book (10). He wishes to nuance the simplified dichotomy between medieval and humanist scholarship which incessantly repeats itself in today's reference books (11).

Secondly, the author assesses the practical character of Cujas' work. Indeed, humanist legal scholarship has always been shrouded in mystery when it comes to its influence on legal practice in particular. It is difficult to demonstrate the degree to which humanist scholarship had a formative impact on how justice was distributed in court. Some scholars contend that such influence was absent. The humanists' ivory-tower erudition was no more than a pedantic display of knowledge which did not have any bearing on what happened in the real world.¹ Others propose a more nuanced view, arguing that it was not so much its direct influence on decision-making as its different mode of reasoning by which humanist scholarship thoroughly changed the way law was perceived and applied.² This book goes somewhat further. In addition to the view that humanist [83] scholarship altered the perception of law, the author contends that the works of Cujas were put to the service of legal practice (15).

The author discusses the two mentioned issues by means of a full-scale investigation of Cujas' writings (12). Moreover, in order to answer the posed questions properly, the author argues that the context within which Cujas worked needs to be restored. This makes, in his view, Cujas' biography indispensable. Consequently, the prolegomena provides the reader with a thorough chronological description of the vicissitudes of Cujas' life. Archival records complete and nuance the portrait offered in older biographies. Furthermore, the author presents a full and detailed bibliography of Cujas' works. The treatment of the standard edition for Cujas' work, Fabrot's *Opera omnia*, is particularly informative (123ff). The reader learns much about the method employed by Fabrot to produce a reliable edition, which includes comparing Cujas' manuscripts with earlier

¹ W Engelmann, *Die Wiedergeburt der Rechtskultur in Italien durch die wissenschaftliche Lehre* (Koehlers Antiquarium, 1938) 242.

² P Stein, 'Legal Humanism and Legal Science' (1986) 54 *Tijdschrift voor Rechtsgeschiedenis* 300; GCJJ Van den Bergh, *Die holländische elegante Schule* (Vittorio Klostermann, 2002) 37.

editions of his writings (124). Overall, the extensive treatment of the various editions of Cujas' work provide researchers with useful insights into their quality and reliability.

Yet, despite the impressive result of the author's work on Cujas' biography and bibliography, it may be questioned whether all this contributes to addressing the issues which the author aims to tackle. The need for a renewed biography of Cujas is defended with the somewhat opaque argument that in order to penetrate the thought of a writer one needs to look at his life (13). Admittedly, the context in which a legal mode of thinking develops is necessary for its correct interpretation. However, such a context consists of a lot more than a writer's biography. The case can be made that when discussing legal humanism against the backdrop of medieval scholarship, a definition and explanation of the latter's features are required. What methodological assumptions did medieval scholars adopt? What did medieval legal practice look like? The book, however, fails to address these questions. This becomes all the more urgent, since the author compares Cujas' humanism and medieval legal science and speculates on the influence Cujas exercised on contemporary legal practice in which the *mos Italicus* still firmly held ground.³ The author does not go beyond the somewhat outdated view that 'the bartolists essentially contented themselves with repeating the solutions developed by their predecessors' (5). Given that biographies of Cujas already exist, the reader can hardly avoid the question whether the biographical part should not have been kept shorter in order to leave more room for an in-depth elaboration of the characteristics of medieval legal scholarship. This would possibly have enabled the author to draw more marked conclusions about the character of Cujas' scholarly work vis-à-vis that of his medieval colleagues.

Having discussed life and works of Cujas in the prolegomena, the first part of the book continues with a substantive analysis of Cujas' work. The author focuses in particular on Cujas' bringing to perfection the historical analysis of the law (133). Contrary to what some scholars posit, this fundamental trait of humanist [84] scholarship does not, according to the author, entail a wholesale breach with medieval scholarship (138). In this regard, the author puts special emphasis on Cujas' ample use of the interpretations of Justinianic law by medieval glossators. Their interpretations form the basis of *ius commune*-doctrine which Cujas tests against the results of his historical scrutiny (144). Backed by a quantitative analysis of the sources Cujas' draws from when interpreting Roman law, the author demonstrates that the humanist interprets the existing body of Roman law texts with the help of everything he could find, including the writings of the first Bolognese interpreters. Yet, Cujas goes further than these by using Greek texts (the accents and aspirations of which the book under review often renders incorrect, as the footnotes on 206-207), grammatical analyses and historical knowledge to reach a correct interpretation of the law texts. It is in the latter that the author observes a marked difference with medieval scholarship (156).

Cujas' predilection for the work of the glossators has already been noted by other scholars such as Flach.⁴ Our author, however, carries the matter further. As additional proof of Cujas' indebtedness to medieval scholarship he highlights the humanist's many favourable references to Bartolus, the most renowned of the commentators (165). Though Cujas sporadically criticizes him, the author ascribes that to the commentator's methodological deficiencies in the particular legal issue at hand (176), not to a wholesale condemnation of Bartolus' work. The author strongly rejects the tendency to put Cujas on a par with other anti-bartolist humanists (181). In sum, Cujas proves to be an eclectic, undogmatic scholar who is averse to taking authoritative opinions for granted but

³ See Stein (n 2) 305.

⁴ J Flach, 'Cujas, les glossateurs et les bartolistes' (1883) 7 *Nouvelle revue historique de droit français et étranger* 205.

who at the same time is not afraid to credit his medieval predecessors when their solutions conform to his own views (231).

The second chapter of the first part of the book provides an in-depth discussion of Cujas' efforts to restore the text of the *Corpus iuris civilis* to its original state. Cujas' approach consists in bringing manuscripts together (*collatio*) and correcting the vulgate text where necessary (*emendatio*) in order to be able to reach a sound interpretation (*interpretatio*). The author provides the reader with sundry examples of how Cujas scrutinized manuscripts and Greek unglossed constitutions to achieve a better understanding of the Roman law in all its stages, which approach constituted something new in comparison with medieval legal scholarship (276, 303).

The chapter continues with the treatment of how Cujas reconstructs the writings of the Roman jurists out of the fragments of the *Corpus iuris civilis*. Contrary to the often-heard opinion in modern scholarship that Cujas attempted to reconstruct classical law, it is here convincingly argued that that was not Cujas' main purpose. He strived for a correct reconstruction of the evolution Roman law had experienced through history (328). All this served the sole purpose of better interpreting the law and of correcting its flawed interpretations, be they introduced by [85] Cujas' predecessors or his contemporary humanist colleagues (330). Cujas even went so far as to bring in Carolingian *capitularia* to back his arguments (336). Still, the casuistic manner in which Cujas worked (341) and his reason for reinterpreting the law, - the wish to solve contradictions in the *corpus Justinianeum* (346) - proves his affinity with the medieval legal mind.

The second part of the book is devoted to the practical dimensions of Cujas' work. In this part's first chapter, the author explores the practical depth of the humanist's writings. He does so by investigating Cujas' *consilia*, which according to the author, 'give a strong testimony of his activity as practitioner' (361). From the sixty *consilia* which have been handed over in Cujas' *Opera omnia*, the author discusses those dealing with the law of succession (363). The focus mainly lies on two sources of contemporary positive law which Cujas frequently used to interpret the issues at hand; customary law (396) and royal statutes (404). After a meticulous analysis, the author reaches the conclusion that the Romanist appears to be a true practitioner (436).

The second chapter of the book's second part continues with Cujas' treatment of feudal law. Medieval legal scholarship had added 'the books on feudal law (*Libri feudorum*)' to the *Corpus iuris civilis* so that they became part of the main body of law that was studied at the medieval law faculties. According to the author, Cujas in his commentaries to the *Libri feudorum* again gives proof of the practical dimension of his work (438). Indeed, as the author demonstrates, Cujas frequently compares Lombard law with French customary law governing the bonds between lords and vassals (483). However, whether this is enough to prove that 'Cujas' historical humanism is not incompatible with legal practice', as the author states (499), can be questioned.

First, it is not clear what the author understands by legal practice. No definition is given. Yet, before being able to make statements about Cujas' relationship to legal practice the reader should be informed about what is meant by the latter. Remarks such as that 'Cujas' historical humanism is not incompatible with legal practice (499)' are otherwise difficult to comprehend. In my opinion, 'legal practice' is what legal practitioners do, eg writing pleas, pronouncing sentences and issuing decrees. In this book it does not become clear to what extent Cujas' work related to these activities. Were his *consilia* used in court by parties under litigation? Did Cujas' writings serve judges in their sentencing? Did rulers in their law-making activities take notice of what the humanist wrote on the law of succession or feudal law or ask for his advice? The book provides no answers to these and

similar questions. The author rather seems to equate writing about contemporary positive law with directly influencing it. In doing so, he passes over the intriguing question of whether humanist scholarship was taken into consideration by practitioners at all, or, even more tantalizing, whether humanists themselves saw any practical purpose to their work.

In particular, the nature of Cujas' *consilia* leaves many questions unanswered. They often lack case-specific facts and rarely cite *ius commune*-doctrine. Taking into account that in Cujas' age the *mos Italicus*-method still prevailed in legal [86] practice and that Roman law in its *ius commune*-clothing was a source of law, whereas reconstructed Roman law was not, it is very unlikely that *consilia* in this form could have been of much practical use. A comparison between Cujas' *consilia* and those of his contemporaries might have been revealing. If we consider eg the various *consilia* written about the succession to the Portuguese throne, it appears, that Cujas' two-*folio*-long *consilium* (425ff) widely differs from those given by contemporary scholars which consist of tens of pages and abound with references to *ius commune*-sources.⁵ One might wonder whether Cujas' *consilium* contained any persuasive power. Perhaps the succession to the Portuguese throne rather posed an attractive legal puzzle for a humanist interested in testing his purified version of Roman law to a contemporary succession case.

In short, both the claim that Cujas' historical humanism is compatible with legal practice and the opposite, that it is not, may be correct. The present study just does not provide enough information for a definite answer to this question. A thorough exposition of the specifics of medieval scholarship would have enabled the author to adopt a firmer position on the practical character of Cujas' *consilia* and his writings on feudal law. As things now stand, it seems as if the author equates Cujas' writing about the law in force with directly influencing its application in practice. Yet, whether such influence existed is exactly what should have been investigated. That theorizing about the law does not necessarily have an effect on its practical workings is a fact not many scholars would dare to deny.

To conclude, this book proves a treasure trove for every scholar who ventures on a journey over the tricky path of legal humanism. Though the analysis of the practical character of Cujas' work leaves room for critical comments, the book nonetheless offers valuable reference material accompanied by thorough analyses. The work done on Cujas' biography is impressive. The author delved deep into the archives to correct flaws in older biographies about Cujas' life. Similarly, the overview of the various existing editions of Cujas' works renders this book a valuable work of reference which no future scholar seriously writing about Cujas can dispense with. Finally, the in-depth discussion of Cujas' treatment of the law of succession and of feudal law give the reader a rare insight into a humanist legal mind. It can only be wished for that more humanist scholars will receive similar attention, as there still remains much to explore in the intriguing world of legal humanism.

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⁵ Eg Miguel de Aguirre's *Responsum de successione regni Portugalliae pro Philippo Hispaniarum Rege* (Venice, 1581), counts 108 folia. Luis de Molina y Morales' *Iuris allegatio pro Rege Catholico Philippo II ad successionem Regnorum Portugalliae* (np, 1579) counts 52.