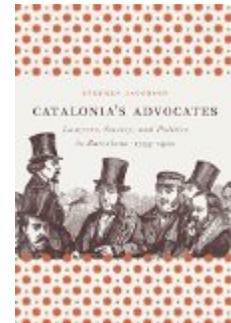


Stephen Jacobson. *Catalonia's Advocates: Lawyers, Society, and Politics in Barcelona, 1759-1900*. Chapel Hill: University of North Carolina Press, 2009. xvi + 336 pp. ISBN 978-0-8078-3297-4.

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Published on H-Urban (June, 2010)

Commissioned by Alexander Vari



## Law and Nation: The Rise of the *Juristes* Class and Legal Nationalism in Catalonia

The expansion of industrialization throughout modern Europe led to the collapse of several professions, from the local doctor to the urban artisan and entire peasant communities. But one profession stood to gain most from the modernist ordeal, reaping the rewards of new sweeping changes. As the expansion of state bureaucracy and capitalist accumulation was accompanied by the proliferation of litigations, legal professions became increasingly influential in local and state-level politics. The lawyers' weight was noticeably felt in those countries, like France and Germany, where nationalism expanded in tandem with state centralization. Within the "professional classes" (often named as the "intelligentsia"), lawyers, barristers, solicitors and other codifiers played a pivotal role in the formation of several nationalist movements throughout Europe, both in support of state centralization and in opposition to it.

Lawyers and constitutionalists played an even more central role in the formation of Catalan nationalism. Here, the abolition of regional institutions ensuing after the War of the Spanish Succession (1701-14) failed to eradicate the primacy of the *dret català* (Catalan law) dating back to the seventh century. After a period of decline, its autonomy within the kingdom of Spain was brought to an end by Philip V (r. 1700-46): a royal decree (*Nueva Planta*, 1716) banned most Catalan institutions, laws, and customs, including the language, and imposed a uniform centralized administration. Although lawyers had reached their professional nadir under absolutism,

Philip V's overhaul could not eliminate overnight the vast baggage of expertise accumulated by Catalan *juristes* during centuries of law-making and institution-building.

Their central role in modern Catalan politics has been assessed for the first time in English by Stephen Jacobson in his *Catalonia's Advocates: Lawyers, Society, and Politics in Barcelona, 1759-1900*. The book clearly and compellingly links the development of Catalan nationalism to the region's legal traditions. Its main thesis is that lawyers were the main contributors to the rise of Catalan nationalism. Among various possible factors, professional "overcrowding" and the "excess of educated men" (p. 246) led many lawyers to enter politics as an alternative profession. This phenomenon is widely known in the nationalism literature as the "blocked elite mobility" thesis, which sees the obstruction of social mobility as the key cause in the politicization of a frustrated intelligentsia.[1] This is in turn reflected in the peculiarity of the Catalan case: "The single characteristic that distinguishes the history of Barcelona lawyers from others ... is their nationalism. Nowhere did lawyers defend a 'native' body of private law from uniform codification and then launch a political movement in its wake" (pp. 245-246).

Theories of nationalism can focus either on the role of institutions, most notably the state, or more emotional aspects—although no serious scholar can legitimately exclude the one at the expense of the other. A

persisting and timeworn debate pits “instrumentalists,” who focus on the elites’ exploitation of ethnicity to foster their own self-interests, against “primordialists,” who focus on the “spontaneous” generation of mobilized identities.[2] Jacobson adopts a coherent instrumentalist position, noting that “nascent expressions of cultural nationalism must be carried forth by interested groups who have something to gain by it, and who possess the motivation, the access to resources, the prestige, and the skills to vie for control—or to demand a reorganization—of the state.... Catalanism was, in many respects, a corporatist initiative, led by lawyers and like-minded professionals who converted a literary movement into a political one. Having done so, they dragged the rest of the middle classes in their wake” (p. 238). The passage is a familiar one among students of nationalism: it is the classical sequence from cultural nationalism (led by poets, folklorists, and literati), by way of the intelligentsia (lawyers, doctors, teachers, priests, etc.), into a fully-fledged political nationalism, through the mobilization of the middle classes.[3]

But Jacobson’s book adopts an entirely law-centered perspective on the rise of Catalan nationalism: the effort to defend and uphold Catalan law appears as the key variable in the foundation of Catalan nationalism (p. 197). The crucial event was the attempted imposition of the Spanish civil code (*Código Civil de España*, 1889), which prompted a vast upheaval in which lawyers turned to populist politics and succeeded in shaping a long-lasting alliance with poets and literati. They were thus able to articulate a broadly popular call for national self-defense, whose appealing message was notably devoid of legal jargon.

Why this preponderance of lawyers among nationalist leaders? One obvious reason is that in Catalonia, like in the Basque provinces, pre-existing legal traditions had not been fully obliterated by state centralization.[4] In the important Basque parallel, which is not addressed in the book, the legacy of the *fueros* (local charters, privileges, and rights), unilaterally abrogated in 1876 by the central government, set the basis for the expansion of foralism (*fuerosismo*), an ideology associated with the defense of a separate body of public law—as compared with the Catalan primacy of private law. While the key Catalan institutions of self-rule were abolished in 1716, the Basque provinces had negotiated and maintained many of their local laws and customary privileges. They were among the last regions of Spain to keep local statutes under which each province kept a separate administration and, in particular the Seigniorship (*Señorio*) of Vizcaya func-

tioned as a state within the Spanish state.[5] Enamored with Basque foralism, the Catalan journalist Joan Mañé i Flaquer (1823-1901) wrote *La paz y los fueros* (1876) and *El oasis: viaje al país de los fueros (Provincias Vascongadas y Navarra)* (1876-80), in which he praised the Basque and Navarrese tradition of legal autonomy.[6] These had a discrete influence on early visions of Catalan nationhood. Yet, none of these is mentioned in the book.

Although Catalonia may be unique, as Jacobson argues, some comparisons are mandatory. Why is the role of lawyers more central to some nationalisms than to others? In the Scottish case, “lawyers largely regulated themselves and preserved their different rules of procedure and legal reasoning even as the substance and the functional activity of Scottish law converged with England. The result was (that) ... Scottish lawyers manned Scottish courts, Scottish universities taught Scots,” and so on.[7]

Other stateless nations had largely diverging experiences. For instance, in Sardinia the informal maintenance of regional local civil code did not result in a peculiar prevalence of the legal profession. The *codice barbaricino* (Barbagia’s code) is a behavioral code based on unwritten social rules common to a few provinces in central Sardinia.[8] The code remained largely rural, tied to a pastoral economy and rarely permeated urban life, except perhaps in the provincial capital of Nuoro.[9] The lack of a formally codified set of norms learned, taught, and developed in a unifying urban center made it impossible to establish indigenous autonomous legal institutions: Sardinia’s major urban center, Cagliari (Casteddu in Sardinian), is largely Italianized after decades of assimilation and remains incapable of exerting its authority beyond its limited hinterland. Moreover, the latter’s lack of formal institutionalization has transformed the code into an unwritten basis for organized crime, often identified as *banditismo* (Sardinian banditry). In other words, legal professions played a minimal role in areas poor or deprived of a written tradition related to a threatened and fragmented minority language.[10]

Institutions within modern nation states are usually centralized within the capital city. However, the role of Barcelona as Catalonia’s *cap i casal* (“head and home,” a title shared by València within its region) entailed a discontinuous retention of some stable institutions embodied in specific buildings (with the *Palau de la Generalitat* being probably the most stable, while the *Palau del Parlament*’s destination shifted considerably). The historical conflict with Madrid meant that formal institutions of lo-

cal nation-building had to be vacated during the zenith of homogenizing nationalism, broadly from the French centralization reform under the Third Republic to the end of World War Two.

One encounters occasionally some questionable assertions, such as: “the more lawyers there are the better the cause of justice will be served.” But that does not mean that the relationship between law and nationalism is an innocent one. In fact a few international criminals, like Slobodan Milošević, were trained as lawyers—while one could add that his archrival Vojislav Koštunica was also a (constitutional) lawyer.[11] In Catalonia, the association between law and nationalism produced a kind of inner professional patriotism or “legal nationalism,” which identified the legal profession as lying at the core of national identity. Hence, the traditional legal code was not only seen as the best available one, but also as the most suitable to the modern age. This self-centered conservatism was shared by other legal traditions: “Just as London barristers agreed that the English common law was the best of all legal systems, and French lawyers grew fond of the French civil code and its volumes of commentary, Barcelona lawyers were convinced that the Catalan civil code was well suited for the industrial age,” each bar thus championing “the juridical tradition in which its members had been indoctrinated” (p. 135). Jacobson rightly stresses how the salience of regional law was part of a general Western process—and increasingly non-Western. Arab political nationalism is similarly related to issues of legal nationalism through the central importance accorded to Sharia law. The rise of a powerful and unchallengeable profession within an urban context is analyzed with much historical details and an often excessive attention to minutiae.

Beyond Jacobson’s great mastery of his subject, the book lacks both a comparative dimension and a more developed critical edge. One would have expected some comparative clues as to the lawyers’ role in sub-state nation-building, as opposed to those operating within an official state structure. But some facets of legal history are presented as self-explanatory, without an appropriate narrative on the broader regional history. Therefore the relationship between lawyers and Catalan nationalism appears sometimes to be decontextualized. Moreover, the names of many institutions are rendered in English only, with no mention of the original names, occasionally giving rise to confusion, like with *Memorial de Greuges* (1885), indicated as “Outline of Grievance” (pp. 201, 225, 231), and the *Bases de Manresa* (1892), indicated as Manresa “Principles” (pp. 203, 236), while the connection be-

tween them and the subsequent autonomy statutes is not stated. Despite these perhaps unavoidable shortcomings the book charts new terrain and offer a new perspective on the relationship between nationalism and the law.

#### Notes

[1]. See J. J. Cormier, “Blocked Mobility and the Rise of Cultural Nationalism: A Reassessment,” *International Journal of Politics, Culture, and Society*, 16 (2003): 525-549.

[2]. See A. D. Smith, *Ethno-symbolism and Nationalism: A Cultural Approach* (London: Routledge, 2009).

[3]. The theory has been comparatively developed in M. Hroch, *Social Preconditions of National Revival in Europe: A Comparative Analysis of the Social Composition of Patriotic Groups Among the Smaller European Nations* (Cambridge: Cambridge University Press, 1985).

[4]. See D. Conversi, *The Basques, the Catalans and Spain: Alternative Routes to Nationalist Mobilization* (London: Hurst & Co., and Reno: University of Nevada Press, 1997).

[5]. See J. Agirreazkuenaga, *Vizcaya en el siglo XIX (1814-1876). Las finanzas públicas de un estado emergente* (Lejona, Vizcaya: Servicio Editorial, Universidad del País Vasco = Argitarapen Zerbitzua, Euskal Herriko Unibertsitatea, 1987).

[6]. J. Mañé y Flaquer, *El oasis : viaje al país de los fueros* (Bilbao: Amigos del Libro Vasco, 1985), and *La paz y los fueros* (Barcelona: Imprenta del Diario de Barcelona, 1876).

[7]. S. L. Greer, *Nationalism and Self-Government: The Politics of Autonomy in Scotland and Catalonia* (Albany: State University of New York Press, 2008), 154.

[8]. A. Pigliaru, *Il codice della vendetta barbaricina* (Nuoro: Il maestrale, 2006); P. Sirigu, *Il codice barbaricino* (Cagliari: La Riflessione -Davide Zedda Editore, 2007).

[9]. C. Zene, “S’imbiatu—Gift and Community in Central Sardinia,” *Culture and Religion: An Interdisciplinary Journal*, 8 (2007): 291-312.

[10]. Barbagia is amongst the less densely populated areas in Europe and its standardized dialect of Sardinian, Logudorese, is scarcely spoken in the larger towns.

[11]. S. P. Ramet, *Thinking about Yugoslavia: Scholarly Debates about the Yugoslav Breakup and the Wars in Bosnia and Kosovo* (Cambridge: Cambridge University Press, 2005), 268.

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**Citation:** Daniele Conversi. Review of Jacobson, Stephen, *Catalonia's Advocates: Lawyers, Society, and Politics in Barcelona, 1759-1900*. H-Urban, H-Net Reviews. June, 2010.

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