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Spatial and Temporal Dimensions for Legal History

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The Diffusion of Law Books in Early Modern Europe:
A Methodological Approach | 195–239



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The Diffusion of Law Books in Early Modern Europe: A Methodological Approach

1. Introduction: Law Books across Temporal, Spatial and Disciplinary Dimensions

Does the so-called “spatial turn” in the humanities and social sciences present new challenges or new perspectives for legal historians? Could a more precise awareness of the *spatial* and *temporal dimensions* reinforce their analytical skills?

One of legal history’s traditional topics is the creative reading of texts in different contexts and periods – labelled as “reception”, “transfer” or more recently as “translation” studies.¹ The very identity of the legal historical discipline is strictly connected to the study of one of the most impressive cases of text “transmission” across two millennia, performed by the compilation later known as *Corpus iuris civilis*,² and it abounds in examples of cross-bordering texts, schools and institutions. As a field of knowledge, the history of law could even be defined as a long history of interconnectedness between actors of different (sometimes even remote) spaces and times.

However, an attentive reflection on how these connections were made possible is still absent in legal history.³ In some cases, legal texts and schools were conceived from a strictly “national” perspective; in others, they seemed to have flowed freely through porous or inexistent frontiers.⁴ Both extremes

1 DUVE (2012), 31–32.

2 The Byzantine codification of the Roman “heritage”, which allowed its transmission over the centuries in the Western territories, has been suggestively defined as a “resistant container” as well as a “deforming mirror” (SCHIAVONE [2005] 12).

3 I refer mainly to the cases of diffusion in the early modern period, for in the frame of the *legal transfer* studies important contributions have been issued. See for example FÖGEN/TEUBNER (2005) 38–45 and the volume edited by FEEST/NELKEN (2001).

4 The attempt to construct an essentialist view of the legal past of Europe as an idealized unity, expressed in works such as Reinhard Zimmermann’s, has been extensively debated

seem to be unrealistic. In an attempt to enhance our *awareness of temporal and spatial dimensions*, I will discuss some analytical tools to study processes of diffusion of printed texts which took place in a specific setting (continental Western Europe) and in a specific period (the early modern centuries).

I will begin with a few elementary questions: why were some legal works able to transcend their immediate local contexts while other similar works were not? Why, for example, did Salgado de Somoza's *Labyrinthus creditorum* or Juan Gutierrez's *Consilia* spread beyond the Pyrenees whereas the same did not happen to the writings of other Spanish and Portuguese jurists? An intuitive answer links, in our minds, the inherent "merit" of these works to their success among the readers of the past. We would be inclined to say that their works were somehow "better" than were those of their contemporaries on analogous topics. However, if we pick up an example taken from widely consumed didactical and practical works, such as the commentaries on the Digest or on the Institutes of Justinian, it is not easy to establish why such similar works deserved such dissimilar destinies. Why did certain commentators experience a wide European diffusion and others not?

I do not intend to deny that most of the popular works had indeed an "intrinsic merit". Neither do I aim to present an alternative view, irreconcilable with the parameters of the so-called "intellectual history", or even of the old history of ideas.⁵ I do intend to present a complementary point of view, defying, though, the "merit" as the chief explanatory cause for the dissemination of some of the most influential legal works in the early modern centuries. Therefore, this reflection might affect the very formation of the "canon" in our discipline. Whether a highly "original" creation or a mediocre synthesis for law students, the popularity of a printed work in the early modern era depended on a complex set of reasons, where even chance and material conditions might have played a substantial role.

This approach benefits from a consolidated historical discipline, or "sub-discipline", known as "book history". Embracing its contributions – such as the reconsideration of notions such as text, author, reader, transmission⁶ –

and criticized from different perspectives (GIARO [1995], OSLER [1997], CAPPELLINI/SORDI [2002], BIROCCHI, [2006]). The "European nature" of the discipline should be seen as a *result* of historical research rather than as a point of departure (SAVELLI [2011] XVI).

5 See the debates in: COLLINI (2014).

6 According to the widely repeated assertion of Chartier: «Se trata, por ende, de romper la actitud espontánea que nos hace suponer que todos los textos fueron compuestos o leídos

could result in a rewriting of many chapters of European legal history. They seem to offer a fruitful path to enhance the awareness of the temporal and spatial dimensions in the legal historical investigation.

2. Book History and Legal History: Points of Convergence

During the early modern centuries, when the “state-centered” conception of political power developed alongside a fixed view of the space,⁷ the diffusion of legal texts occurred mainly (not exclusively⁸) through the hand printing press. As printing shops rapidly spread throughout the European continent, the first printed editions of the Canon and the Civil law compilations were released together with the medieval authorities and new voices in the jurisprudence. The main schools of thought and cultural movements which influenced the legal culture during those centuries – such as Legal Humanism, the *Usus Modernus Pandectarum* or the Enlightenment, to quote only some examples – have spread thanks to the printed medium.

Although legal historians, with very few exceptions, do not usually consider their source (the printed book) as a material object belonging to a universe of practices (that of the printing culture of the early modern era), most of them would instinctively acknowledge a connection between the printing press and the diffusion of legal books in this period. In other words, it seems undeniable that printing technology enabled legal schools and authors «to transcend their immediate circumstances and communicate reliably with others in different times and places»;⁹ since books are precisely one of the ways of escaping the spatial and temporal constraints in the communication.¹⁰

en el pasado según las reglas o las prácticas que caracterizan la relación contemporánea con la cultura escrita» (CHARTIER [2000] 9). For a critique of the notion of “transmission” which is at the heart of the great bibliographic projects see HELLINGA (1995) 64.

7 HESPANHA (1993).

8 On the manuscript culture in the early modern centuries see, among others, BOUZA ÁLVAREZ (2001).

9 JOHNS (1998) 40.

10 «Communiquer à distance, par l’écrit (manuscrit ou imprimé) ou par d’autres médias, c’est échapper à l’impératif de l’espace et du temps, permettre la mise en commun des savoirs en même temps qu’une réorganisation des modèles d’intelligibilité et des pratiques qui leur sont liés» (BARBIER/BERTHO LAVENIR [2003] 7).

This elementary assumption is not, however, as self-evident as it appears at first glance. To the common belief that printed word's importance «lie[s] precisely in its ability to transcend such local contexts and enable communication across wide distances», many historians today tend to consider «this power to transcend place as something itself in need of explanation».¹¹ Several investigations have put into question the features of universality, uniformity, fixity and reliability ascribed to printed texts in the early modern period.¹² The association between the printing press and the large-scale reproduction of uniform materials remains no longer undisputed.

In an effort to enhance the consciousness of the temporal and spatial dimensions in the study of widespread legal historical writings, two basic ideas might be especially enlightening: first, the “epistemic indeterminacy” of the printed texts in the age of the hand press;¹³ second, the focus on the reader. If the printed text was seen by its contemporaries as intrinsically untrustworthy, the task of the history of the book would consist of explaining how this indeterminacy «could be overcome to make knowledge and hence cultural change».¹⁴ The fixity of a text was not an inherent quality, but rather a “transitive” one, resulting from complex strategies to create “credit” practiced by the different cultural agents involved in the “communication circuit” of the manual printing culture. The early users understood the book as an unfinished, imperfect object.¹⁵ Can we then identify, in the universe of books of jurisprudence, some strategies to deal with this “uncertainty”, managing to transcend it and contributing to the production and dissemination of knowledge? Why did some specific writings manage to do it more than others? In order to address these questions I will examine briefly some ideas related to *the construction of the idea of authorship*, the role of the agents of the book trade (such as printers and booksellers) and the role of *copyright* in the diffusion of law books. They all had a significant impact on the creation, production and circulation of legal knowledge, beyond the author's intentions or the originality of his thought. The role of each of these elements may vary according to the case under study. Yet without a reconsideration of these

11 JOHNS (1998) 41.

12 On the field of legal history, see the studies of OSLER (1995).

13 JOHNS (1998) 36. See also the suggestive analysis of MCKITTERICK (2003).

14 JOHNS (1998) 32–33.

15 MCKITTERICK (2003) 3 and 95.

three characters – author, printer and censor, and their creative ways of dealing with the “epistemic indeterminacy” – any history of migration and reception of law books across different places and times would remain deficient.

Several of the issues mentioned above have been largely revisited by book historians in the past decades. Despite the considerable maturity of book history as a “subdiscipline”, it probably deserves a few introductory lines in a collection of essays dedicated to another field, such as legal history. As Shelley Rubin ironically points out, «Perhaps an emergent subdiscipline attains maturity at the moment when its adherents assume (usually erroneously) that their colleagues outside the new field understand what it is all about». ¹⁶ Since its birth, usually identified with Martin and Febvre’s groundbreaking work *L’Apparition du Livre* (1958), ¹⁷ this emergent “subdiscipline” has grown through the labor of institutions, annual conferences, a specialized journal and countless publications on a huge variety of topics. ¹⁸ Developing from the crossing of manifold influences, it was possible only «when French cultural historians fused the quantitative book history of the Annales school with an interest in microhistory and mentalité, when German hermeneuticists dismissed the ‘affective fallacy’ in favor of a reader-oriented Rezeption-ästhetik, and when British bibliographers overturned their peers’ view of printing as a discrete constant through which the author’s original intentions could be recovered». ¹⁹

The growth of this academic field is evidenced also by the appearance of several companions ²⁰ and reference works centered on specific territories and nations (such as France, ²¹ Spain, ²² Italy, ²³ Scotland, ²⁴ Britain, ²⁵ Amer-

16 SHELLEY RUBIN (2003) 555.

17 BARBIER/MONOK (2009).

18 The work conducted by the members of *The Society for the History of Authorship, Reading and Publishing* (SHARP), which runs its annual meetings, a specialized journal (*Book History*) and several discussion groups, was fundamental for this growth.

19 PETHERS (2012).

20 ELIOT (2007); SUAREZ (2010).

21 CHARTIER/MARTIN (1989–1991).

22 BOTREL (2003), MARTÍNEZ MARTÍN (2001).

23 SANTORO (2008).

24 BELL (2007–2011).

25 See MORGAN (1999–2012).

ica,²⁶ Australia,²⁷ Brazil²⁸ or Mexico²⁹) as well as on peripheral printing centers.³⁰ Significantly, the discipline counts already with a solid body of canonical texts, reprinted and compiled, for example, in the five volumes of the *History of the Book in the West*.³¹ Beyond the Western traditions of the book important contributions have also been made, such as the studies assembled in *Literary cultures and the material book* (which begins with chapters on China, Japan, Persia, India, and Africa),³² or the recent reference works addressing the Middle East³³ and East and South Asia.³⁴ Within the Western world, insightful works analyzed the experiences of neglected reading communities, such as those of women,³⁵ members of the working classes³⁶ or African Americans.³⁷ Book history has helped also to offer new perspectives on broad cultural movements such as the French Revolution,³⁸ the Enlightenment,³⁹ the Protestant Reformation;⁴⁰ or on more recent events such as World War I⁴¹ and the Second Republic in Spain.⁴²

Various attempts to define the subject of book history have been made, describing it as the study of creation, dissemination and uses of script and print in any medium, or “the social and cultural history of communication by print.”⁴³ Many have harshly criticized its claim of encompassing such a

- 26 For North America see HALL (2007–2009); some studies on South America in CÁTEDRA/LÓPEZ-VIDRIERO (2004).
- 27 ARNOLD/LYONS (2001).
- 28 HALLEWELL (2005), VILLALTA (2013).
- 29 TORRE VILLAR (2009).
- 30 RIAL COSTAS (2013).
- 31 ROBERTS (2010). CAVALLO, CHARTIER (1998) remains indispensable.
- 32 ELIOT (2007) 53–131.
- 33 ROPER (2013).
- 34 BROKAW/KORNICKI (2013), ORSINI (2013).
- 35 JACK (2012), CÁTEDRA/ROJO (2004).
- 36 ROSE (2001).
- 37 COHEN/STEIN (2012).
- 38 Discussing the theses of DANIEL MORNET’s *Les origines intellectuelles de la Révolution française* on the role of the diffusion of books to explain phenomena like the French Revolution, see DARTON (1995) and CHARTIER (1991).
- 39 DARTON (1979); SHER (2006).
- 40 PETTEGREE/HALL (2004); also EISENSTEIN (1997).
- 41 HAMMOND/TOWHEED (2007).
- 42 MARTÍNEZ RUS (2005) 179–203; MARTÍNEZ MARTÍN (2000).
- 43 DARTON (1993) and (1982).

broad spectrum as «the social, cultural, and economic history of authorship, publishing, libraries, literary criticism, reading habits, and reading response»⁴⁴ and, therefore, the requirement of interdisciplinary skills across different areas of knowledge. However, «books themselves do not respect limits, either linguistic or national», replies Darnton; «[B]ooks also refuse to be contained within the confines of a single discipline when treated as objects of study. Neither history nor literature nor economics nor sociology nor bibliography can do justice to all aspects of the life of a book».⁴⁵

For the purposes of this brief essay, it is relevant to highlight that all these different ways and perspectives within the discipline lead to one basic direction, namely, a focus on the *reader* as the main performer of every process of reception or creative appropriation of a text in a different context. The various metaphors and interpretative clues suggested for the history of the book in the early modern times, from Chartier's *Ancien Régime typographique*⁴⁶ to Darnton's "communication circuit,"⁴⁷ all point to the perspective of the reader, the final target of the process, the first and last link in the chain of production and circulation of the early modern imprint. The manifold perspectives suggested – the history of reading,⁴⁸ the history of audiences,⁴⁹ the social history of education, the history of the "media"⁵⁰ or of the forms of communication,⁵¹ the diffusion of ideas,⁵² the new sociology of the text⁵³ –

44 GREENSPAN / ROSE (1998) ix.

45 DARNTON (1982) 80–81.

46 CHARTIER (1981).

47 DARNTON defined the "communications circuit" as a complex web of communication where a series of agents – from author to editor, printer, book dealer, bookbinder, and other intercessors – intervenes, passing from censor up to the reader, in a multifaceted process oriented by social, economic, political and intellectual reasons.

48 CHARTIER (1995). See the overview of PRICE (2004).

49 The term was suggested by ROSE (2001) 3.

50 See BARBIER / BERTHO LAVENIR (2003).

51 Bouza Álvarez proposes a reconstruction of the debate between writing/reading, seeing and hearing, during the sixteenth and seventeenth centuries in: BOUZA ÁLVAREZ (1999) 127.

52 As a substitute for the dichotomy between studies of *reception*, which too greatly emphasized the *passive* aspect of the process, and the counterproposal of emphasis on the *active* aspect of *transfer*, there have been proposed alternatives, such as the notion of *diffusion*: HELMRATH (2002).

53 We refer to the well-known suggestion of Donald F. McKenzie, explained in *La bibliographie et la sociologie des textes* and in his exemplary study of the typographic transformation

all consisted of efforts to reorient and broaden the horizon of the old reception theory.⁵⁴

This “methodological thunderstorm” in the book studies of the past decades has had, though, a timid impact on legal history.⁵⁵ Besides certain studies on professional libraries,⁵⁶ editorial projects⁵⁷ and indispensable bibliographical surveys,⁵⁸ not much has been done.⁵⁹ Reversely, book historians have equally paid little attention to the universe of legal books, even if during the early modern age law was still considered one of the three “superior faculties”; together with medicine and theology, and the presence of legal books was thus paramount.⁶⁰ This neglect might be explained by the required expertise in legal historical studies or even by a persistent lack of information about the prominent role of the jurists in early modern European learned culture.⁶¹

The methodological approach suggested in the present study comes from the convergence of book history and the history of law. The two guidelines

offered by the works of William Congreve, where he offers his consideration of the book as “an expressive means”: MCKENZIE (1991) and (1977).

- 54 The turn from the perspective of the author toward that of the reader was largely developed in the field of literary theory. See the collection of studies bringing together authors such as JAUSS, WEINRICH, GUMBRECHT and STEMPEL in HOLUB (1989).
- 55 António Manuel Hespanha had indicated the consequences of the reorientation of the old history of reception for the history of law in: HESPANHA (1990) 187–196. In another study, he tried to establish the relationship between some intellectual shifts in early modern legal theory and the material changes in the layout of early modern legal books (HESPANHA [2008]). Also RANIERI had outlined some methodological proposals (RANIERI [1982]).
- 56 LLAMOSAS (2008); WIJFFELS (1993); BARRIENTOS GRANDÓN (1992).
- 57 Both VALLEJO (1998, 1996) and CONDE (1998) offer excellent reconstructions of the editorial projects of Castilian medieval legal texts in the eighteenth century.
- 58 See the works of Osler, e. g., OSLER (2009).
- 59 For the medieval jurisprudence there are the studies organized by COLLI (2005) and (2002).
- 60 CLAVERO (1991) stresses the predominant presence of theological and juridical books in Nicolás Antonio’s seventeenth-century catalogue. Most of the reference works on book history quoted above do not have specific chapters dedicated to legal works; a few exceptions are the article of MARSÁ (2004) or the classic *Livres, pouvoirs et société à Paris au XVII^e siècle (1598–1701)* by MARTIN (1969). The reference volume *Historia de la edición y de la lectura en España* does not offer a specific chapter on jurists, although a few data can be found in BUIGUES (2003c) 424–431.
- 61 ENCISO RECIO (2002) is surprised by the presence of legal books in nobility’s libraries.

proposed – the above-mentioned *uncertainty of the text* and the change of focus toward the *reader* – might serve as useful instruments to enhance our awareness of the spatial and temporal dimensions and thus reinforce the analytical skills of legal historical inquiry.

3. Uncertain, immoral, but useful authors

Early modern readers were not familiar with the idea of modern authorship as an individual ownership protected by copyright rules and based on originality and creativity. Their notion of authorship was probably as indefinite and *uncertain* as the text itself, and even after the introduction of the copyright it remained essentially *fluid* and *polysemous*, attached to diverse individuals and collectivities, such as the publishers⁶², the compilers, the translators, the adapters or the annotators.⁶³ The attribution of authorship was one of the mechanisms used to cope with the *uncertainty*; however, the attribution to one single author remained problematic since it was often a collective enterprise.⁶⁴ The term “author” was not a synonym for “writer” and it remained apparently close to its original Latin meaning, *actor*, which indicated responsibility in a broad sense, from the creation to the promotion of something.⁶⁵ If knowledge was still attached to “authority” (i. e., a superior order of truth), it could not be conceived as an individual property, since it belonged to humanity as a whole.⁶⁶ The mental experience itself, as Ross explains, was not understood in terms of individual possession.⁶⁷

Illustrative examples of this fluid notion of “author”, attached to a broader sense of “authority” in the jurisprudence, is found in two new literary

62 JASZI (1994), 32.

63 See BUIGUES (2003a), 292–301; BENEDUCE (1994).

64 JOHNS (1998), 137.

65 According to Lewis and Short’s *Latin Dictionary*, *actor* was «he that brings about the existence of any object, or promotes the increase or prosperity of it, whether he first originates it, or by his efforts gives greater permanence or continuance to it» (LEWIS / SHORT [1879]).

66 «But knowledge itself was not property. Authority, in this sense, is always proper, always an order of truth gleaned by some individuals perhaps better than by some others, but not possessed solely by any individual. For an individual alone to possess such knowledge would make it purely private knowledge, purely private truth, a blatant self-contradiction» (Ross [1994] 235).

67 Ross (1994), situating the origins of the “possessive authority” in the 12th century.

genres, cultivated with special interest in German universities in the seventeenth and the eighteenth centuries: those of *historia litteraria* (literary history) and *notitia librorum* (knowledge of books).⁶⁸ During this period, several “encyclopaedic” works were published for the use of the jurists: Martin Lipenius’ *Bibliotheca realis iuridica* (1679),⁶⁹ Bukhart Struve’s *Bibliotheca iuris selecta* (1703),⁷⁰ Johann Stefan Pütter’s *Litteratur des Teutschen Staatsrechts* (1776–1783)⁷¹ and Gerhard Meermann’s *Novus thesaurus iuris civilis et canonici* (1751–1753).⁷² Equally noteworthy are the general compilations, which dedicated important sections to jurisprudence, such as the celebrated Daniel Morhof’s *Polyhistor literarium*.⁷³ More modest overviews, such as those written by Beyer, Ludewig or Gundling echoed this general trend.⁷⁴ In France, well-known expressions of this literary genre are the compilations of Taisand and Terrasson.⁷⁵

A good representative of this encyclopaedic spirit of the German scholarship of the time was the jurist Daniel Nettelbladt (1719–1791), active in the University of Halle, mainly recalled as a pupil of Christian Wolff. Besides his studies on natural law, Nettelbladt tried to offer a comprehensive overview of the main authors, schools of jurisprudence and juridical genres from the Antiquity to the eighteenth century, in his *Initia historiae litterariae iuridicae universalis*.⁷⁶ In these pages, as well as in further writings,⁷⁷ Nettelbladt offers a rich testimony of the mechanisms of the juridical-literary field of

68 GIERL (2001). See also BLAIR (2010) 166–168.

69 LIPENIUS (1757).

70 STRUVE (1756).

71 PÜTTER (1783).

72 MEERMANN (1751–1753).

73 MORHOF (1708).

74 BEYER (1726); LUDEWIG (1731); GUNDLING (1707).

75 TAISAND (1737); TERRASSON (1750). In the nineteenth century, works such as the *Bibliothèque* by Camus, annotated by André Dupin in later editions, continued this tradition (CAMUS/DUPIN [1832]).

76 NETTELBLADT (1764); in the last section, “Bibliotheca iuridica”, he presents several lists of reference works. Nettelbladt’s “enzyklopädische[r] Anspruch” is mentioned by REGEN (2001) 467–468.

77 Such as *Systema elementare doctrinarum propaedeuticarum iurisprudentiae positivae Germanorum communis...* (NETTELBLADT [1781]), and the *Hallische Beyträge zu der juristischen Gelehrten Historie*, where he reviewed the lives and works of several jurists.

the early modern era:⁷⁸ its values, rules, communication practices and diverse expressions of the so-called “author-function”.⁷⁹ He personifies an important effort to build the “canon” for the *respublica iurisconsultorum*, in what concerns its *historia litteraria*, its sources, its subjects and its identity as a discipline.

A significant passage is his attempt to define what a *jurisconsult* is. *Jurisconsultus*, the protagonist of the *Initia historiae litterariae*, says Nettelblatt, is not anyone dealing with “positive jurisprudence”. It is someone who chose legal studies (“studium iuridicum”) as his main object of learning and whose merits were acquired principally through his erudite written legal production (“potissimum per docta ab eo edita scripta iuridica acquisita”⁸⁰).

It is important to note that “potissimum” – principally, particularly – does not exclude those who had *not* left a written production in law and could eventually be considered “jurisconsults” for the purposes of a literary history. This is why Nettelblatt assesses next the critical issue of whether such diverse figures such as Cicero, Paul the Apostle, the biblical King David, Hugo Grotius, Gottfried Wilhelm Leibniz and Christian Wolff could legitimately belong to a *historia litteraria iuris*.⁸¹ He quotes a list of dissertations

78 The analysis of erudite culture (*Gelehrsamkeit, Gelehrtenkultur*) as a cultural practice, very insightful for the study of the *respublica iurisconsultorum*, is presented in the volume edited by MULSOW / ZEDELMAIER (2001).

79 I refer to the *locus classicus* of the discussion: FOUCAULT’s 1969 “What is an author?”, in reference to the “death of the author” decreed by Barthes in 1968 (BARTHES [1968]). For a contextualization of the debate about the death of the author, or his later rebirth, see the results of the symposium of the DFG 2001, in DETERING (2001). See also IRWIN (2002) and JANNIDIS (1999). Although part of the debate pertains only to literary theory, one of its outcomes – the contextualization of the distinct expressions of the “author-function” – is also fruitful for the study of the jurisprudential field.

80 NETTELBLADT (1764) 25, § 32.

81 The complete sentence is: «Non quilibet qui iurisprudentiam positivam callet, sicque omnino in sensu generali ICtus dicendus, ideo, si in historia litteraria eruditi in classes secundum scientias, in quibus excellent, redigendi sunt, ad ICtorum classem referri debet, eiusque notitia huc pertinent. Requiritur potius, ut quis hic ad ICtos referri possit, eum, praeterea quod sit eruditus, et citra hunc respectum ICtus dici possit, talem esse, qui, nisi sit Polyhistor, studium iuridicum tanquam principale studium elegit, et cuius extant in iurisprudentiam immediata merita, potissimum per docta ab eo edita scripta iuridica acquisita. Unde facile diiudicari potest an, et quo sensu, ad ICtos referri possint M.T. Cicero, Apostolus Paulus, Rex David, Hugo Grotius, God. Guil. Leibnizius, Christianus Wolfius aliique» (NETTELBLADT [1764] 25, § 32).

and orations discussing this topic: from Cornelius van Bynkershoek's *De Cicerone non Iurisconsulto* and Samuel Stryk's *Dissertatio de iurisprudencia Pauli Apostoli* to Heinrich Kestner's *Dissertatio de iurisprudencia Regis Davidis*.⁸²

This argument may appear anecdotal to contemporary eyes. Nevertheless, these discussions show the lack of a clear distinction between what we would today consider “author” and “authority”: “Jurisconsultus”, and thus a juridical author who merited to be included in a *historia litteraria iuris*, was not necessarily someone who had formally studied jurisprudence and who had left a written work of undisputed authorship. It was also someone whose *auctoritas* was recognized as in force in the legal field, even if it was somebody who had left only an “oral” register or if the evidences about his existence relied exclusively on the Old or the New Testaments. This was the case of King David, whose authorship of the Psalter was uncertain and controversial: there was a long medieval tradition discussing this topic.⁸³ His doubtful moral virtues (qualified as an adulterer or a sinner) began to be discussed in the theological tradition from the twelfth century on, but the authority ascribed to him as a righteous king and as the voice of God in the Sacred Scriptures qualified him enough to integrate a *literary* history, according to a widespread opinion. The attribution of more written sources to Paul the Apostle, an educated Roman citizen, seemed less uncertain, such as his letters, added to the Gospels, and the Book of Acts. His past as a sinner before his conversion to Christianity did not matter given his participation in the Sacred Scriptures. However, Paul would not fit exactly in Nettelblatt's definition either. In any case, “author” was such a fluid notion that the “authenticity” of the presumed writings left both by Paul and King David were not brought into the discussion at any moment. In a world where the printing of classical scholarship could be based on “any old manuscript”, it is not surprising that almost “any old authority” would still do it too.⁸⁴

82 NETTELBLADT (1764) 25–26, § 32.

83 St. Ambrose, St. Augustine and Cassiodorus had attributed the Psalter to King David, but its authorship offered a major problem (see: MINNIS [1984] 43 ff.).

84 On the practice of “any old manuscript will do” by the humanist scholars and its equivalent by the modern legal historical scholarship (“any old edition will do”), see: OSLER (1995) 325.

Concerning Cicero, the debate was certainly subtler, since it referred to the distinction between the *officia* of the juriconsults and that of the philosophers under the Roman Republic and the Empire. In the opinion of Nettelblatt, refuting the thesis of Gerhard Noodt, under the Roman Empire both *officia* were combined, so that prominent figures such as Cicero could be considered juriconsults and simultaneously orators and *rhetores*.⁸⁵ Furthermore, these polemics evidence the efforts in delimitating the juridical branch of learning and the standards for communication inside the *respublica iuriconsultorum*.⁸⁶ To build an idea of authorship and authority was, in sum, one of the strategies to cope with the inherent uncertainty of the printed text and the permeable boundaries of the discipline.

Nevertheless, if ancient authorities raised doubts regarding their written contribution, the modern jurists (*recentiores*) who had left manuscript and especially printed works offered other kinds of difficulties. As Gutenberg's invention had facilitated the opportunity of being printed, the "authority" of these juriconsults had to be justified in other ways, relying on fluid criteria such as "usefulness" and "moral virtues". The argument of "utility" is very familiar to the reader of early modern sources, since it appears repeatedly in the prefaces and preliminary texts, and has been extensively documented in other contexts, such as the requests for obtaining printing licenses.⁸⁷ They were not mere rhetorical artifices, but functioned as effective limits for containing and selecting the printed production in general.

These criteria oriented another interesting testimony left by Nettelblatt on how the jurists built the idea of "authorship" in the early modern centuries: his reconstruction of the vivid debate around the literary qualities of the Dutch juriconsult Arnoldus Vinnius (1588–1657), published hundred years after his death, in 1757.⁸⁸

Nettelblatt's account of Vinnius' life and works would never fit in one of our contemporary journals' sections dedicated to book reviews. His arguments would have appeared exotic to the eyes of our peer reviewers. After a

85 NETTELBLADT (1764) 24, § 31.

86 The term *respublica iuriconsultorum*, quite widespread at the time, used by NETTELBLADT in several passages, is the title of the work of IANUARIO (1733).

87 See abundant examples in GARCÍA MARTÍN (2003); DE LOS REYES GÓMEZ (2000) I, 645–666; CONDE (2006); ALVARADO (2007).

88 NETTELBLADT (1757) 638–680. I analyse in detail this debate in BECK VARELA (2013) 47–86.

short reference to Vinnius' noble origins, he deals mainly with the quarrel over plagiarism that accompanied his works and with the supposed injuries to the reputation of celebrated jurists, such as Jacques Cujas.

The victims of Vinnius' plagiarism were presumably his own master, Gerhard Tuning, Bachoff von Echt and Hugo Donellus. All of them had inspired Vinnius' production as an editor, annotator and writer. The main accusers of Vinnius were the Neapolitan lawyer Giuseppe Aurelio de Genaro, known as Ianuario, author of the *Respublica iurisconsultorum* and Daniel Morhof in his *Polyhistor literarium*. Together with the catalogues of pseudonyms and plagiarism, the *Polyhistor*, typical examples of this already mentioned literary genre dedicated to the *notitia librorum*, engaged in a public fight against the *librorum multitudo*, or "superabundance of books," one of the topics that have accompanied the printing press since its beginnings. The need to contain the *librorum multitudo* functioned as a principle for the selection of books and restriction to written production in the learned world in general. It was of special interest in the case of jurisprudence, where there was a perception that cases of plagiarism were more frequent than in other fields and that the literary production of the jurists was excessive and was deteriorating legal knowledge.⁸⁹ The problem was not only that Vinnius had plagiarized: if he had transcribed entire passages of Bachoff's commentary and additionally had commented unnecessarily the concise Institutes of Justinian⁹⁰, his work, according to Morhof's judgment, was superfluous and should not contribute to the exorbitant number of imprints on the market.

Yet this was not the preponderant opinion. Despite his possible lack of "originality" (Vinnius' debt to Bachoff had even been treated as banal in the reports and protobibliographies of the day⁹¹), the opinion of the majority of the jurists, such as Beyer, who had edited Vinnius' commentary, Ludewig,

89 Morhof mentions that there are many more accusations of plagiarism in the chapter dedicated to juridical books than in the other chapters dedicated to theology and economics (MORHOF [1708]). Similarly, Brückner states that the practices of plagiarism and free appropriation of citations were especially accentuated among jurists (BRÜCKNER [1717]).

90 The polemics around the necessity or not of commenting on the Institutes of Justinian was one of the strategies, specific to the *respublica iurisconsultorum*, to restrain the abundance of legal writings (BECK VARELA [2013] 57–64).

91 See the reference to Vinnius' debt to Bachoff in STRUVE (1756) 982.

Noricus, Gundling, Gravina or Heineccius, are incontestably positive concerning the erudition and utility of Vinnius for readers.⁹² His merits were appreciated especially for beginners, as in the case of his textbook for the classroom. *Utilissimus, amoenus, facilius et luculentior lectu*: there is no doubt that Vinnius' ability to handle materials taken from other authors deserved praise. These characteristics associated with the *style* and *utility* of Vinnius merited the recognition of the learned community. Nettelbladt invoked them to redeem Vinnius of the heavy charge of plagiarism. Despite the evident exploitation of materials that were not his own, Vinnius' capacity for throwing light on other writers' obscure passages excuses him.⁹³ His judgment is categorical: to summarize and synthesize someone else's work does not constitute the crime of *plagiarism* – a term, which other jurists had not even employed, with the exceptions of Ianuario and Morhof.⁹⁴

In the early modern European context, where the printed book was so widespread, the juridical book is an instrument that has force in offering *effectivity* – no longer the *authority* typical of the medieval period.⁹⁵ The very notion of the author in the early modern written culture corresponds to diverse realities⁹⁶ and has had distinct evolutions in each area of knowl-

92 For the complete bibliographical references see BECK VARELA (2013) 47–86.

93 «Endlich kann auch nicht behauptet werden, daß er sich dieses Verbrechens in Ansehung des Bachovis schuldig gemachet, da er seinen commentarium über die Institutionen nicht so wohl ausgeschrieben, ohne ihn zu nennen, wie doch zu dem corpore delicti in diesem Verbrechen nothwendig erfordert wird, als vielmehr, wie Gundling der Wahrheit gemäs urtheilet, in seinem Commentario über die Institutiones dasienige, was Bachov obscur vorgetragen, deutlich gemachet» (NETTELBLADT [1757] 677).

94 Ianuario employed it, not on account of Vinnius, but referring to other authors, e.g. IANUARIO (1733), 330.

95 HESPANHA (2008) 12–50. Another question discussed on account of the historical forms of the author-function is whether the printing press produced an inversion in the logic of the construction of authorship. Differently to what happened with manuscripts, which were undertaken only if the author enjoyed authority, imprints on their own were turned into a cause of authority: «print ... becomes the cause of authority. Once printed, the text possesses authority, and the writer, however lacking in knowledge or experience, becomes an author who possesses the authority imprinted in the text, whose words must be attended to because some saw fit to print them» (Ross [1994] 242–43).

96 Referring to the eighteenth century, «[...] la noción de autor corresponde a realidades muy distintas. El autor puede ser el que escribe la totalidad de una obra original, su inventor, y en tal caso adoptamos la definición que hoy suele sobreentenderse. Pero también puede ser un comentarista, un traductor, un adaptador o el que realiza una compilación, y en la mente de la época dominaba más bien este concepto amplio de autor [...]

edge.⁹⁷ This discussion surrounding the “authorship” of Vinnius is illustrative of two positions in conflict with the definition of the “author-function” which operated in the juridical discourses of that time. From a predominant point of view, the image of the copyist and compiler still received a positive evaluation. The collective, corporatist or “collaborative” notions of writing, still persistent in the origins of the modern copyright,⁹⁸ are prevalent also among the members of the *respublica iurisconsultorum*. Ludewig argues that the plagiarism between Hotman and Balduinus came to benefit the reader.⁹⁹ In eighteenth century Spain, similar debates or doubts surrounded the publications of the *Sacra Themidis* of Franckenau (or Juan Lucas Cortes’), De Lolme or the free translations of Raynal written by the Duque of Almodóvar.¹⁰⁰ Far from the late nineteenth-century conception of authorship, the weak *auctoritas* or acceptance of Vinnius and other jurists of the day appeared to emanate fundamentally from the values recognized by the community – of effectiveness, utility and vague notions of style that explain the typographic success that his works had merited.¹⁰¹ In spite of the absence of criteria like that of romantic “originality” – a word that neither Nettelbladt nor the other mentioned authors use – there is, in contrast to the laxity of the predominant opinion, a more rigorous point of view, represented by

dicho de otra forma, es un autor cualquier individuo bajo cuyo nombre se publica un impreso». BUIGUES (2003a) 292. For a typology of authors, see GLENDINNING (1983) 4, 43–45.

- 97 One of the fruitful critiques of Foucault’s approach is precisely the one that refers to an inadequate generalization of history that had situated the emergence of the author-function as a limit of discourses in the disciplinary society of the eighteenth century. See CHARTIER (2000) 90–105 and (1994) 41–67.
- 98 See WOODMANSEE (1994) 15–28. For the genesis of copyright in France, see HESSE (1991); for England see ROSE (1993). For a legal historical overview of copyright law in the nineteenth century in Europe: MAZZARELLA (2010).
- 99 «Hotomannus Balduino, amico et praeceptoris, sua commenta primus transmisit. Respondit hic illi, sibi institutum esse simile. Utrique igitur eadem laude digni esse, videntur. Sed malem Hotomanno carere, quam Balduino. Felix tamen lector utrisque» (LUDEWIG [1731] 48).
- 100 See CLAVERO (1993) and (1992); and Vallejo emphasizing that the appropriation of the text of Raynal by the Duque de Almodóvar exceeded the boundaries of the “translator” even for the broad criteria of the day (VALLEJO [2000] esp. XXXIV–XXXV and XXVII). Muñoz de Bustillo mentions the appropriation of the manuscript of Andrés de Pozas by Juan Gutiérrez (MUÑOZ DE BUSTILLO [2006] CXI–CXVIII).
- 101 NETTELBLADT (1757) 657.

Morhof or Ianuario.¹⁰² Both illustrate a new and growing sensibility toward literary plagiarism and other practices of simulation and dissimulation so common in the learned community. The alert pages of the *Polyhistor* as well as the long catalogues of pseudonyms, claiming for vigilance among scholars, fought against these practices.¹⁰³

The problem of literary plagiarism had begun to be a theme of discussion among jurists. The brief work by Jakob Thomasius, *De plagio literario* (1673), followed by the *accessiones* of 1679 (which offered a supplement to the catalogue of plagiarists and an alphabetic index)¹⁰⁴ is perhaps one of its first systematic treatments. The work was well received at the time and inspired other authors,¹⁰⁵ such as a dissertation dedicated especially to *De plagio literario in studio iuris*.¹⁰⁶ Among the theses of Thomasius, developed under the form of theorems, are the definition of plagiarism as a lie, a question belonging to the moral sphere; and the distinction between judicial and extrajudicial plagiarism, whose persecution would take place exclusively in the realm of the *orbis eruditus*.¹⁰⁷ Thomasius offered a curious catalogue of the universal history of plagiarism, including such disparate authors as Greek and Latin classical authors (Homer, Sophocles and Aristotle), Ambrose, Gratian, Isidore of Seville, and hitherto jurists like Cujas. His notion of plagiarism is a wide-ranging and malleable one, not clearly distinct from other forms of literary appropriation often used. The index itself is titled *Index plagiariorum, vel quasi*. Nevertheless, there is no doubt that this work shows the development of a new sensibility or consciousness relative to the strengthening of the “author-function” as a limit to the appropriation and circulation of discourses.

Another curious aspect of Nettelbladt’s portrait that would not fit in a contemporary biographical sketch is his description of Vinnius’ moral vir-

102 In Spain, Gregorio Mayáns represented a critical voice, although more flexible than Morhof or Ianuario.

103 MULSOW (2006).

104 THOMASIVS (1673); THOMASIVS (1679). Jakob Thomasius is the father of Christian Thomasius, who precociously had also contributed to the debate with a definition of *decorum* (JAUMANN [2000] 72).

105 SCHWARTZ/STEMPEL (1701).

106 BRÜCKNER/BROCRIS (1717).

107 For the association between the definitions of Thomasius and an incipient public opinion see JAUMANN (2000).

tues. This attention to moral virtues appeared frequently in the juriconsults' protobiographies of the time: Gundling, for example, mentioned Wesenbeck's "castitas and fides coniugalis" against the accusations of philandering.¹⁰⁸ In the case of Vinnius, the reviewer focuses his attention on the moment of his death. His death was not especially tragic, nor was it surrounded by extraordinary circumstances: he died at home, attended by a few friends and colleagues (his wife and four children were already deceased), after a short period of illness. However, Vinnius had supposedly faced that difficult moment of his illness with remarkable serenity. In Nettelbladt's outline, the exaggeration of Vinnius' virtues, in the parameters of Christian morality, comes as a complementary support to his literary merits. This double facet of the juridical author demonstrates, moreover, the indistinctness between the intellectual and the moral aspects.¹⁰⁹ This indistinctness seems to have been constitutive of the representations of the *auctor*, which had endured since the medieval period.¹¹⁰ In his *Systema elementare doctrinarum propaedeuticarum*, Nettelbladt wrote about the "animae conditio" of the juriconsults. He said that their *anima* was characterized by moral and intellectual vices and virtues. Their intellectual virtues are the *scientia* and the *capacitas*. The ancient juriconsults excelled in both, but the medieval ones excelled rather in capacity than in knowledge («scientia tanta non fuit, magna tamen omnino fuit eorum capacitas».¹¹¹ The recent ones (*recentiores*) have great intellectual virtues, like those of the ancient ones («Recentiores iurisconsulti vero iterum ad veterum iurisconsultorum gloriam adscendunt»). However, many of the *recentiores* do not excel in moral virtues («Quoad vitia moralia virtutesque morales, Iurisconsulti, praesertim recentiores, apud multos quidem male audiunt; ast et hic valet, sunt boni mixti malis».¹¹² In this sense, the undoubted moral virtues of Paul the Apostle

108 GUNDLING (1707) III, 214–274, on 246.

109 Stating the lack of distinction between the physical aspect and the moral or intellectual one of the act of reading in the early modern period, Robert Darnton underlines the "physical element" of the act of reading, which is expressed in metaphors like "reading-as-digestion" or "reading as spiritual exercise" (DARNTON [1990] 172).

110 ZIMMERMANN (2001) 7–14.

111 NETTELBLADT (1781) § 200.

112 NETTELBLADT (1781) § 200, 144. For analogous narratives based on the moral virtues of judges and lawyers see the description of the *perfectus advocatus* by CUNHA (1743) and the references quoted by GARRIGA (2004) on the literature of the *iudex perfectus*.

(even though he had been a sinner before the conversion) have certainly contributed to assure his status as a *jurisconsult*.

In sum, the recourse to moral virtues, besides being inseparable from intellectual merits in the mentality of the time, helped to justify or to reinforce certain figures of authorship.

If we had asked an early modern jurist how to define a legal *auctor* in the science of law, he would probably have answered that it was someone who had contributed to knowledge in the legal field, even if there were doubts about his written legacy. He would have probably said, too, that an *auctor* was someone who had contributed a *useful* work (even if he had benefited from previous jurists' writings) and who was, preferably, a virtuous man, since both reading and writing embodied a certain notion of Christian morality and were not detachable from other moral actions. This fluid and collaborative notion of authorship, which was under construction during the early modern centuries, was one of the ways of coping with the *uncertainty* of the early printed text. Without these notions in mind, we will be able to understand neither the process of creation nor the diffusion of the early modern legal literature.

4. Printers and censors: manufacturing credit, spreading uncertainty

It is an obvious fact that printers and censors alike determined decisively how early imprints were created and how they circulated. Nevertheless, it is not usual to consider the ambivalent consequences of their actions. While they were responsible for “manufacturing credit”,¹¹³ i. e., for fighting against *uncertainty* and building strategies to create text reliability, they were also responsible for its reverse effects: the increase of the *uncertainty* of the printed texts.

Printers – or, more broadly, the various agents associated with the book trade¹¹⁴ – were a fundamental piece in the “communication circuit”. They

113 «Printers and booksellers were manufacturers of credit» (JOHNS [1998] 31).

114 Concerning the printer, editor, and the book dealer – key figures in the production of the early modern book, often united in the same person – see the synthesis of Jaime MOLL (2003) 77–82, and the remarks of MARIO INFELISE: «Il libraio, inoltre, che, più di qualsiasi altro operatore del settore, stava avvicinandosi alla figura del moderno editore. Era solitamente lui ad elaborare una propria originale linea editoriale, a tenere i rapporti con gli autori, a curare la commercializzazione dei libri all'interno e all'estero, ad organizzare la

were virtually responsible for any element of a printed sheet, for it was impossible to isolate «a consistent, identifiable, immutable element attributable to the individual author».¹¹⁵ They were crucial in shaping what may be defined as “external” strategies – such as establishing networks, negotiating with the authorities and supporting important editorial projects – as well as “internal” aspects, such as the process of adaptation of legal texts, the creation of new meanings, new uses and even a new target public for certain works or genres.

Printers and book traders in general saw the field of jurisprudence as an attractive market, especially the branch of the *reprints* of works of previous decades and centuries. The Benedictine writer Martín Sarmiento complained that in the 1720’s, the book dealers in Madrid «no se extendían más que comprar o vender [...] libros triviales y comunes; y el que mas, á traficar en libros facultativos que llaman de pane lucrando, v. gr. de Medicina, Leyes y Teología»¹¹⁶ and the reprints appeared to have dominated the Spanish legal culture in this period.¹¹⁷ They supposed a guaranteed readership and required lower taxes to obtain printing licenses,¹¹⁸ representing certainly a

rete dei corrispondenti» (INFELISE [1989] 138). Johns refers to the “Stationers”, which were formally all men and women concerned in the book trade and members of the Company of Stationers, recognized by Queen Mary in 1557. However, “Stationer” meant not only a corporate affiliation, but a distinctive cultural identity that bound those who were involved in the printing craft (JOHNS [1998] 59–60).

- 115 Referring to the Stationers, Johns states that «[in] managing publications, Stationers, and often booksellers in particular, controlled events. The practices and representations of their domains affected every character and every leaf of their products. Isolating a consistent, identifiable, and immutable element attributable to the individual author would be virtually impossible in these circumstances. Attributing authorship was thus intensely problematic for both contemporary and future readers. A priori, virtually any element in a work might or might not be the Stationers’ responsibility, in virtually any field of writing» (JOHNS [1998] 137).
- 116 MARTÍN SARMIENTO, PE., “Reflexiones literarias para una Biblioteca Real, y para otras Bibliotecas publicas, escrito [...] en el mes de diciembre de 1743” (1743) 99–272, on p. 132 (*apud* JUÁREZ MEDINA [1988] 193).
- 117 TOMÁS Y VALIENTE (1988) 369. See the comprehensive overview by JUÁREZ MEDINA (1988). Buigues stresses the prevalence of reprints among the books of jurisprudence: BUIGUES (2003b) 318.
- 118 There were less expensive taxes for the re-impressions (DE LOS REYES GÓMEZ [2000] t. I, 513, 615). Esteban Conde analyzed the difficult formalities faced by those who wanted to become juridical authors in eighteenth century Spain (CONDE [2006]). The *Juez de Imprentas* in his *Informe* of 1752 prescribed penalties for the reprints without licenses. These

less risky enterprise.¹¹⁹ Although the history of diffusion is not a synonym of a recounting of reprints,¹²⁰ they can offer a good indication of the predilections of the readers and were mainly conceived for them, being in most cases completely independent from the author's intentions.¹²¹ The most widespread legal genres of the early modern centuries, for instance, circulated thanks to the reprints undertaken by important typographic houses.

A good sample of this reprinting phenomenon are the names quoted in the introductory lines, those of Salgado de Somoza and Juan Gutierrez, quoted in Meerman's *Thesaurus* as well as in Nettelblatt's *Initia historiae litterariae*. The re-impressions of their works were issued in most cases long after their death by the printing shop of Anisson in Lyon,¹²² which was an important exporting center linking the northern and the southern markets. Especially from the seventeenth century on, the Iberian book market was attractive to the printers of the North, since they scarcely faced there strong local competitors.¹²³ This family (the Anissons and their associates, Duperron and Posuel), which had agents in the Peninsula, engaged in printing Spanish and Portuguese jurists and shaped conclusively their European diffusion. The Anisson family printed a considerable number of works in vernacular – *libri Hispanici, Italici*– besides several juridical, theological and philosophical works printed in Latin. Among these, many Portuguese and Spanish jurists went through the Anisson presses, such as Solórzano Pereira, Castillo Sotomayor, Agustín Barbosa, Domingo Antunes Portugal, Pereira e Castro, Melchor de Valencia, Lorenzo Matheu y Sanz, Manuel González

licenses for reprints sometimes encompassed the privilege to reprint various works and authors (JUÁREZ MEDINA [1988] 140–141).

- 119 «The reprint figures are especially valuable, for they tend to reveal more accurately the activities and predilections of the reading public than do the first edition figures. A first edition is almost always a commercial risk for the publisher. The reprint, conversely, is almost always a guaranteed success, for it is generally prompted by previously demonstrated enthusiasm on the part of the book-purchasing public» (BEARDSLEY JR. [1986] 14–15).
- 120 Many reprints of Vinnius' works were in reality hiding old unsold sheets under a renovated title page (BECK VARELA [2013] 105 ff.).
- 121 Leah Price, noting that the "reprint series" are based not on the author's identity anymore, but on the readers' identity (PRICE [2004] 311–313).
- 122 Salgado de Somoza's *Tractatus* was reprinted by Anisson in 1647; Juan Gutiérrez in 1661. On Gutiérrez see ALONSO ROMERO (1997).
- 123 See MARTÍN ABAD (2003); PÉLIGRY (1990).

Télez and Gaspar Rodríguez. Some of the most popular legal works of the time consolidated their presence in the Peninsula and beyond its boundaries through the Anissons' editions, such as Gil de Castejón's *Alphabetum iuridicum*, the additions to the glosses of Gregorio López by Hermosilla; or the notes to Antonio Gómez written by Ayllón Laynéz.¹²⁴

If we turn it the other way round – to Northern jurists who managed to trespass the Pyrenees, after the Protestant Reformation – a few more requirements for the cross-bordering were necessary. Historians have looked at the new political and religious boundaries built after the Reformation sometimes as porous and sometimes as impermeable, as meeting points as well as impervious walls.¹²⁵ The dichotomy between porosity and impermeability might not be the most appropriate perspective to capture a broad view of the effects of this important cultural event. Even if the new political and religious divisions were not always perfectly aligned,¹²⁶ they have undoubtedly shaped a new dynamic for the production and circulation of knowledge, including the jurisprudential.

One of the core mechanisms in this new dynamic, which can be paradigmatically seen as a “boundary” and a “passport” for written production, is the *Index of forbidden and expurgated books*. Many of these *Indexes* were published throughout Catholic Europe, from Rome to the Spanish Low Countries,¹²⁷ although book censorship is not in any case a Catholic exclusivity.¹²⁸ They consist of the most visible instrument of the well-known politics of censorship *ex post* undertaken by the ecclesiastical authorities.

124 See the *Bibliographia Anissoniana*, a catalogue of works available for sale in his bookstores of Paris and Lyon printed in 1702 (including also imprints by other shops): *libri hispanici* in pp. 455–78; in the pp. 163–232 we find the section dedicated to the *libri iuridici*. For more information about the family of printers, see RENOARD (1995) 6.

125 About the ambivalence of the “frontier”, which «[...] implique a contrario le fait du passage et celui du passeport, c'est-à-dire l'idée du voyage, de la rencontre de la différence de l'autre, même s'il s'agit d'une rencontre contrôlée, limitée, parfois réservée à quelques-uns, rencontre légale toutefois», see GARRISSON (1992) 9.

126 Pastore refers to «il problema della coincidenza fra i confini territoriali ed i confini religiosi, ovvero del loro mancato allineamento» (PASTORE [2007] 15).

127 See the eleven volumes of the collection *Index des livres interdits*, directed by MARTÍNEZ DE BUJANDA and completed in 2002.

128 See, e. g., JOSTOCK (2007).

No matter how paradoxical it might appear *prima facie*, an author's presence in the Index functioned as a "visa" for crossing the Iberian frontier.¹²⁹ Consider for example one of the most widespread legal genres, mentioned in our preliminary lines – that of the commentaries on the Institutes of Justinian. The four representatives most frequently quoted in the sources of legal education, and likely abundant in today's libraries, all entered the Spanish catalogues. These were Joachim Mynsinger (1514–1588), Johannes Schneidewein (1519–1568), Matthaeus Wesenbeck (1531–1586)¹³⁰ and the already quoted Arnoldus Vinnius. Additionally, all of them deserved printed versions adjusted to the Inquisition standards, which facilitated their voyages around the Spanish and Portuguese territories.¹³¹ The same did not happen to other authors of similar works who had entered the Index as well.¹³² The Index itself was a business opportunity for printers, who hurried to issue modified versions.¹³³ It was also an occasion for faked announcements of adaptation, spreading the uncertainty. The multiple forms of "piracy" – such as these false promises, false places of imprint, plagiarism in its broad meaning and other kinds of text corruption – were not seen as accidental, but commonplace and even inherent to the print culture of the time.¹³⁴ As noted above, printed books, even when transcending by far their immediate spatial and temporal circumstances, were not self-evidently credible: when taking them in their hands, readers considered the reliability of the people and places involved in its fashioning.¹³⁵

- 129 The Italian case is different, since the Roman authorities failed to publish expurgatory Indexes (see the analysis of SAVELLI [2011]).
- 130 Wesenbeck was quoted especially for his *Paratitla*, a brief commentary on the Digest and the Codex, besides his commentaries on the Institutes.
- 131 See for example MYNSINGER (1691) and WESENBECK (1639); copies of their works abound in Spanish and Portuguese libraries.
- 132 There are no expurgated editions, for example, of the commentaries on the Institutes of Johann Harprecht, Gerhard Tuning, or François Hotman.
- 133 In the Italian territories the situation was not different: see countless examples in SAVELLI (2011) 16 ff., 23 ff.
- 134 JOHNS (1998) 171; MCKITTERICK (2003). A curious example of the malice of the printers is observed in the Nuremberg edition of 1734, whose title page falsely announced inexistent expurgations (BECK VARELA [2013] 111).
- 135 JOHNS (1998) 62. «Living in a world where printed materials could not necessarily be trusted, contemporaries developed a wide range of techniques, social, material, and literary, to affirm and defend what they claimed to be knowledge. In particular, they were well aware of the insuperable independence of readers» (JOHNS [1998] 378–379).

Other jurists, who had possibly demonstrated a non-negligible ability in explaining the Institutes, had not met at least one of the conditions for a wide diffusion: whether the presence in the Index (as an expurgated but allowed reading) or the help provided by a corrected printed version. Both factors contributed to multiply the chances of being further reprinted and imitated by other printing shops.

Both conditions concurred, for example, in the case of the Dutch jurist Arnoldus Vinnius, whose unprecedented popularity surpasses that of any other jurist during the eighteenth century in Spain. The extraordinary diffusion of his works is due mainly to the conjunction of five factors – all of them distant from the authors' intentions – and could not be understood without considering the premises discussed here, such as the fluid notion of authorship and the decisive role of printers and censors. The first decisive factor was the inclusion of his *Commentarius academicus et forensis*, printed in Leiden in 1642, in the Spanish *Index librorum expurgatorium et prohibitorium* of 1707 (the censored passages were amplified in the 1747 Index), offering a safe port for readers and book traders. Second, the initiative of a printer like Anisson, alert to the demands of the jurisconsults and ready to take typographic risks. He had already suppressed some of Vinnius' heterodox sentences in previous editions of his Commentary (e. g., in 1683) and in 1708 a more reliable edition according to the new Index of 1707 was issued.¹³⁶

Third, the spread of Anisson's model in other printing shops, such as that of Francisco Lasso's in Madrid in 1723 (being probably the first imprint of a Protestant jurist in Spain). The existence of a trustworthy corrected edition facilitated considerably the printers' work. Other printers reproduced this model in subsequent editions, such as the Institutes of the Salamancan Professor Antonio Torres y Velasco, printed in 1735 without the acknowledgement of Vinnius' authorship on the title page.¹³⁷ By the end of the century, with the closing of the Spanish border to the European book mar-

136 Anisson prepared two different versions of the 1708 edition: one of them was adapted to the Index prescriptions, indicating Vinnius as *auctor damnatus* in the title page and suppressing the forbidden passages (BECK VARELA [2013] 113–121).

137 TORRES Y VELASCO (1735); see the critical remark by SEMPERE Y GUARINOS (1785) II, 240.

ket,¹³⁸ the reinforcement of civil censorship¹³⁹ and the reprints of his commentaries in further expurgated versions (now also with the precious notes regarding the sources of the *ius patrium*), Vinnius' hegemony in the Spanish legal schools was assured.

A fourth reason that helps to understand his predominance over other similar commentators is probably the new "reading protocol" (Chartier) implemented by Anisson in Vinnius' editions: he added Vinnius' *Notae* (published originally in 1646 as a separate work) alongside the *Commentarius* and Justinian's text in a renewed page layout.¹⁴⁰ The posterior editions of the *Commentarius* reproduced this new model, especially suitable for the classrooms and for the kind of reading practices developed by the students, based on techniques of memorization of excerpts and on constant repetition. Readers ended up by considering this redundant model as intrinsically attached to Vinnius' commentary.¹⁴¹ It helps to explain why he was known as the "oracle" in the teaching of law in Spain until the beginning of the nineteenth century.¹⁴²

Finally, the incorporation of the sources of the *ius patrium* in the late eighteenth-century Spanish editions – through notes, footnotes and headings indicating the corresponding passages in the *Siete Partidas* or in the

138 This is one of the main features of the measures undertaken during the reign of Charles III. See the *Privilegio concedido a la Compañía de Impresores de Madrid y demás mercaderes de libros*, para que no pudiesen introducir en España ni en América los libros extranjeros reimpresos en España, Madrid, 29 de noviembre de 1763 (DE LOS REYES GÓMEZ [2000] I, 553).

139 See GARCÍA MARTÍN (2003).

140 The expression "protocol de lecture" is Chartier's (see CHARTIER [1992] 55, 59). He explains that «Le plus souvent, dans l'édition ancienne, ce qui est contemporain du lecteur n'est pas le travail d'écriture mais celui d'édition, et la 'lecture implicite' visée par le libraire-imprimeur vient se superposer, parfois contradictoirement, au 'lecteur implicite' pensé par l'auteur. Les dispositifs typographiques importent donc autant, voire plus que les 'signaux' textuels puisque ce sont eux qui donnent des supports mobiles aux possibles actualisations du texte, puisqu'ils permettent un commerce perpétué entre des textes immobiles et des lecteurs qui changent, en traduisant dans l'imprimé les mutations des horizons d'attente du public, en proposant de nouvelles significations, autres que celles que l'auteur entendait imposer à ses premiers lecteurs» (CHARTIER [1985] 62–88).

141 See the preface of the Spanish translation of the *Commentarius*, printed in Barcelona in 1846 (VINNIUS [1846]).

142 PESET (1975) XLII–XLIII.

Nueva Recopilación – played also a decisive role for the consolidation of his presence among students and professionals. The scheme of the standard Justinian text illustrated by the local law perspective, as Birocchi highlights, explains the European editorial success of authors like Vinnius, Voet, Huber, and Heineccius.¹⁴³ The promoters of new editions of Vinnius, such as the jurists Bernardo Danvila (1700–1799) and Juan Sala (1731–1806), invoked the “utility” of the *ius patrium*’s notes, which were of increasing importance in the eighteenth century. Juan Sala even engaged personally in strategies to assure a portion of the market for his *Vinnius castigatus*, threatened by other competing editions. The Council of Castile finally attended his claims.¹⁴⁴ If even a genius like Galileo had to struggle to assure readership and publication of his works,¹⁴⁵ why should a poor commentator of Justinian’s Institutes do less?

143 He states, concerning widespread legal works, such as those of Vinnius, Voet, Huber or Heineccius, «[...] che sembrano proporsi nel solco della continuazione di una scienza comune europea modulata sulla compilazione giustiniana. Ma il successo di questi giuristi si spiega innanzi tutto con la capacità altissima di ‘insegnare un metodo per argomentare giuridicamente e poter formulare decisioni’: il che sta a significare che essi, raffinatissimi per strumentazione storico-filologica, non venivano letti come se insegnassero il diritto immediatamente vigente. Si spiega poi con la prospettiva modernizzante e per la direttrice ‘patria’ che essi aprivano attraverso la considerazione dei mores e del ius hodiernum» (BIROCCHI [2006] 29; in quotation marks, citing Van den Bergh).

144 Torremocha summarizes this episode: «La obra de Vinnio fue reimpresa en Valencia por Benito Monfort, y el Consejo determinó en 8-X-1779 que los catedráticos de Instituciones Civiles explicasen y enseñasen por esta edición. Esto dio lugar a que el Dr. Juan Sala, catedrático de Instituta en la Universidad de Valencia dirigiese una representación al Consejo (3-XII-1780), manifestando el agravio que se le hacía, pues él había publicado su obra *Vinnius Castigatus*. Si todos los estudiantes estaban obligados a comprar la edición de Monfort, que había establecido unos precios fijos – 45 reales en papel y 50 encuadernados – no podía vender sus ejemplares hechos con fin académico. Esto determinó que el Consejo tras realizar una consulta – a tres Fiscales y al abogado del Consejo y Catedrático de Prima de Granada, Pedro José Pérez Valiente – accediese a que se utilizasen cualquiera de las dos obras. A.U.V., Libro de Claustros nº 18, fol. 544, 26-X-1781; Libro nº 509, 17-X-1781» (TORREMOCHA [1993] note 189, 78–79). Another strategic effort of the author is expressed in the separate publication of his notes to the second edition of the *Vinnius castigatus*, as a complement for those readers who already possessed the first edition (SALA [c. 1786]).

145 BIAGIOLI (1993).

Vinnius' case illustrates remarkably well all possible factors involved in the diffusion of an early legal imprint – material conditions, local market's limitations, social networks, additional notes on local law, censorial prescriptions, printers' creativity, and the potential impact of their innovations in expanding the target public. All these elements intend to enrich our comprehension of diffusion processes, far from trying to reduce the book to the condition of a mere material commodity, as if it did not carry out written words of cultural and social relevance. This elementary criticism of material approaches has been the object of vibrant debates.¹⁴⁶ For what concerns legal history, the focus on readers' demands and experiences, and the awareness of the "text indeterminacy" as methodological tools, remind us of the primary assumption that legal knowledge, as any other kind of learned knowledge, is always produced in a certain time and a certain space. As in the academic world nowadays, a complex set of conditions defines the production and dissemination of knowledge.¹⁴⁷

Beyond Vinnius' particularities, it is possible to state that the first two conditions mentioned above – presence in the Index or in other censorship edicts, and the existence of a corrected printed version – might have assured or at least remarkably enhanced the chances of crossing the Pyrenees' borders.

It does not mean, notwithstanding, that all jurists were censored the same way, nor that the expurgated versions would assure a serene trajectory among the Iberian readers. The *Index librorum prohibitorum et expugandorum* did not guarantee, in any case, uniformity or stability in the practice of censorship. Once again, it is necessary to face the intrinsic indeterminacy of the printed text, as well as the readers' perspective. The text itself was conceived as incomplete, unfinished; as a space of readers' interventions and interactions with the text through various means: punctuation, marginalia, correction of typographic errors, translation of Greek characters, and hand censorship. McKitterick reminds us that «[a]s an activity, censorship introduces its own instability».¹⁴⁸ Since it depended on individuals inasmuch as on the

146 GORDON (1998); EISENSTEIN (1997).

147 BOURDIEU (1984).

148 MCKITTERICK (2003) 152.

official prescriptions, censorship multiplied an awareness of uncertainty regarding the printed text.¹⁴⁹

The sources of uncertainty in the practice of censorship relied on the impracticality of the enterprise itself: the civil and ecclesiastical authorities were well aware that it was impossible to control every printed piece issued by Protestant or other heterodox hands. Once the censorship commissions had carefully examined and expurgated one edition and it had entered the Index, none could guarantee that the new ones would obey its model. On the contrary, readers and censors alike were conscious of this permanent difficulty.¹⁵⁰ Moreover, the Index contained numerous typing errors, which in some cases hampered the labor of expurgating.¹⁵¹ Another cause of “anxiety”¹⁵² was the difficult access to the Index, expressed in the endless complaints about the scarcity of its copies.¹⁵³

The forms of hand expurgation were diverse: by excision, by crossing through, or by more vigorous and careful ink deletion. Readers made also often very smooth and transparent signs, which did not impede the reading, or solely added *marginalia* on the side of the prohibited passages, such as

149 MCKITTERICK (2003) 153.

150 See for example the testimony of a reader who took his notes on a copy belonging to the library of the University of Seville: «Esta impresión de Madrid del año 1723 no es la que se manda expurgar: por que exstá [sic] expurgada. La impresión de Leon del año 1666 por Lorenzo Anison es solamente la que debe expurgarse, como puede verse en el 1^o. tomo del expurgatorio fol. 22 verbo Arnoldus Vinnius J. C. etc.a. esta impresión está conforme a la de Valencia del año 1767. Dedicada al Exmo. Conde de Aranda». It is a copy of the Seville University Library, which in its day belonged to the bachiller Francisco Xavier Peñaranda y Velasco, Fernandez de Reguera (VINNIUS [1723–1724]). The same uncertainty persisted 20 years later: in a copy of the second edition of Danvila in 1786 which continued in use until at least 1844, the owner indicated that«[...] esta obra del Vinnio está mandada expurgar por la Inquisicion, según el expurgatorio de 1747 pag.25: pero como esta edicion fue impresa en 1786 en regular que se arreglaria a aquella disposicion, sin embargo el sujeto que use de ellos devera leerlos con cautela y examinar si se han o no expurgado como ali se manda». (This copy belongs to the library of the *Colegio de Abogados de Barcelona* (VINNIUS [1786]). Enrique Gacto relates similar uncertainty concerning the editions in his study on Gonzalo de Illescas’ work (GACTO [1992] 23–40). See SAVELLI (2011), 22 ff.

151 BECK VARELA (2013) 313.

152 «Censorship is a measure of the anxiety a given culture has about the impact of books on its society» (ELIOT [2007] 27).

153 The Index of 1790 mentioned this difficulty (Index [1790] XIII). Martins alludes to the troubles in finding the prohibitory edicts in the Portuguese context (MARTINS [2005] 825).

caute lege.¹⁵⁴ The very same edition of the same legal author could be read and censored in various ways, especially amidst a qualified readership such as that of the professional lawyers and scholars. The universe of legal books, as other books *qui de religione non tractant*, were under a less rigid suspicion.¹⁵⁵ They counted on a reading public in many cases sufficiently prepared to confront heterodoxy, many of them usual receivers of special *licentiae legend.*¹⁵⁶ A respectful reference to Hugo Grotius by a Neapolitan censor («ex Etherodoxis Clarissimus Grotius») is a good example of this mentality.¹⁵⁷

Not only did the official censorship criteria vary substantially within the bounds of Roman Catholic Europe – the different expurgations of Vinnius proposed in Rome, Naples and Madrid are a good example again – but the ways in which readers approached them changed enormously. The copies of early legal imprints remaining in today’s libraries vary from the complete absence of expurgation (besides the existence of totally forbidden works) to the other extreme, that of the presence of expurgations spontaneously added by the reader, i. e., the deletion of passages that were not strictly forbidden in the Index. This practice of spontaneously adding censures on legal books

154 «The only possible conclusion to be drawn about the textual transparency of many expurgated texts, and about the ease with which forbidden texts can be viewed, is that simple demarcation was deemed to be sufficient: the faithful might, as it were, look over the boundary, but they might not acknowledge what they might see, or use it in their own private devotions or in their intellectual life» (McKITTERICK [2003] 160).

155 The Tridentine Index of 1564 (which had smoothed the more rigid tone of the previous Index, of Paul IV), in its second rule, received in later catalogues, determined that books written by heretics that did not deal with religion, but with other subjects, should be recalled and examined by theologians named by bishops and inquisitors (in the edition of MARTÍNEZ DE BUJANDA [1984–2002] VIII, 150; see rule 3 of the Indexes of 1583 and 1640; second rule of the 1632 Spanish Index; also in the Portuguese expurgatory Indexes of 1564, 1581 and 1624). In the Spanish version «[...] Los libros de los Hereges, que de proposito tratan de Religion y puntos controversos de ella, se prohiben del todo. Mas bien se permiten los que no tratan de ella, siendo primero examinados y aprobados por Teologos pios y doctos, por nuestro mandado, como son muchos contenidos y permitidos de la primera Clase de este nuestro Catalogo» (*Reglas, mandatos y advertencias generales*, III, reproduced in Index [1707] s. p.; Índice [1790] XVI).

156 See FRAJESE (2000) 210; SAVELLI (2011) XX.

157 In the preliminary notes to Vinnius *Commentarius* printed in Naples in 1772, censorship note nr. IV, p. 50; reprinted in 1804 (VINNIUS [1772]). He mentions Grotius’ theses in other passages of his notes.

persisted until the end of the eighteenth century.¹⁵⁸ This is because the Index itself was not understood as a complete, finished work, but as one incomplete artifact open to the readers' collaboration.

Besides the evident difficulties in controlling the arrival and diffusion of imprints,¹⁵⁹ it is important to consider that the norms of the *Index librorum* were not understood as absolute prohibitions (as were not, in general, the norms of the Old Regime),¹⁶⁰ but rather as suspensions of a provisional character, subject to permanent extension and updating.¹⁶¹ The Index was also understood as an itinerary of reading and an invitation to rewriting; open to all Catholic and erudite citizens willing to participate in the great enterprise of purification of bookish materials.¹⁶² The *Reglas, mandatos y advertencias generales* opening the Index's editions are a good sample of these conceptions.¹⁶³

By the end of the eighteenth century, the bull *Sollicita ac provida* (1753) by Pope Benedict XIV, which headed the Roman Index of 1758 and influenced

158 I have examined this practice in detail in: BECK VARELA (2013) 325–348.

159 DEFOURNEAUX (1963).

160 See HESPANHA (2007) 55–66, criticizing the anachronistic approach of many historians, when they project onto the early modern legal experience the contemporaneous views on law.

161 Savelli mentions the frequent lists of updates for new prescriptions (SAVELLI [2011] 30).

162 For the Portuguese context, see the remark of Payan Martins: «Proibir não é simplesmente dar execução ao índice em vigor; é um procedimento, muito mais complexo, de permanente superação das omissões e desatualização do próprio Index; é o exercício de um poder onde as lacunas legislativas obrigam os agentes censórios a regerem-se por critérios subjectivos, condicionados, não raro, pela conjuntura política, social e económica, ainda que, internamente, vigore o princípio de pautarem a sua actuação pelas regras seguidas em Roma ou em Espanha» (MARTINS [2005] 135).

163 The fourth warning, incorporated later, stated that: «[...] Y esta advertencia puede servir para los que, menos atentos que deben ser, se querellan de que no se permiten todos los libros de los herejes, que no son de argumento herético, ni contienen herejía. A los cuales se responde que se permiten muchos; los que se prohíben es, ó porque no han llegado a nuestras manos, ó porque no consta de la utilidad: y aunque tal vez conste, no es bien permitirlos a todos sugetos, y por observar el estilo de la Iglesia, que en pena de su delicto no permite que corran y se lean aun aquellos libros que no contienen herejía. Pero ordenamos y mandamos que todas las veces que alguna persona erudita y piadosa presentase algun libro de estos en el Consejo ó en sus tribunales para que le remitan á él, visto, examinado y censurado, puesta la nota de autor condenado y obra permitida, constanding que es ó puede ser de utilidad, se le permitirá, y no de otra manera» (in Index [1707], s. p.; Índice [1790] xxxiii).

the Royal Decree (*Real Cédula*) of 16 June 1768 in Spain, reinforced the practice of hand expurgation by the readers themselves, without the intermediation of the Inquisitional authorities.¹⁶⁴

This lack of uniformity brings us again to the locality and the diversity, even within the bounds of what we today identify as the religious borders in early modern Europe. Significant differences in the access to legal books and in reading practices are one of the many elements that impede us from perceiving Catholic Europe as a space of intellectual or religious unity.¹⁶⁵ Alien to the hypothetical intentions and merits of a dead author or of a remote biblical authority, the meaning and reliability of a flexible text, the commentaries on the Institutes of Justinian, the fruit of a collaborative, plural, uncertain author, depended essentially on the activity of various Catholic readers, who adapted his plural readings also to the commandments of a vacillating, uncertain authority.

5. Epilogue

Never before had the impression been so strong, that our knowledge has “lost” its temporal and spatial constraints as in today’s era of technology. Besides enabling immediate communication, computer technology has multiplied *ad infinitum* our possibilities of storing, selecting, and accessing knowledge, and transcending physical restrictions. Tools like *Google* have not only transformed our way of accessing and diffusing information, but are apparently affecting our mental focus and our way of creating knowledge

164 This *Real Cédula* of 1768, invoking the papal bull, determined, despite the opposition of the Inquisitor-General, that the owners themselves of books could expurgate the passages: «2 [...] Conviene tambien se determine, en los que se han de expurgar, desde luego los parages ó folios, porque de este modo queda su lectura corriente, y lo censurado puede expurgarse por el mismo dueño del libro; advirtiéndose así en el edicto, como quando la Inquisicion condena proposiciones determinadas» (*Novísima Recopilación*, 8, 18, 3). See the dispute, concerning these regulations, between the prosecutors of the Council of Castile and the inquisitor general Quintano Bonifaz, in the document titled *Consulta del Consejo y resolución de Su Majestad a súplica del Inquisidor general sobre las reglas dadas por S. M. para la expurgación y prohibición de los libros*, of 28 February 1769 (Manuscript of the Spanish National Library, nr. 10863).

165 MCKITTERICK (2003) 163. For the differences in censorship practices and criteria within the Catholic space: SAVELLI (2011) 9; BECK VARELA (2013) 292–300.

as well.¹⁶⁶ «Never has a communications system played so many roles in our lives ... as the Internet does today», synthesizes Carr; «The Internet [...] is subsuming most of our other intellectual technologies. It's becoming our map and our clock, our printing press and our typewriter, our calculator and our telephone, and our radio and our TV».¹⁶⁷ Among the practitioners of law, there is even a growing impression that the medium itself is responsible for a deterioration of the quality of legal sources, such as judges' sentences or doctrine.¹⁶⁸

The legal historians gathered together in this volume represent probably the last generation which has been educated under the predominance of the printed text and has lived, especially in the past two decades, the increasing concurrence of online tools. All of us have begun our university careers handling manual catalogues and paper cards; many of us have travelled at least once to consult a rare manuscript or printed source in a remote archive or library, and some have even typed their first academic writings on a memorable *Olivetti*.

Readers in the age of the manual printing press had the same impression that their knowledge could transcend their immediate temporal and spatial dimensions, although not in the stable way we tend now to conceive. We have seen some clues of how it operated in practice, and how it affected the creation and diffusion of legal knowledge in the early modern centuries. Their notion of text was possibly as uncertain, as collaborative, as collective, as the one lying under the practices of Wikipedia users. Their medium had facilitated the possibility of plagiarism and free appropriation of texts as intensively as ours have. They depended on the reader, as we do, to construct text credibility; the conception of the printed text as something fixed, perfect and constant, the one with which this generation has started its instruction, is the outcome of a long historical development. As educators in law schools, we face as well the daily challenge to offer our students solid criteria to select among the infinitude of information provided by Google, or to learn how to

166 «When I mention my troubles with reading to friends and acquaintances – literary types, most of them – many say they're having similar experiences. The more they use the Web, the more they have to fight to stay focused on long pieces of writing». CARR (2008).

167 CARR (2008).

168 Judith Martins-Costa draws a desolating picture of the copy-and-paste of opinions in the daily life of legal professionals in Brazil (MARTINS-COSTA [2014]).

attribute authorship when constructing a legal reasoning. For the contemporary generation, as never before, the “physical” space occupied by knowledge seems unlimited, and the time for accessing it, minimal.

This brief and partial overview on the ways law was conceived, created and diffused in the early modern centuries leads us to historicize our discipline, its material and human conditions. This itinerary, whose intention was somehow to enhance our *awareness* of the *spatial and temporal dimensions* of legal knowledge in the past, might open a window to understand how these dimensions are being reshaped today and might be redesigned in the future.

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