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JOURNAL OF CATALAN INTELLECTUAL HISTORY,
Issue 4, 2012 | Print ISSN 2014-1572 / Online ISSN 2014-1564
DOI 10.2436/20.3001.02.55 | P. 111-129
Reception date: 8/09/2011 / Admission date: 12/12/2011
<http://revistes.iec.cat/index.php/JOIHI>

Ramon Martí d'Eixalà and the Nineteenth-Century Catalan Philosophical and Legal School

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abstract

This text presents some of the central features of the philosophical and juridical thought of Ramon Martí d'Eixalà while also offering keys for interpreting his role in the establishment of the Catalan School of Philosophy and the Catalan Legal School in the nineteenth century. It draws attention to some unjustified interpretive clichés regarding his work, for example the attempt to link his theses with romantic postulates.

key words

Ramon Martí d'Eixalà, philosophy of common sense, Catalan School of Philosophy, Catalan Legal School, Catalan law.

Introduction

Vicens Vives says, “The rise of Catalonia and the work of a number of distinguished teachers – Martí d'Eixalà, Bergnes de las Casas, Milà i Fontanals, Llorens i Barba, Permanyer i Tuyet, Reynals i Rabassa, Rubió i Ors, and Duran i Bas – ended up giving sense to the students coming out of our faculties: a sense [...] of service to the land. In this regard, the Faculty of Law was outstanding [...] in gradually forming a school that was notable for the vigour of its scientific and human commitment” (Vicens, 1958: 130). In a recent book, an American scholar describes the core task carried out by lawyers in the construction of a complex network of ideological concerns and interests of Catalan society at the time, noting that, “Ramon Martí was one of the city’s [Barcelona’s] most powerful men in the decade of the 1840s and early 1850s” (Jacobson, 2009: 116).

How did Martí d'Eixalà come to occupy such a prominent position? What qualities did he have to be deemed worthy of such recognition? It is my

view that Ramon Martí lived at a sort of crossroads and played something akin to a hinge role. He was at the forefront of pedagogical reforms in philosophy; he would lead the campaign for yearned-for restoration of the University of Barcelona¹ where he was to train a batch of jurists who marked legal studies for a long time to come; and he would be an active participant in the moderate political offensive carried out by some Catalans in Madrid in their efforts to bring the administrative structures up to date and to modernise the interests of the Spanish political class.² There is no doubt that it would be impossible to understand Martí's thought unless one was aware of the social, cultural and political conditions of Catalonia at the time, but neither would it be possible to understand certain subsequent developments in some spheres of Catalan intellectual endeavour without taking into account his contributions and, above all, his teachings.³ In this paper I am concerned with the most outstanding features of his philosophical and juridical thought. I shall offer several pointers that should help the reader to grasp his importance in the creation of the Catalan School of Philosophy and the Catalan Legal School while also rejecting clichés such as that which attempts to link him with romantic currents.⁴

The Philosophical Thought of Martí d'Eixalà

The Relevance of *Curso de Filosofía Elementar*

Martí d'Eixalà's philosophical oeuvre is not very extensive. It is limited to *Curso de Filosofía Elementar* (Introductory Course in Philosophy) plus an Appendix and Notes to the translation of Jean-François Amice's work titled *Manual de Historia de la Filosofía* (Manual on the History of Philosophy), both of these

1 Born in Cardona in 1808, he played a major role in the reestablishment of the University of Barcelona in 1837 and gave the inaugural lecture.

2 Martí was several times a member of the Spanish *Cortes* (Parliament) and it was during one of his trips to Madrid that he died unexpectedly on 18 May 1857.

3 As Ignasi Casanovas notes, "Martí d'Eixalà is the prolific patriarch of many tribes: of philosophers, of jurists, of literati and of politicians" (Casanovas, 1921: 11). By way of corroboration we may cite some of his most distinguished students: Manuel Duran i Bas, Estanislau Reynals i Rabassa, and Francesc Permanyer (among the jurists); Francesc Xavier Llorens i Barba and Pere Codina (among the philosophers); Joaquim Rubió i Ors, Josep Coll i Vehí and Joan Mañé i Flaquer (among the literati); Laureà Figuerola (jurist, economist and politician); Manuel Milà i Fontanals (philologist).

4 For a more thoroughgoing study of his philosophical, legal and political thinking, see Vilajosana 2011, Part Two.

books being published during the time when he was expelled from the university (1840 – 1843). Apart from these works, Martí published no other philosophical text. Nonetheless, there are several lectures he gave and a series of unpublished manuscripts dealing mainly with the sentiments. I shall now go on to highlight just three significant elements of *Curso*: empiricism, the concept of consciousness and the utilitarian nature of philosophy.

Empiricism

In general, Spanish academics had thitherto disdained any approximation to scientific method from the standpoint of philosophy. Martí, however, was to lay claim to the postulates of science which, in his view, were analysis and observation of facts.

It is no coincidence that the man who gave such importance to science was the selfsame person designated to give classes at the Academy for Science and the Arts.⁵ His thinking was functional in an industrial society that was evolving at forced-march pace. Martí offers an explicit account of his aims: “I have consistently proceeded from the facts of the inquiry, both internal and external, taking my analysis as far as possible”. He criticises the trend-setters of the time: These people [the eclectics] call themselves members of the school of observation but, with every step they take, a vague fear of encountering the school they disparagingly label ‘empirical’ impedes them from going ahead to analyse the facts they admit” (*Curso*:VIII). Thus, Martí d’Eixalà makes it clear very early on that he embraces empiricism as the philosophical position that is closest to a “scientific” way of thinking, at least in terms of the way in which science was interpreted at the time. Seen from the perspective of our own times, however, the empiricism to which I am referring here must perforce be deemed ingenuous since one would find therein what Willard Van Orman Quine has critically dubbed two dogmas of empiricism (Quine 1953). I shall now comment briefly on the second of these.

Quine’s second dogma of empiricism, reductionism, consists in sustaining that it is possible to confront certain statements of an empirical science with the facts, and that the result of this confrontation entails a test that permits one to say whether the theory in question is correct or not. It would seem that, for

5 After 1835, philosophy teaching was carried out in the Acadèmia de Ciències i Arts (Academy for Science and the Arts) and never at the university. He was the first layman to teach philosophy in the academic realm (Bilbeny, 1985: 160) and the Appendix is deemed to be the first publication on the history of Spanish philosophy, at a time when the discipline did not as much as exist.

Martí, the notion that one's senses could have direct access to the facts did not represent any problem. He tells us here that his method starts from external and *internal* facts. An inquiry into the role played in this method by internal facts helps one to understand adequately the originality of his philosophical thought, at the same time as it makes one aware of the cul-de-sac into which it eventually leads.

A New Concept of Consciousness

Martí sustains that, "The condition of existence or of what is essential for any idea is to be conscious of it, however that may be. This will be the first fact or phenomenon which, in its generality, encompasses them all" (*Curso*: 21). One must pause at this point so as to take note of a peculiar element in Martí's thinking when it comes to characterising consciousness.

According to Martí, consciousness is not just another faculty that comes together with the rest. It is a capacity that encompasses the rest. This is a significant detail since it furnishes an original philosophical ingredient. Up to this point, the Scottish philosophers that had influenced him dealt with consciousness as a simple faculty. Martí is the first to take the step towards an all-embracing concept of consciousness, before this position became famous once it had been sustained by William Hamilton (1869). Martí's student, Francesc Xavier Llorens i Barba, bears witness to this when he says, "As long as I want, I know that I want; as long as I know it, I know that I know it. By rigorous induction [...] I have with this a general fact, the fact of having consciousness. This is what our Martí d'Eixalà had set down before a celebrated school proclaimed that consciousness turns out to be the fundamental form of our existence" (Llorens, 1920: Vol. I, 116-117).

Nevertheless, the problem confronting Martí was that his insistence on the general and primary role of consciousness would help him to establish, at the very most, the connection between "internal" facts (to use his terminology). Where, then, is the link with "external" facts? If the only access we have to experience comes through our consciousness, this thesis runs the risk of falling into some kind of idealism and, pushing it to its limits, solipsism (Roura, 1980: 239). In brief, it lapses into the impossibility of justifying knowledge of the external world (which is to say, that which lies beyond the bounds of our consciousness), which could then make the scientific character of the system look shaky. The suspicion arising from this short circuit is confirmed when one reads, "Man sees nothing other than his own thought and everything is reduced by him to being aware of some object, to having ideas" (*Curso*: 24).

Utility of Philosophical Reflection

A pragmatic concern runs throughout *Curso* in the sense of signalling paths by way of which the material in the book might furnish a yield that is translatable into actions. This utilitarian view that Martí has of philosophy is in line with his jurist's mentality. I would say that Martí's case would fit better with the archetypical jurist who engages in Philosophy than with the philosopher who engages in Law. Accordingly, he criticises authors of "abstract" systems for not using hypotheses that may be checked against facts: "The whole artifice of these systems consists of constructing and linking up hypotheses in such a way that there is no contradiction between them, and that they conspire together for the same end; however, just as adroit arrangement of the scenes of a drama does not prove the reality of the fact being assumed, neither can one conclude from artificial coordination of the parts of a theory that it conforms with the nature of things." (*Curso*: 293).

Martí d'Eixalà and the Catalan School of Philosophy

Two of the features that one might consider as defining the Catalan School of Philosophy are its defence of common sense, based on Scottish Common Sense Realism, and the priority it gives to analysis of the senses. Let us see now to what extent these elements are present in the thinking of Martí d'Eixalà.

The Philosophy of Common Sense

What has come to be known as "Philosophy of Common Sense" is generally deemed to be that which is most characteristic of the Catalan School. It is commonly said that it would have as its precedent Joan Lluís Vives, who was introduced by Martí d'Eixalà, and that its outstanding proponent would be the latter's student Llorens i Barba. One frequently finds statements concerning Martí's role in this respect. Joan Ruiz i Calonja, for example, says that Martí is "the master of what is known as the Catalan school of common sense philosophy, which is inspired by the Scottish School" (Ruiz i Calonja, 1963: 82). Pere Lluís Font, after affirming that "common sense philosophy was introduced by the jurist and philosopher Ramon Martí i d'Eixalà", adds, "The Catalan School of common sense philosophy, twin of the Scottish one, while evoking the similar fates of two politically-subjugated yet culturally-alive nations, also helps one to understand the relationship between Catalan and Scottish romanticism" (Font, 1984: 186). From outside Catalonia other writers also describe Martí as a

prime representative of Catalan philosophy of common sense, among them José Luis Abellán and Manuel Suances (Abellán, 1984: 349; Suances, 2006).

In fact, however, such assertions are not a close fit with the reality. I would not be so radical as Joaquim Carreras i Artau when he says that, in *Curso*, “one does not find the slightest trace of Scottish common sense philosophy” (Carreras i Artau, 1994: 19).⁶ Some influences of the Scottish School, and especially of Thomas Reid (1785), are present. What is nowhere to be found is any specific mention of the concept of common sense.

How, then, is one to understand this tenacity in considering Martí d’Eixalà the paragon of the Scottish notion of common sense? I shall respond to this conundrum in two different but complementary ways. One refers to possible causes that might explain this biased interpretation while the other shows the systematic ambiguity with which the term “common sense” tends to be used in this context.

With regard to the first question, it is almost certain that the fact that Llorens i Barba –who was indeed a follower of the Scottish doctrine of Common Sense Realism⁷ – was Martí’s most outstanding student of philosophy contributed towards the propagation of this tale (Llorens, 1859). One must note that a good number of the erroneous statements in this regard have their origin in the highly emphatic assertions of Marcelino Menéndez y Pelayo (1876, Vol I: 112). The latter has enjoyed great authority in Spanish intellectual circles, which would certainly mean that many of his pronouncements would have been uncritically accepted. Neither is it irrelevant to recall that Menéndez y Pelayo was a student of Llorens.

That there was a certain deformation of Martí’s thought in order to bring him closer to positions he had not upheld is clearly demonstrated by considering the features that a contemporary and student of Martí considered as pertaining to the Catalan School, which was only just emerging at the time. I refer to Estanislau Reynals i Rabassa. This author gives the following attributes as the defining characteristics of the “Catalan School that is about to be born”: analytical system, anti-dogmatism, empiricism, intellectual independence, individualism and practical sense (Reynals i Rabassa, 1858: 18-19 and 59). All these traits are undoubtedly present in Martí’s thought and work. But what has happened to common sense? Why is there no reference to the concept that was later to appear as defining his thought? The answer that I think is most plausible

6 In this line of interpretation one might also find Roura (1980: 178) and Bilbeny (1985: 174).

7 Both Anglès (1998) and Cuscó (1999) make this clear.

is that Llorens engaged in an *a posteriori* reading of his teacher's philosophical thinking, attributing to him connotations that were closer to the ideas of the pupil. This "transfer" is passed on from Llorens to his own student Menéndez y Pelayo and thence to latter-day writers who merely repeated the claim.

Two Concepts of Common Sense

It is my view that the expression "common sense" is used ambiguously in the context now being analysed, thus leading to misunderstandings.

There is one sense that effectively corresponds with the *common sense* of which the best-known members of the Scottish School spoke. The function carried out by "common sense" in this case would be strictly philosophical. It would represent a way of justifying primary truths, the axioms of any philosophical construction.

Now, sometimes, especially when one wishes to say that a characteristic feature – even the most characteristic feature – of the Catalan School of Philosophy is the defence of "common sense", it is understood in the Catalan sense of *seny*, which is to say good judgement or sensibleness. In this case, the definitional leap is unjustified. The word "*seny*" is no longer used to refer to the aforementioned philosophical function but to action contrasted with, or complementary to *rauxa*, which means impulsiveness or emotional outburst. If what I have just stressed had to be applied to Martí, I would say that he was a person who showed a great deal of *seny* in all the actions of his life.⁸ However, there is no evidence anywhere that he used the concept of "common sense" as a foundation of primary philosophical principles. As some writers have asserted, the relationship between Martí and Scottish philosophy is more a "deep agreement in intellectual viewpoints" than any causal relationship (Batista i Roca, 1957: 51).

As I have noted, the person who did have a part to play in propagating the Scottish ideas was Martí's student, Llorens i Barba. In his lifetime he only published the inaugural speech of the academic year 1854-55 in which, before the staff of the University of Barcelona, he endorsed "a labour that although modest was very important" and carried out "with deep faith, exempt of systematic pretensions, in the terrain of good sense, in Scottish simplicity". Llorens who considered that philosophy was the "late fruit of a people's intellectual cul-

8 Indeed, in the words of Duran i Bas, Martí was a well-balanced, circumspect and prudent man (Duran i Bas, 1905: 7-8).

ture”, believed that the consolidation of philosophy teaching in the university would lead to “the development of philosophical thinking in harmony with our national life” (Llorens, 1854: 24 and 26). This aim would contribute to the Catalan cultural renaissance movement – the *Renaixença* – of the second half of the nineteenth century.

It was Llorens, then, who following this line of thought, would unequivocally link his own philosophical thinking with the idea of common sense as an expression of a set of people (the Catalan nation, for example), just as the German romantics tended to speak of the spirit of a people. Llorens shares with his mentor the fact of starting out from consciousness as a basic reality. Yet, for him, consciousness does not only have an individual dimension but it mainly incorporates a collective and historical dimension, which expresses the feeling of a people. This has made it possible to affirm that Catalan philosophy particularly accentuates the social dimension of reason, in relation with contemporaries as well as with the people who have come before us and the people yet to come (Nubiola, 1995).

Thus, if one reads the philosophical texts of Ramon Martí d’Eixalà attentively one must come to the conclusion that it is difficult to slot him into this romantic derivation. Nowhere does one find any illusion to any kind of collective spirit (neither Catalan nor of any other people). Martí’s position is strictly *individualist* . There is no consciousness that goes beyond what any one of us has.

The Role of Sentiments

Besides the idea of common sense, Catalan philosophy also tends to be considered as giving considerable prominence to the sentiments, a form of procedure that one detects as early as in the writings of Ramon Llull. This quality is to be found in Martí’s texts, but only among the unpublished material. I now propose that we might engage in a small exercise of philosophical fiction so as to look at Martí’s position on this point in the light of certain present factors.

Some years ago, one of the characterising traits of a certain change of direction in the treatment of philosophical themes was precisely the growing significance given to the presence of impulses, sentiments and passions or, in short, to the whole area that was for a long time deemed to be an impediment to people acting rationally. It is illustrative in this regard that a book like Antonio Damasio’s *Descartes’ Error* should have been a best seller (Damasio, 1996).

Martí would have subscribed to Damasio’s critical review of Descartes’ thought without a second’s doubt, although not exactly for the same reasons. Damasio shows, as fruit of contemporary research in neuroscience, how emo-

tion and sentiments are indispensable for rationality. This research reveals that the human mind is the way it is owing to the interaction between the brain and the rest of the body in the evolutionary process. Lesions in certain parts of the body can also harm the processing of emotions. Descartes' error, then, would have been to postulate a radical separation between body and mind.

Now let us compare these contemporary ideas with Martí's words: "Just as the brain is the organ through which the spirit verifies intellectual operations, would not the brain together with the entire nervous system be the organ through which sentiment is felt?" (*Manuscripts*, XXXIV: 5). The mere formulation of the question is significant enough. So too is Martí's approach to the question. It indicates that he was aware of the intimate relationship between the organic and spiritual parts of the human being. He argues that sentiment operates on the organism which, in turn, makes possible action in the moral (read "spiritual") sphere by bringing about an increased power of feeling and, later, reducing it. I cannot help thinking that, for all the anachronism, a Martí d'Eixalà transported to our own times would be very close to the position represented here by Damasio. I would even venture to surmise that the new discoveries would have helped him to eliminate – or at least diminish – the problems raised for him by "internal facts". Seen from the present-day scientific perspective, they are perfectly explicable with the same scientific mechanism that helps to explain "external facts". After all, an assumed immaterial mind could not exist apart from the material body.

Martí d'Eixalà and the Catalan Legal School

Ramon Martí d'Eixalà was, by family tradition⁹ and academic training,¹⁰ a man of law. He worked in several areas as a jurist, *inter alia* as a solicitor and participating in the drafting of some Barcelona ordinances. However, his well-earned renown came from his teaching activities at the University of Barcelona. It should be recalled that, in fact, he was a university lecturer only in legal subjects.

9 His great-grandfather, Melcior d'Eixalà, was an "ciudadà honrat" (*honorary citizen*) of Barcelona and held a doctorate in Law, as did his grandfather, Baltasar d'Eixalà i de Maerschalk, who was appointed Jurisdictional Advisor to the Duke of Cardona. Moreover, his grandmother was Raimona Thomasa, daughter and sister of notaries (Vilajosana, 2011: Part One).

10 He began his degree in Law at the University of Cervera in the academic year of 1824-25, attaining his bachelor's degree on 14 November 1827, a degree in Law three years later and, once the University of Barcelona had been reinstated, a doctorate in Law on 27 April 1837 (Roura, 1980: 48).

His academic works are his commentary on *Las Partidas*¹¹ of Alfonso X and the only two books on legal matters that he published. Both these latter texts were written for teaching purposes. One (devoted to civil law) was his first publication, while the other book (a study of mercantile law) was his last.¹² The subjects of civil and mercantile law constituted private law. That this should have been Martí's concern is not surprising, both because of the commercial tradition of his paternal lineage and his own quite pragmatic sensibility, which also appeared, as we have seen, in his approach to philosophical problems.¹³

Attributes of the Catalan Legal School

The existence of a Catalan Legal School can be traced back through history (Vallet de Goytisolo, 2007). In what follows, however, my references will be confined only to the nineteenth-century sense of the term. Many Catalan jurists, who mid-century wished to confront fears of a push to uniformity arising from repeated attempts to draft a Spanish Civil Code, took as their theoretical reference the doctrine of Freidrich Karl von Savigny, an outstanding representative of the Historical School of Law. Many people consider that Martí was among this very diverse group of men. At least this was the view of Manuel Duran i Bas, who described the Catalan School as follows: “a) Spiritualist without yielding to idealism; b) practical without being empirical; c) based on ethical principle and the historical element without being immobilised; d) more inclined to private than to public law but without diminishing the latter through undue disrespect; e) essentially analytical without renouncing rising to synthesis when possible and when obliged to generalise; f) in harmony with the philosophy of common sense, which is the most apposite for a people of great practical sensibility as is the case with Catalonia; g) modest in its pretensions because it founds its doctrines on observation of the facts and proposes their applications in conformity with the conditions of the country. It therefore tends to reform without destruction, and focuses on the past, not out of mere aesthetic contemplation but because of the great lessons it holds: it requires the light of both

11 Also titled *Siete Partidas* (Seven-Part Code), this work was a Castilian statutory code compiled during the reign (1252 – 1284) of Alfonso X (“The Wise”) [translator].

12 They are respectively titled *Tratado elemental del derecho civil romano y español* (Elementary Treatise on Roman Civil Law, 1838) and *Instituciones de derecho mercantil de España* (Spanish Institutions of Mercantile Law, 1848).

13 Martí's father was a merchant and small proprietor who was to become a veritable potentate thanks to his highly lucrative dealings in the Cardona salt trade (Vilajosana: Part One).

reason and history, from the former not as the source but as the revelation of the absolute element of law and, from the latter in order to know the origins and to understand the spirit of the positive law of each people” (Duran i Bas, 1888: 352 – I have added the letters a) to g)).

Among these characteristics we certainly find in Martí’s work d), e) and partially g). Also present are a) and b) but with some nuances, either because of the inherent danger in Martí’s philosophical framework of lapsing into idealism, or because of the fact that if Martí upholds anything it is empiricism.

I have already discussed the alleged presence in his philosophy of the idea of common sense. I have maintained that there is ambiguity in the use that some writers make of the expression. Duran i Bas’ description of the attribute that I have designated with f) constitutes a clear case in point of this ambiguity: the philosophy of *common sense* mutates here into the philosophy of Catalan *seny*. As I have noted, Martí did show some influences of the Scottish School, but not in this regard.

What about the role of History? At this point there is no clear coincidence between Martí’s texts with what is stated in c) and partially in g). In another section below I shall sustain that, while Martí believed that the history of institutions was important (this, in fact, is one of the most outstanding points of the book *Instituciones*), the sense in which he does so is a long way from being that which one finds in Savigny’s theses and, thence, in those of Duran and other members of the Catalan School. I shall deal with this issue below, after taking a path that leads to the matter of inquiring into the moot question of whether Martí d’Eixalà championed Catalan law.

Martí and the Defence of Catalan Law

Two authors give a categorically negative answer to this question. Montserrat Figueras says, “Martí cannot be included in the nineteenth-century Catalan Legal School, which had as one of its leitmotifs precisely that of upholding Catalan civil law in the face of the Spanish legal code” (Figueras, 1993: 73). Another commentator, Judit Valls, opines that “[...] in order to be deemed a jurist one must know the laws and in order to be deemed a Catalan jurist one must know and uphold Catalan law. This, one sees, is not the case with Martí d’Eixalà” (Valls, 2009: 391). Valls drives home the point when she observes, “Martí d’Eixalà at no point defended Catalan law and Catalan institutions in his legal writings” (Valls, 2009: 479).

Is the vehemence of these statements justified? One must recognise that if one only pays attention to the literalness of the legal writings published by Martí, the judgement of these two authors would be correct: there is no sign

of any explanation or citation of any law proper to Catalonia. Nevertheless, this undeniable datum should be viewed in relation with other facts. Then one sees that the overview of the resulting whole is more kaleidoscopic.

On the one hand, Martí, unlike other treatise writers of the time, gives great emphasis to his account of Roman law. This circumstance means that the material he dealt with brought him close to the law as practised in Catalonia which, together with canon law, was taught at the University of Cervera. José María Pérez Collados has emphasised the importance of the study of Roman law at this university as the background to the survival of Catalan law in legal studies to the point of bluntly asserting, “In Catalonia, upholding Roman law meant upholding Catalan Law in the face of Spanish Law” (Pérez Collados, 2004: 150). This is a highly significant point since it brings the Catalan experience closer to other lands in which the struggle against legal uniformisation went hand in hand with a defence of Roman law, as James Whitman has stressed with regard to the German case (Whitman, 1990).

On the other hand, it is very important to offset what Martí’s writings say, directly or indirectly, with the very prominent position he occupied in Catalan civil society. More specifically, one should bear in mind the negative response in Catalonia to the draft Civil Code of 1836 and, in particular, that of 1851. Making this context explicit paves the way for a thesis that I think is quite plausible: it is very difficult to imagine that Martí would have remained on the fringes of a protest against the uniformising thrust of the driving forces behind the Civil Code. We shall now look at this point.

The Catalan Offensive against the Civil Code

The rejection by many Catalan jurists of the two draft Civil Codes I have mentioned has a background of factors of identity and also economic reasons. With regard to the former, there was a feeling that the proposed reforms would deal the deathblow to Catalan juridical institutions, which had already been impaired after the *Decret de Nova Planta*¹⁴ which had quashed any legislative capacity that might have made it possible to adapt them to new times. As for the economic reasons, there were convincing arguments for demanding that

14 The decrees titled (in Spanish) *Decretos de Nueva Planta* were signed between 1707 and 1716 by Philip V, the first Bourbon king of Spain, during and shortly after winning the War of the Spanish Succession. Based on the centralised model of Philip’s native France, the decrees suppressed the institutions, privileges, and the ancient charters of Aragon, Catalonia, Valencia and the Balearic Islands, which had formerly been part of the Crown of Aragon [translator].

such highly prized institutions in Catalonia as the freedom to make a will and updated legislation on emphyteutic lease should be respected (Salvador, 1980).

What was Ramon Martí d'Eixalà's position in this whole affair? There is one highly relevant datum. On 27 August 1845, a meeting of the Board of the College of Lawyers of Barcelona was held. The Dean at the time, Joaquim Ruyra, summed up in fifteen points the themes of the possible uniformisation that could have negative repercussions for Catalonia. The Board decided that Pere Nolasc i Cebrià should issue a report on the matter. He, however, agreed to do so only with regard to the part pertaining to emphyteutic legislation, after which Martí was given the task of writing the rest of the report (Egea, 1989: XXII and XXXVI). One should also add the fact that Martí was also very much involved with the defence of interests represented by the Junta de Comerç (Chamber of Commerce), while he was also a member of the Economic Society of Friends of the Country, two associations whose intervention in favour of upholding the emphyteutic legislation with variations was notable. What does one make of all this?

My impression is that, for a start, Martí was very well-versed in Catalan civil law.¹⁵ Would the Catalan lawyers have commissioned him with producing such a report if he were not truly proficient in the matter? Moreover, would they have entrusted him with the task if they were not sure that the report would reflect the view held by the majority in the College?

Nuance is required here. Since he was in favour of rationalisation as entailed by a code resembling the French Code¹⁶ and taking his conciliatory nature into account, one must suppose that his stance would not have been totally against the codification (and neither was that of Vives i Cebrià, it must be said) but that he would have wished to convince the codifiers that the aspects of Catalan law that should be preserved did not represent any unacceptable distortion of Spanish law. This fits with his decision to take on the task of commenting on *Las Partidas* which, as the Spanish legal text most influenced by Roman law, was thus the most adaptable to the Catalan standpoint.

Finally, one of the goals of the moderate Catalan members of parliament in Madrid, Martí among them, was to rationalise administration. It is

15 Would it be possible not to have this knowledge for somebody who, like Martí, had not only thoroughly studied Roman Law, as I have noted, but who was the relative of a large number of notaries, precisely the group that did most to keep Catalan law alive and to apply it to everyday transactions.

16 It was Robert Pothier who systematised general contract theory which would subsequently have a decisive influence on the French Civil Code and other European and American codes. Martí praises his method of analytical work in *Tratado* (p. 24).

reasonable to construe that what they were attempting politically they were also hoping to attain in the juridical sphere: if they believed that it was necessary to take things further with the freedom to make a will or that a good part of emphyteutic law should be retained, this is what they – Martí too – must have been defending. Disappointment was to follow, however, when the answer came in the form of imposition of the Spanish *legítima* (forced heirship) and the total suppression of emphyteusis.

I believe that an account similar to what I have just outlined does better justice to the complexity of the times and to the role Martí must have played therein. Independently of the facts that his legal texts in defence of Catalan law were not very explicit and that he was of a generation preceding that of people who would defend it unambiguously, the prominent position that he enjoyed in Catalan civil society at the time meant that he could not be excluded. I am inclined to think, then, that there is a defence of Catalan civil law behind his activities but perhaps not of all its core concepts, nor with the intensity that others would later show.

The Romanticism of the Catalan Legal School

I shall conclude this brief account of Ramon Martí d'Eixalà's legal thinking by inquiring whether it includes postulates of the school headed by Savigny because it was precisely his work that, as we have seen, is one of the indicators applied when it comes to defining the Catalan Legal School. It should be recognised that Martí was concerned with the historical origins of the civil and mercantile juridical institutions he examined in his books. Nowadays, this interest in history does not have the sense bestowed on it by Savigny and his followers. For Savigny, law is a product of the spirit of a nation, a position that is perfectly recognisable in Duran i Bas when he states that the Catalan Legal School has “the historic element at its base” and that it is “in harmony with common sense”, which is the most apposite “for a people of great practical sensibility as is the case with Catalonia”, or that legal analysis should be carried out in order to “know the origins and to understand the spirit of the positive law of each people”.

Nothing that Martí said would lead one to think that he would have endorsed this “romantic” role that both Savigny and Duran assigned to the history of a people. One finds here, as happened with Llorens, another projection. Certainly the esteem in which he was held by both followers meant that they attributed to him the paternity of both Catalan schools, of philosophy and of jurisprudence. One symptomatic detail is that Duran i Bas presented the characteristics pertaining to the Catalan Legal School in 1888, thirty years after Martí's death and fifty years after *Tratado* was published.

To sum up, Martí was neither a historicist nor a romantic. He was, however, an enlightened man bound by conviction to champion a liberal view of the world, which was, on the other hand, what his times demanded. In the end, this is the perspective that is reflected in his political activities. The political group that he headed for a time was to be greatly disappointed to see that its modernising goals were not well received by a power that would be viewed with increasing distance. One can never know whether, as a result of this disillusionment, Martí would have moved closer towards the romantic approaches of his most prominent students, or even towards proto-nationalist positions. The fact is that his premature death, just when such modification was on the horizon, put an end to any speculation that one might make.

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