BOOK REVIEW


Xavier Prévost’s study of Jacques Cujas, which derives from his thesis defended in 2012 at the University of Paris-I in the history of law, is a significant contribution to our understanding of Renaissance legal history by focusing on this important, yet neglected French jurist. To date, leading studies on Cujas began with the “Histoire de Cujas” by Berriat-Saint-Prix (1821), then followed by only a few studies by Paul Frédéric Girard, Pierre Mesnard, Edoardo Volterra and Hans Erich Troje. Meanwhile the knowledge of the “Renaissance Jurisprudence” was fundamentally renewed, especially thanks to the works of Guido Kisch, Vincenzo Piano Mortari and Donald R. Kelley. Cujas, Jean-Louis Thireau (PhD supervisor of Prévost) warns, is “one of the greatest French lawyers and also one of the most difficult to understand, despite his great popularity” (Preface, p. VII). One of the merits of Prévost’s study is his systematic reading of Cujas’ Opera omnia (Charles-Annibal Fabrot’s comprehensive edition of 1658 contains ten volumes in-folio). To better understand Cujas’ work, Prévost provides a detailed biography (Cujas was born in Toulouse in 1522 and died in Bourges in 1590) based on previously unexplored archives. Prévost emphasizes the inexhaustible cultural awareness as well as the eclecticism of Cujas as a humanist: his passion for history, ancient languages, and various sciences (mathematics, medicine and many others). He also puts forward the hypothesis of his “religious sensitivity between the two [Catholicism and Calvinism]” (p. 80), which was common in the sixteenth century. Prévost examines Cujas’ published work in a very clear and compelling way thanks to the sources themselves. Such “Prolegomena” guides the sequence of Prévost’s own discussion of the material, which focuses on the “most original aspect of the Cujas method, namely the perfectionism in historical analysis” (p. 133). This focus is central to the first part of the book: “Jacques Cujas’ Legal Humanism,” as well as the second part: “Jacques Cujas’ Legal Practice”.

Prévost highlights how Cujas’ work represents a prime example of the humanist historical method that developed during the Renaissance. This method used pure Roman law as a base favouring an explanatory approach. At the same time, his views on mos gallicus (French method of civil law) differed from that of other supporters. His critique of the previous doctrine and of that adopted by his contemporaries —
excepting Hugues Doneau, whom he never names — is always nuanced. For instance, even though he overcame the scholastic thinking of his predecessors, he never broke “definitively from the interpretative techniques of the Middle Ages” (p. 141): as he scrutinized the writings of the Commentators, he sometimes recognized the relevance of their analyzes. As for his contemporaries, Cujas stood apart from the anti-Tribonians, by offering measured criticism of the work of Tribonian, while also keeping away from the dominant group of anti-Bartolians. Prévost repeatedly emphasizes Cujas’ pragmatism and lack of dogmatism; the jurisconsult always gave preference to rational analysis, made distinctions between the sources, and referred to ancient, medieval and modern historians alike.

Later on, Cujas widened his historical method in ways that surpassed his teachers; Prévost restores with great precision and with the help of numerous examples the three exercises developed by Cujas: collectio, emendatio, interpretatio. This “trilogy” began with the search for the manuscripts. Then, in order to restore the text in its original purity, he created the amendment, which was principally an exercise in philology and a repair of the text to remove interpolations, through an external and internal analysis of the documents. Subsequently, the source was returned to its original context so as to reveal its primary meaning. Once the text’s credibility was established, it could then be used for a scientific reading of legal history. Only then was it possible to interpret the development of law over time. Prévost reveals that over two thirds of Cujas’s works are based on “legal analysis of the historical and exegetical type”; defining historical analysis as an “interpretive starting point”, albeit, he rightfully notes, with some “epistemological breakage” (p. 327-328).

Cujas’ criticism of the texts was also useful for him in practice: he used it in his consultations — mainly in the field of inheritance law. He structured his reflections off of Roman law, but also referred to additional sources. Here, Prévost measures the increase made by the legal situations up to the point where he competes with the decisions contained in the Corpus juris civilis, which until then served only as a “handbook of interpretation aimed at clarification of the obscure points in the national standard” (p. 411). Cujas thus contributed to the harmonizing of the common law, called “jus commune” (p. 402), in the French Kingdom. In addition to these observations, Prévost raises questions relating to the limits of the historical method and to the ways in which Renaissance jurists adopted Roman law: one such example was where Cujas analyzed fief as a right of usufruct (p. 455). Such are the numerous facets of this impressive study. Written with a clear prose and in a dynamic style, Prévost’s book offers new insights as well as points the way for future research on the personality and work of Jacques Cujas.

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