

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

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### ABSTRACT

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

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

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## 1. VIVES'S INTEREST FOR LAW

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

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

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

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

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

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

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

(somehow an impersonation of Vives) refers to “an uncle of mine, who applied himself to the humanities [*litterae*] in Bologna”.<sup>6</sup>

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

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

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

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

<sup>6</sup> Vives, *Ling.* 5 (*VOO* 1: 292; García Ruiz 2005: 142, lines 30-31).

<sup>7</sup> See *LC xxxiii-xci*; *CEBR* 1: 354b-355b.

<sup>8</sup> *LCB* Ep. 26, lines 44-50.

<sup>9</sup> See *LC xci-xcix*; *CEBR* 2: 26a-b, 306a-307b.

<sup>10</sup> See *CEBR* 2: 456a-459a.

<sup>11</sup> Allen 4: Ep. 1106 (*CWE* 7: 288-295). More mentions the following works: *Aedes*, *Pseud.*, *Somn. uig.*, and *Syll.*

<sup>12</sup> Allen 4: Ep. 1106, lines 21-26 (*CWE* 7: 290-291; trans. R.A.B. Mynors).

<sup>13</sup> See *CEBR* 1: 212b-217a.

<sup>14</sup> See Tournoy (2015).

<sup>15</sup> Vives, *Ciu. dei* 2.17 (Pérez Durà 1992-2010, vol. 2: 319, lines 35-36): “*quae* [i.e. scientia iuris] *per ipsum instaurari collapsa iam coepit*”.

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

## 2. THE AEDES LEGUM: PUBLICATION AND MAIN THEMES

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

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

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

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

<sup>18</sup> Vives, *Disc. trad.* 5.3 (*VOO* 6: 402; Vigliano 2013: 451): “*Quare noscendus est homo totus intus et foris*”.

<sup>19</sup> See González (1992: 117-119).

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

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

<sup>22</sup> Tournoy (1987) and Roca (1993: 47-60) have assessed this edition and, when necessary, have outlined its shortcomings.

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

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

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

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

<sup>23</sup> Vives, *Aedes ep.* 1, 4 (M 1984: 1, lines 3 and 28): “*Ponti, iuris et humani diuini consultissime, [...] iuris iustitiaeque antistes*”.

<sup>24</sup> See *Aedes ep.* 1, line 6 (M 1984: 1).

<sup>25</sup> Vives, *Disc. trad.* 5.3 (VOO 6: 409; Vigliano 2013: 459): “*manifestum est fit philosophi esse de aequitate tractare et ex ea deriuare leges [...]; quique olim populis leges sanxerunt philosophos fuisse constat, Draconem, Solonem, Lycurgum*”.

<sup>26</sup> The allusion to “*nostram Valentiam*” (*Aedes* 1; M 1984: 16, line 16) makes it clear.

<sup>27</sup> Or “cantankerous concierge”, as described by Fantazzi (2008: 3).

<sup>28</sup> See VOO 5: 512 (*Curinalis*); Roca (1993: 84); also note 21.

<sup>29</sup> See Vives, *Aedes* 7 (M 1984: 18-20).

<sup>30</sup> See Vives, *Aedes* 12 (M 1984: 23-24).

<sup>31</sup> See Vives, *Aedes* 13 (M 1984: 24).

<sup>32</sup> See Cicero, *De legibus* 3.1.3.

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

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

### 3. STUDY OF CONCEPTS

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

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

#### 3.1. *Ciuitas*

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

#### 3.2. *Lex*

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

<sup>33</sup> See Vives, *Aedes* 15-16 (M 1984: 25-26).

<sup>34</sup> See Vives, *Aedes* 17-19 (M 1984: 26-27).

<sup>35</sup> See Vives, *Aedes* 21-24 (M 1984: 28-30).

<sup>36</sup> Vives, *Aedes* 1 (M 1984: 16, line 8): “*deo gratius atque iucundius*”.

<sup>37</sup> *Ibid.*, lines 9-10.

<sup>38</sup> *Ibid.*, lines 4 and 7.

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

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

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

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

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

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

<sup>39</sup> Vives, *Aedes* 11 (M 1984: 23, lines 11-13): “*quum tamen nullus perscrutari domum hanc legum rite possit, qui plene ueram tersamque Latinitatem et antiquariam hanc modice saltem non imbiberit*”; cf. similar thought in *Disc. corr.* 7.3 (VOO 6: 235; *Vigliano* 2013: 265): “*opus est uaria notitia antiquitatis*”. Regarding the Archaic Latin, see notes 21, 28.

<sup>40</sup> See note 29.

<sup>41</sup> Vives, *Aedes* 3 (M 1984: 17, lines 9-11): “*lex illa erat aeterna diuina, quae uniuersum mundum regit, nec scitum aliquod esse populorum, quae est mens omnia ratione aut cogentis aut uetantis dei*”. It is an almost exact quotation of Cicero, *De legibus* 2.4.8.

<sup>42</sup> Vives, *Aedes* 13 (M 1984: 24, lines 27-28): “*huic oboediunt maria terraque, et hominem uita iussis supremae legis optemperat*”.

<sup>43</sup> Cicero, *De legibus* 2.4.8 (trans. Zetzel 2017: 134): “*legem neque hominum ingeniis excogitatam, [...] sed aeternum quiddam, quod uniuersum mundum regeret imperandi prohibendique sapientia. Ita principem legem illam et ultimam mentem esse dicebant omnia ratione aut cogentis aut uetantis dei*”.

<sup>44</sup> Vives, *Aedes* 16 (M 1984: 26, lines 7-8): “*leges constitutae sunt ... naturae norma*”.

<sup>45</sup> Vives, *Aedes* 22 (M 1984: 29, lines 3-5): “*... naturae normae, ad quam ... leges omnes conditae, directae ac formatae sunt*”.

<sup>46</sup> Vives, *Praef. Leg.* 3 (M 1984: 29, lines 28-33; 30, lines 1-2): “*Ingessit enim ipsa natura, cuius sunt subtilissimae et imperscrutabiles uires, unicuique primum nascenti deorum uenerationem et cultum. Ingessit congressos ac humanae communicationis appetitum [...] Ingessit etiam delictorum nonnullam erubescitiam et male actae uitae conscientiam [...] Indidit et superiorum aut prudentium aut senum aut principum reuerentiam*”.

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

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

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

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

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

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

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

<sup>47</sup> Vives, *Aedes* 15 (M 1984: 25, lines 11-12): “*leges ... rectae (sicut aedificio hoc contueris) aequabilisque omni sui sunt parte*”.

<sup>48</sup> Vives, *Aedes* 20 (M 1984: 28, lines 10-11): “*...ab ipsa legis lege, quod est bonum et aequum*”.

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

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

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

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

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

### 3.3. *Ius, iudex, iuris consultus*

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

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

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

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

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

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

<sup>54</sup> Berger (1953: 525b); see also Zetzel (2017: xxxiii-xxxiv).

<sup>55</sup> The translators (S. A. Barney *et al.* 2006: 117; see note 56) render *ius* as ‘jurisprudence’, which is not in my opinion the best option because it can be confused with *iurisprudentia*. However, they admit in a footnote to the text that “the Latin term *ius* has a broad range of meaning and application, with no single English equivalent. We have generally translated it as ‘jurisprudence’, but have also used the terms ‘right’, ‘law’, or ‘justice’, according to the context”.

<sup>56</sup> Isidore of Seville, *Etymologiae* 5.3; trans. S. A. Barney, W. J. Lewis, J. A. Beach, O. Berghof (2006: 117).

<sup>57</sup> Vives, *Aedes* 22 (M 1984: 29, lines 9-10): “*Idcirco recte iuris normam aequum bonumque esse dictum est*”.

<sup>58</sup> In both senses, ‘skillful technique’ and ‘methodical science’.

<sup>59</sup> Vives, *Disc. corr.* 7.1 (VOO 6: 224; Vigliano 2013: 252): “*Ius finitur ars boni et aequi*”; 7.3 (VOO 6: 235; Vigliano 2013: 264): “*Ius est ars aequi et boni*”. Exact quotation of Ulpian, in *Digesta* 1.1.1. pr.; cf. Vives, *Ciu. dei* 19.21 (Pérez Durà 1992-2010, vol. 5: 319, lines 14-15).

<sup>60</sup> Maclean (1992: 24) renders *ius* as ‘law’ in translating the passage of Ulpian cited in the previous note.

<sup>61</sup> This is the option chosen by the Fathers of the English Dominican Province in their translation of Thomas Aquinas. See, for example, *Summa Theologiae* II2, q57: “On Right [*De iure*]”.

<sup>62</sup> Vives, *Aedes* 16 (M 1984: 26, lines 1-2): “[*aliqui iudices iudicia, iura, leges, iustitiam deserunt*]”.

<sup>63</sup> Vives, *Aedes* 17 (M 1984: 26, lines 28-29): “*in hoc uerum legum, iuris, aequitatis domicilium*”.

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

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

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

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

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

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

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

<sup>64</sup> Vives, *Aedes* 22 (M 1984: 29, lines 2-3): “*ius summum sequi, quae saepissime summa iniuria est*”; see Terence, *Heautontimorumenos* 796; Cicero, *De officiis* 1.10.33.

<sup>65</sup> Erasmus, *Adagiorum chiliades* 925 (ASD II-2: 432, lines 395-398; CWE 32: 244; Trans. R.A.B. Mynors).

<sup>66</sup> Vives, *Aedes* 22 (M 1984: 28, lines 30-31): “*Sunt enim multa de quibus legis lator praecipere non potest*”.

<sup>67</sup> Vives, *Aedes* 15 (M 1984: 25, lines 12-13): “[leges] *per se mutae sunt atque surdae*”.

<sup>68</sup> *Ibid.*, lines 14-17: “*Viri quidam his adhibentur, quibus loquentibus ipsae loquantur, quibus uidentibus ac audientibus uideant ipsae atque audiant. Hos iudices appellare soliti sumus, quos ἀπὸ τῆς δικῆς δικαστὰς Graecia nominauit*”.

<sup>69</sup> Vives, *Aedes* 22 (M 1984: 28, lines 31-32): “*iudex, qui legum personam gerit atque sustinet*”.

<sup>70</sup> *Ibid.*, lines 32-33: “*flectatque legem ut exigit rei qua de agitur natura*”.

<sup>71</sup> *Argentangina* ‘silver-quinsy’, meaning that judges will never agree to accept bribes. See Vives, *Sat.* 159 (Tello 2020a: 84, 107; *VOO* 4: 55, *Sat.* 155); Erasmus, *Adagia* 619 (ASD II-2: 144-146; CWE 32: 78).

<sup>72</sup> Vives, *Aedes* 15 (M 1984: 25, lines 20-24): “*grauis, sanctos, incorruptos, seueros, inadulabiles, castos, temperatos, prudentes, quos nec gratia flectet nec timor deterrebit humanus; odio, amicitia, ira uocabunt atque misericordia; non patientur umquam argentanginam nec argenteis hastis oppugnabuntur*”.

<sup>73</sup> Vives, *Aedes* 16 (M 1984: 25-26, lines 31-1): “*bestiolis imbecillibus acres sunt et seueri, maiores uero minimo quoque eorum motu expauescunt*”.

<sup>74</sup> See Maclean (1992: 12-66); Kuehn (1999: 390-391).

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

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

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

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

<sup>75</sup> Vives, *Disc. trad.* 5.4 (VOO 6: 409; Vigliano 2013: 459): “*Qui uero leges has latas iam et receptas tenent atque interpretantur, iuris consulti sunt dicti, quod ab eis quid sit ius in quaque re sancitum rogamus*”.

<sup>76</sup> Vives, *Conc.* 3 (VOO 5: 310): “*sacerdotes boni, aequi, antistites iustitiae, praesides legum, patroni iuris*”.

<sup>77</sup> Vives, *Aedes* 21 (M 1984: 28, lines 14-15): “*ex monumentis eorum qui humani diuinique iuris consultissimi fuere*”.

<sup>78</sup> Vives, *Disc. trad.* 5.4 (VOO 6: 409-410; Vigliano 2013: 459): “*Sin id uero id demum est ueri et perfecti iurisconsulti munus ac professio, ut legem sensa et mentem explicet, ut quae sit in quaque lege aequitas (id est, qui uigor, quae uita, quas conseruari quoque tempore expediat, quas antiquari), nimirum philosophia huic homini est opus, mediocriter quidem naturali, sed morali plene ac absolute*”.

<sup>79</sup> Vives, *Disc. corr.* 6.1 (VOO 6: 208; Vigliano 2013: 234): “[*Disciplina ... Ethica*], qua mores hominem componerentur”.

<sup>80</sup> See note 50.

<sup>81</sup> See Vives, *Arist.* 16 (VOO 3: 34-36; Tello 2019: 78-91).

<sup>82</sup> Vives, *Disc. corr.* 7.2 (VOO 6: 229; Vigliano 2013: 258): “*At ii in quorum manu est consultatio et responsio de iure, ne rem exiguum et cuius obuiam uideantur praestare populo, curant ut obscurerentur leges, ne promptum sit cuiuis qui sit sensus perspicere, adeundum uero ad se habeant tanquam ad oraculum*”.

<sup>83</sup> See note 29.

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

According to Vives, such advisors or legal experts are unfitted for jurisprudence, as they lack “good sense (*prudencia*): the only quality without comparison that is necessary in all the affairs of life”.<sup>85</sup> In ancient times, legal experts were called *prudentes* (‘sensible’),

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

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

### 3.4. *Epiicia*

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

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

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

<sup>85</sup> Vives, *Disc. corr.* 7.3 (VOO 6: 235; Vigliano 2013: 265): “*prudencia..., res una in negociis uitae omnibus incomparabiliter necessaria*”.

<sup>86</sup> Vives, *Disc. corr.* 7.3 (VOO 6: 236; Vigliano 2013: 265): “*Prudentes enim et habiti sunt semper ‘iurisconsulti’ et nominati, eaque ipsa disciplina ‘iuris prudentia’ et ‘responsa prudentum’: quippe eam professionem non sunt rati absque prudentia tueri se ac praestare suae ciuitati posse*”.

<sup>87</sup> Vives, *Disc. trad.* 5.4 (VOO 6: 413; Vigliano 2013: 463): “*Quibus uelut condimento opus est magno et uegeto iudicio, ad adnotanda et censenda singula*”.

<sup>88</sup> See *ibid.*: “*cognitis tum humani generis communi natura, tum multarum gentium animis et moribus, sed potissimum suae ciuitatis*”.

<sup>89</sup> See *ibid.*: “*Ius ciuile spectare ad ciuium concordiam debet*”.

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

<sup>91</sup> See, for example, Thomas Aquinas, *Summa Theologiae* II2, q120, a1-2.

<sup>92</sup> See, for example, Thomas Aquinas, *Sententia libri Ethicorum* liber 5, lectio 16, n1.

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

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

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

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

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

<sup>93</sup> Vives, *Disc. corr.* 7.1 (VOO 6: 223; Vigliano 2013: 252): “*Lex de omnibus cauere non potest*”.

<sup>94</sup> See notes 64, 65.

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

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

<sup>97</sup> Aristotle, *Ethica Nicomachea* 5.10 (1137b19-24, b26-27; trans. D. Ross): “ὅταν οὖν λέγῃ μὲν ὁ νόμος καθόλου, συμβῆ δ’ ἐπὶ τούτου παρὰ τὸ καθόλου, τότε ὀρθῶς ἔχει, ἢ παραλείπει ὁ νομοθέτης καὶ ἡμαρτεν ἀπλῶς εἰπόν, ἐπανορθοῦν τὸ ἐλλειφθέν, ὃ κἂν ὁ νομοθέτης αὐτὸς ἂν εἶπεν ἐκεῖ παρών, καὶ εἰ ἦδει, ἐνομοθέτησεν [...] καὶ ἔστιν αὕτη ἡ φύσις ἢ τοῦ ἐπιεικοῦς, ἐπανόρθωμα νόμου, ἢ ἐλλείπει διὰ τὸ καθόλου”; see also *Rhetorica* 1.13 (1374 a26- b23); Herodotus 3.53.4; Plato, *Leges* 757e.

<sup>98</sup> Vives, *Disc. corr.* 7.4 (VOO 6: 242; Vigliano 2013: 272): “*Vbi omnia explicare uolumus nec aequitatis syncerae interpretationi locum relinquimus, iniquitatem introducimus*”.

<sup>99</sup> Vives, *Disc. corr.* 7.1 (VOO 6: 223; Vigliano 2013: 252): “*Est enim aequitas legum anima [...] Nihil est enim iniquius quam leges, quae per aequum et bonum non spirant ac reguntur*”.

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

#### 4. LAW WITHIN THE HUMANISTIC PROJECT

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

When Erasmus remarked that “there will be no true law unless it is just, fair, and conducive to the common good”,<sup>109</sup> he tried to admonish the future Emperor Charles V that “your first aim

<sup>100</sup> Vives, *Aedes* 24 (M 1984: 29-30, lines 30-1): “*Ego sane prudentiae maioris existimarem omnia iuxta loca, tempora, personas, res denique ipsas perpendere ac metiri*”.

<sup>101</sup> Vives, *Disc. corr.* 7.3 (VOO 6: 236; Vigliano 2013: 265): “*Nam quis aequitatem rerum uideat aut definiat sine magna prudentia?*”.

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

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

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

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

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

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

<sup>108</sup> Horace, *Carmina* 3.24.35-36: “*Quid leges sine moribus / uanae proficiunt?*”

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

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

## 5. BIBLIOGRAPHY

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

### Abbreviations<sup>114</sup>

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

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

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

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

*Arist.* = *De Aristotelis operibus censura* (1538).

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

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

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

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

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

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

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

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

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

<sup>111</sup> Vives, *Disc. corr.* 7.1 (VOO 6: 227; Vigliano 2013: 256): “*ne qui uelint esse mali*”; see note 50.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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