Melchor Cano and the conundrum of historical scholarship: Probability and criticism in the sixteenth century

Giuliano Mori

Abstract: This article discusses the role played by the rhetorical-judicial notion of verisimilitude in the sixteenth-century rise of historical criticism. Embracing a dialectical conception of historical facts as something that needed to be extremely probable rather than logically necessary, early modern authors became increasingly concerned with the development of critical tools of verification. Borrowed from the medieval judicial tradition – influenced in turn by classical rhetoric and dialectics – these tools aimed at assessing historical sources and accounts based on their inherent degree of verisimilitude. The judicial background of these tools of assessment explains the rise of historical criticism in environments that were influenced by the innovative legal and philological tradition of the *mos gallicus* (e.g., François Baudouin, Jean Bodin). Yet, at the same time, it also explains the emergence of similar critical notions among authors who independently integrated humanist, late scholastic, and canonistic interests. This was the case, for instance, with Melchor Cano (d. 1560), whose *De locis theologicis* predate both Baudoin's and Bodin's works, providing one of the earliest examples of a fully developed method of historical criticism.

1. *Humanism and the rise of modern historical scholarship: The strange case of Melchor Cano*

Upon tracing the origins of modern historical scholarship, Donald R. Kelley (1970) passingly remarked that "in various medieval legal traditions there were ideas and techniques of vital importance for historical scholarship" (10). In spite of this crucial caveat, modern historical criticism has been generally seen as resulting above all from the methodological innovations introduced by Quattrocento humanists. Classical and medieval jurisprudence – it is often assumed – merely provided the subject matter for pioneering works such as those of François Baudouin and Jean Bodin, whose critical method was nevertheless markedly humanist in character. In fact, by embracing humanist philology, Baudouin, Bodin, and other adherents of the *mos gallicus* sought to reject the exegetical tradition developed by medieval jurisprudents and followed in the sixteenth century by exponents of the *mos italicus* or neo-Bartolism.[1]

[1] For a few examples and variations of this scholarly view, see Cotroneo (1971); J.H. Franklin

philinq X, 2-2022, pp. 159-178
ISSN (print) 2281-8618-ETS doi: 10.4454/philinq.v10i2.426

Legal historians have rightly advanced reservations about the perceived polarity between *mos italicus* and *mos gallicus*, stressing that the two schools were not irreconcilable.[2] Yet, the general narrative concerning the fifteenth-century rise of critical legal scholarship in opposition to earlier, scholastic methods of legal interpretation remains mostly unchallenged, especially among scholars in historiography and philosophy.

According to this view, Guillaume Budé played a special role in paving the way for modern historical criticism. Inspired by the philological genius of Lorenzo Valla and Angelo Poliziano, in his *Adnotationes in Pandectarum libros* Budé was among the first to portray medieval jurisprudence as a misinterpretation of Roman law, occasioned by a fatal combination of scholastic methodologies and philological carelessness. Andrea Alciato soon followed, along with his disciple Baudouin, whose *Institutio historiae universae* (1561) was widely hailed as a manifesto of modern historical scholarship. Five years later, in 1566, Bodin's *Methodus ad facilem historiarum cognitionem* appeared in print. As Huppert (1970) writes, by applying the philological methods of the *mos gallicus* to all historical problems, Baudouin and Bodin erected a scientific system on the foundation of historical jurisprudence (59-60).

This widely accepted narrative is in many ways correct; yet we should not mistake it for an exhaustive explanation of the genealogy of modern historical criticism. The praise ascribed to Baudouin, Bodin and other French scholars such as François Hotman, Étienne Pasquier, and Pierre Pithou is well deserved but theirs was not the only road to critical historiography. The intellectual experience of the Spanish scholastic theologian and inquisitor Melchor Cano offers a powerful antidote to this misconception.

A Dominican friar, famed inquisitor, professor of theology, and – momentarily – Bishop of the Canary Islands, Cano is certainly quite unlike the typical exponent of the *mos gallicus*. Rather, Cano's biography is an example of the most distinguished kind of academic and political career that could be sought within the sixteenth-century Dominican order. Having studied under Francisco de Vitoria in Salamanca, in 1531 Cano was allowed to complete his education at the prestigious Colegio de San Gregorio in Valladolid. There, he began his academic career succeeding his former preceptor as professor of theology in 1536. In 1543, Cano moved to the Complutense University in Alcalá, where he held the first chair in Thomist theology. Finally, having Vitoria died in the summer of 1546, Cano – his most illustrious disciple – was chosen to take his place. Such was Cano's fame as a theologian that in 1551 Charles V chose him as the

(1963); Huppert (1970); Grafton (1991; 2007); Kelley (1964; 1970).

[2] See for instance Maclean (1992).

Emperor's envoy to the Council of Trent, whence Cano returned one year later (cf. Belda Plans 2006: xxxiv-xxxviii; Di Liso 1995: 131-34; Hogenmüller 2016).

During his appointment at the Complutense, Cano started working on his *opus magnum*, the *Loci theologici*, which remained unfinished at his death and was published posthumously in 1563 (cf. Belda Plans 2006: lxx-lxxx). The treatise intended to provide theologians with an array of *loci* functioning as sources of belief or repositories of useful arguments in defense of the Catholic faith against its opponents, Protestants scholars first of all. More specifically, theologians could rely upon ten *loci* offering probative arguments of varying degrees of probability: the Holy Scriptures, the Apostolic tradition, the universal Church, the Councils, the Roman Church, ancient saints and Fathers, scholastic theologians, natural reason, the works of philosophers, and – lastly – human history (Cano 1563: 4-5)

2. *A Scale of Probability*

Cano's apologetic aims were clearly different from those of the French jurists. Notwithstanding, Cano's nuanced conception of argumentative probability (and "probativity") produced a demand for critical discernment that extended to all of Cano's *loci*, including the most innovative one, that of human history (cf. Biondi 1973: xxiv-xxv; Schuessler 2019: 74-75).

As Cano repeatedly remarks, not all of the *loci* could yield equally probative arguments: some *loci* are "very firm", like the Holy Scriptures; others are less certain, like the works of philosophers. Furthermore, firm *loci* do not necessarily produce firm arguments, while questionable *loci* can, under certain circumstances, yield utterly certain arguments (1563: 447). Therefore, the greatest mistake theologians can make is to lack critical diligence, thus failing to correctly assess the degree of probability of their arguments, ultimately taking dubious sources for certain and vice versa (297, 384, 447). In order to avoid this risk, Cano insists on the need to establish a set of criteria or "normae" (436) that theologians could use for the evaluation of topical probability (cf. Schuessler 2019: 75-76).

Probability thus emerges as Cano's core concern. Along with the cognate concepts of credibility, verisimilitude, and plausibility, the notion of *probabilitas* is mentioned no less than 216 times in the *Loci*. Indeed, Cano's entire treatise can be read as an attempt to devise a probative organon where the *loci* are critically discussed and compared with one another, being ultimately ordered along a scale of generally decreasing probability.

First in order come the *loci* of the Sacred Scriptures and the Apostolic tradition. These sources of revealed authority are ipso facto certain, even though

they cannot be accepted uncritically. Theologians must ascertain the canonicity of alleged Sacred and Apostolic writings in order to confirm the authentic character of the truths they contain. Sharing a long-standing doctrinal preoccupation, Cano expounds on the ways of discerning between pseudoepigraphic and canonical works. Quite typically, he combines traditional and innovative methods: the authority of the Church's pronouncements on canonicity, on the one hand, and the philological collation of Hebrew, Greek, and Latin witnesses, on the other (1563: 7, 21-24). Cano's interest in authenticity also concerns the third *locus*, namely the authority of the universal Church. Arguments drawn from this *locus* are certain, yet only insomuch as they are authentically universal. Individual opinions within the Church, instead, are merely probable or plausible.

Like the first three *loci*, the fourth is also grounded in authority, more precisely in the authority of the Councils of the Church. In this case, theologians must exert their critical spirit in distinguishing between various kinds of "sub-*loci*" bearing different degrees of probability. While the decisions of general Councils can be held as certain, merely probable arguments can be extrapolated from provincial Councils (175). Furthermore, general Councils too produce probable rather than certain decisions when these do not concern faith but – for instance – mores (188-189).

The fifth *locus*, the authority of the Roman Church, should in principle take the fourth place since it is altogether more certain than the Councils, which derive their infallibility from the approval of the pope (212). Yet, like the Councils, the Roman Church is not a source of invariably certain authority: since God does not constantly assist the pope, who can err in his personal believes, his private opinions and inner faith are merely probable. Nonetheless, the pope's statements are certain when – as we would say today – they are spoken *ex cathedra* (240).

With the sixth *locus* – that is, the authority of ancient saints and Fathers – Cano enters a dangerous territory. To counteract Protestant claims he needed to confirm the authority of the saints, yet he also had to find a way to avoid logical inconsistencies ensuing from the contradictions in their works. To this end, Cano resorts to one of the paramount tools of his comparative critical method, namely the principle of consensus or multiple corroboration. Just as, among celestial bodies, the sun, the moon, and the stars are not equally bright, so too do ecclesiastical writers enjoy different degrees of certainty (248). The authority of ancient saints and Fathers is certain when it concerns faith and reflects universal consensus, being equivalent to the authority of the universal Church. Isolated positions offer arguments that range from little to moderate probability (244-254). Finally, when they regard questions that do not concern faith, even opinions that are largely shared among ecclesiastical writers cannot be considered certain (245-249).

Scholastic authors, whose authority constitutes the seventh *locus*, generally afford less certainty than ancient saints and Fathers. Notwithstanding, most of their conclusions are highly probable, being rationally derived from certain sources of knowledge such as the Holy Scriptures, the Apostolic tradition, and the pronouncements of the Councils (266-267). Cano's defense of scholasticism reveals his conception of theology as a science founded upon human reason and aided by other rational disciplines, including philosophy and history. This stance is implied by the last three *loci* as well, starting with the *locus* of natural reason.[3]

Like all sciences – Cano holds, in keeping with Aristotle – the conclusions of theology are certain when they are based on syllogistic demonstrations, while they are merely probable when founded on enthymematic deductions. Yet, since some theological conclusions exceed the power of human reason and cannot be syllogistically demonstrated, the arguments theologians can draw from natural reason are probable for the most part and certain in isolated cases (298). By the same token, the rational conclusions of philosophers – which constitute the ninth *locus* – can furnish theologians with probable arguments. These are highly probable when based upon the authority of highly respected philosophers and, in accordance with the principle of consensus, essentially certain when based on universal philosophical agreement (308-309).

The critical means by which Cano assesses philosophical probability are also applicable to the field of human history, which constitutes the last and most innovative of Cano's *loci.* Arguments drawn from respected historians are highly probable and can ultimately engender moral certainty if they reflect universal historical consensus (327-328). That said, the works of historians are generally unfit to provide certainty (327). Showing his awareness of humanist philological criticism, Cano insists that one's skepticism must also involve historical accounts that appear highly authoritative such as those related by popes and sacred authors – for example, the account of Constantine's leprosy and his Donation, which had been disproved by Valla. The use of this kind of historical accounts by popes and ecclesiastical writers is not to be taken as a formal act of validation. Popes, like all theologians, need not have recourse to certain and undisputable arguments alone. In order to persuade rhetorically they may also

[3] Cano's rational conception of theology is revealed by his censure of Bartolomé de Carranza's *Comentarios sobre el catechismo cristiano*. Cano's criticized Carranza for embracing positions that reminded of the mystical movement of the Alumbrados. These positions were especially pernicious since they resonated with some of Luther's dismissive claims with regard to the little importance of natural reason as opposed to mystical illumination (Cano 1981: 241-44). A similar error was imputed by Cano to the humanists, who downplayed the role of natural reason in theology, substituting it with grammar and philology, cf. Belda Plans (2006: cx).

rely upon merely plausible historical arguments without ipso facto vouchsafing for their certainty (324-25, 357-358).

In conclusion, it is certainly a mistake to accept historical accounts uncritically; however, one should not infer from the falsity of some historical accounts that human history is an altogether unreliable source of information (357). Yet, the assessment of historical arguments demands a special effort of theologians, who are required to observe specific critical precautions in addition to the criteria applied to the first nine *loci*. Cano's resulting discussion of the methods for assessing the reliability of historical sources constitutes a precocious yet fully mature example of critical historical scholarship, developed more or less independently from the cultural stances that characterized the milieu of authors such as Baudouin and Bodin.

3. *The sources of Cano's Loci*

In order to appreciate the nature and novelty of Cano's critical approach to history it is necessary to entertain the question of its intellectual sources. Most of those who attribute the rise of critical historical scholarship to the cultural innovations of the *mos gallicus* are bewildered by Cano's method of historical scrutiny. Yet, so ingrained and widespread are their historiographical assumptions that the perceived discrepancy between Cano's scholastic background and the cultural stances of French sixteenth-century jurisprudents has failed to modify the prevailing narrative about early modern historical scholarship. On the contrary, Cano's apparent oddity in the context of early modern historical criticism produced two main scholarly reactions that both concern the interpretation of Cano rather than the emergence of critical historiography. Following Girolamo Cotroneo and Julian H. Franklin, some scholars simply denied the actual critical import of the *Loci*, stressing Cano's debt towards the supposedly backward-looking Bartolian and scholastic tradition.[4] Others, instead, acknowledged the modernity of Cano's critical approach, which they explained by means of what I see as a significant overestimatin of the humanist influence over Cano.[5]

Granted, Cano was not positively averse to humanist culture, nor did he reject all of the humanist novelties. Not only had he been attracted to the *stu-*

[4] Cf. *infra*, sections 4-5.

[5] The depiction of Cano as a humanist in disguise is well established. As remarked by Belda Plans (2006: xcviii), in the late nineteenth century Marcelino Menéndez y Pelayo (2019) was already convinced that Cano ought to be considered a humanist in its own right, having nothing to share with Thomist and scholastic philosophers (1:244). This interpretation was eventually embraced by the majority of Cano scholars.

dia humanitatis in his youth but during his formative years he absorbed the lesson of Vitoria's philologically informed Scholasticism, which characterized the entire Salamantine environment.[6] Moreover, Cano was an attentive reader of humanist authors, from Nebrija and Vives to Valla, Lefèvre d'Étaples, and Erasmus. However, rather than embracing the spirit of their works, Cano used humanist notions and tools to pursue his own ends.[7] And, since such ends were often not aligned with the humanist cultural program, it is clear how misleading it may be to overestimate Cano's humanist propensities.

The most notable example of this misinterpretation concerns the widespread conviction that Cano's *Loci theologici* and its critical character were closely modeled upon Rudolf Agricola's *De inventione dialectica*.[8] Cano was obviously cognizant of Agricola's work and he shared with him an interest in developing a dialectical method for discoursing *probabiliter* about one's subject. Yet, Cano's conception of the nature and use of the *loci* is entirely different from Agricola's. Agricola's dialectical innovations are solidly grounded in classical topics. Like Aristotle and Themistius (whom he knew via Boethius), Agricola conceives of the *loci* in markedly ontological terms. The *loci* are, for him, the paramount tool of *inventio* (cf. 1539: 14-15). They function as general classes or "communia capita" of possible predicates that are for the most part essentially or accidentally inherent in the subject of one's discourse, from which they can thus be deduced or induced (1539: 36). They encompass arguments drawn from a subject's definition, genus, species, property, whole, parts, conjugates, adjacents, efficient cause, final cause, effect, place, and time.[9] Thanks to Agricola's *loci*, dialecticians can explore and discover (*invenire*) all the characteristics of their subject, without necessarily resorting to external sources of knowledge. Due to this emphasis on the power of *inventio* inherent in his dialectical method, Agricola attaches relatively little importance to markedly 'nontechnical' (*inartificiales*) arguments that cannot be derived from within the dialectical system. Nontechnical or inartificial arguments were crucial, instead, for less ontological and more judicial kinds of topical formulations. Such was the case, for instance, with Cicero and Quintilian, who respectively defined nontechnical arguments

[6] Cf. Belda Plans (2006: xciv-xcv); Di Liso (1995: 122-31); Muñoz Delgado (1978: 238, 248-50); Olivari (2001: 152, 170-71).

[7] An example of Cano's use of humanist texts is offered by his polemical epistolary exchange with Juan Ginés de Sepúlveda (1730: 21-39). Cf. Biondi (1973: xiii); Valverde Abril (2006: 313-14).

[8] This view has been advanced by virtually all of the major scholars of both Cano and Agricola, cf. *inter alia*: Belda Plans (2006: lxix, cxxxiii); Di Liso (1995: 139); Muñoz Delgado (1978: 214, 254-55); Ong (1958: 93-94).

[9] For an analysis of Agricola's dialectic, cf. in particular: Mack (1993: 117-256; 2011: 56-76); Ong (1958: 92-130); and Vasoli (2007: 225-73).

as those that derive "ex auctoritate" (Cic. *Top.* 4.24) or "extra dicendi rationem" (Quint. *Inst.* 5.1) – for example, legal judgments, hearsay evidence, evidence from torture, written evidence, oaths, and witnesses (Quint. *Inst.* 5.1).[10]

Clearly, Cano's ten theological *loci* differ from Agricola's in both substance and purpose. In terms of classical topics, all of Cano's *loci* are nontechnical or inartificial since they cannot be induced or deduced from the subject of one's discourse, that is the Catholic doctrine. Agricola's interest in dialectical *inventio* has no place in Cano's apologetics, whose probative arguments are drawn from sources of authority that are entirely external to the dialectical system (the Holy Scriptures, the Councils, natural reason, human history, etc.). Cano's *loci* serve a taxonomical and mnemonic purpose: they help theologians organize in an orderly and rhetorically effective fashion the probative arguments that one must have previously collected from the "nontechnical" fields of knowledge discussed in Cano's treatise (cf. Cano 1563: 448-450; Biondi 1973: xv-xvi).

By duly distinguishing Cano's *loci* from the tradition of humanist dialectic, one can better understand his intellectual project, which mostly belonged to the milieu of scholastic philosophy and medieval jurisprudence – precisely the two traditions that sixteenth-century champions of the *mos gallicus* sought to reject. In fact, the Thomist idea behind the *loci* was cited by Cano himself, who saw his work as an attempt to expound on Aquinas' cursory remarks regarding the "loci ab auctoritate" from which theologians could draw arguments for discussing Christian doctrine *probabiliter* or *ex necessitate* (*ST* I, q1, a8).[11] Aquinas' observations opened the first part of the *Summa*, which constituted the object of Cano's course of 1548-49, in Salamanca.[12] Although the surviving student manuscript of Cano's course is not particularly helpful on this point (cf. BAV, Ott.lat.286, fols. 100v-112v), it is probable that Cano should have commented

[10] The arguments considered "nontechnical" by Quintilian and Cicero are subsumed by Agricola under a single *locus* – that of *pronunciata* (1539: 172-175). Agricola's categorization of many *loci* as "external" (e.g., *locus*, *tempus*, *nomen rei*, *connexa*, *contingentia*, *comparata*, *similia*) should not lead us to overestimate the role of nontechnical arguments in his system. It is evident that, albeit considered external by Agricola, *loci* such as *tempus*, *nomen rei,* etc. can still be considered technical, insomuch as – at variance with markedly nontechnical *loci* – they can be inferred from one's subject, although they are less inherently connected to it than "internal" *loci* such as *definitio, genus, species*, etc.

[11] "Hoc autem tempore tantum nobis declarandum fuit cur Divus Thomas diligentissimus absolutissimusque theologus hunc de locis tractatum dereliquerit, si tam est quam nos dicimus theologo necessarius. Et quidem Divus Thomas (in I parte, quaestione 1, articulo 8, ad secundum), restricte breviterque, ut solet, Theologiae locos indicavit, non omnes sed plerosque. Quin etiam, ut homo minime ingratus illi me dedam, cui me tantopere debeo, et huius officii servitutem adstringam testimonio sempiterno, Divus Thomas mihi et auctor et magister fuit huius operis componendi" (Cano 1563: 392).

[12] Cf. Beltrán de Heredia (1933: 183-185); Di Liso (1995: 133-34); Muñoz Delgado (1978: 188-89). These scholars have also suggested that Cano may have drawn further inspiration from *ST* II.2, q1, which he taught in 1544, at the exact time when he started working on the *Loci theologici.*

on Aquinas' passage along the lines of the treatise he was then in the process of writing. In doing so, he had been preceded by Vitoria, who had taught the first part of the *Summa* in 1539-40. With regard to the first article of the *Summa*, Vitoria insisted that theologians can rely upon some "loca communia argumentandi in theologia", namely the Holy Scriptures, the universal Church, the general Councils of the Church, the provincial Councils, the authority of the pope, the consensus of scholastic theologians, natural reason, and the authority of philosophers (cf. Langella 2007: 76-77).

4. *The judicial inspiration of Cano's critical method*

The precedent of Vitoria does not diminish the novelty of Cano's approach, which concerns in particular the inclusion of history among the theological *loci* and the connection established between the topical tradition and the problem of source criticism. According to Cano, one of the theologians' tasks is to develop a critical method for the analysis of historical works, learning to discriminate (*internoscere*) between authoritative (*probabilis ac fide dignus*) and untrustworthy historians (1563: 321-22).

To devise this method and, more generally, the rules for assessing the probability of different topical arguments, Cano sought guidance in the legal tradition, which in turn reflected some of the typical concerns of medieval scholastic probabilism.[13] Cano's choice was rather natural, due to both personal and intellectual reasons. Not only was Cano familiar with the jurisprudential tradition of the School of Salamanca but he had also earned the reputation of being an extraordinary inquisitor – a veritable hound (*canis*) that could pick up the slightest scent of heresy, he would remark in punning allusion to his name (1563: 442; cf. also: Bataillon 1966: 702-3; Olivari 2001: 175).

Yet, even more important than Cano's personal experience was the substantial analogy between the critical demands of the *Loci theologici* and the epistemological concerns that informed medieval and Renaissance jurisprudence. Concentrating in the hands of the inquisitor the functions of both the judge and the prosecutor, the inquisitorial paradigm placed extraordinary emphasis on the epistemological task of the inquisitor, who was required to reach virtual certainty about crimes whose proof, in most cases, depended on merely

[13] Scholastic philosophers such as John of Salisbury, Thomas Aquinas, and Henry of Ghent elaborated critical notions that allowed them to choose between opinions that presented different degrees of probability, cf. Giuliani (1961: 148-49); Schuessler (2019: 185). In the fifteenth and sixteenth centuries, lists of philosophical and judicial criteria for the assessment of doxastic probability were formalized by authors including Konrad Summenhart, John Major, and Martín de Azpilcueta, cf. Schuessler (2019: 185-93, 214-15).

probable evidence. To this end, medieval and Renaissance judges needed to rely upon a dependable method for evaluating fragmentary and dubious pieces of evidence, assessing and comparing their degree of probability so as to ultimately determine their weight in the process of reaching judicial certainty (*fides*) about suspected crimes.[14]

A growing attention for issues related to the assessment of probability characterized late medieval discussions about circumstantial evidence. From the thirteenth century onwards, jurists including Azo of Bologna, Guillaume Durand, Alberto Gandino, Thomas de Piperata, Baldo de Ubaldis, and Bartolus de Saxoferrato developed a highly sophisticated system whose aim was to distribute different kinds of evidence upon a formalized scale of probability. In Gandino's words: "there are many kinds of presumptions… some are accidental (*temeraria*) and of little weight, others are probable and distinct; others still are called violent (*violenta*)" (1560: 53).[15]

Furthest from certainty was "accidental" or "fallible" evidence (*indicia temeraria* or *fallacia*), followed by remote *indicia*, which were in turn superseded by probable and sufficient proofs. The latter could be considered "half-proofs" (*provae semiplenae*) since they sufficed the judge to begin an inquisition. More persuasive than *provae semiplenae* were violent (*indicia violenta* or *vehementes*) proofs of the kind that was classically illustrated by Thomas de Piperata: in the case of a homicide, someone pale, holding a bloody sword, is seen leaving a room with only one entrance, where a body is found (1563: fol. 13r). These violent proofs – most jurists believed – paralleled necessity in the degree of credence they entailed. It is clear, therefore, that the judicial scale of evidential probability run parallel to another scale that measured the conviction of the judge, which ranged from the lowest degree of *dubitatio* to the highest degree of *credulitas*, through the intermediate stages of *suspicio* and *opinio*.[16]

The judicial discussion of circumstantial evidence informed not only the way Cano conceived and organized his ten *loci*, but also some of the tools he developed in order to assess the probative weight of specific claims. Let us take, for instance, Cano's celebrated criteria for assessing historiographical trustworthiness.

The first rule theologians must follow involves the reputation (*fama*) of historians as faithful reporters of witnessed events. The reliability of historical ac-

[14] With regard to the crucial role of probable knowledge in medieval jurisprudence, cf. *inter alia*: Alessi Palazzolo (1979: 3-98); Cavallar and Kirshner (2020: 253-396); Franklin J. (2001: 12-63); Giuliani (1961: 115-205); Rosoni (1995); Sbriccoli (1968: chap. 4); Ullmann (1946); and Vallerani (2008).

[15] "Praesumptionibus autem multae sunt species… alia temeraria, et levis, alia probabilis et discreta, et alia dicitur violenta".

[16] Cf. for instance: Saxoferrato (1596: fol. 30v). Cf. also in this regard: Alessi Palazzolo (1979: 43-45); Bassani (2017: 174-79); Franklin J. (2001: 29-30); Rosoni (1995: 236-37); and Ullmann (1946: 85-86).

counts is directly proportional to their authors' honesty (*probitas*) and integrity (*integritas*). These virtues condense classical deontological requirements, including those of historical impartiality, frankness, and modesty. Accordingly, theologians should not automatically prefer Christian authors over pagan historians, since due to their partial agenda – Cano regretfully recognizes – Christian historians and hagiographers often displayed less honesty and integrity than many pagan authors (1563: 373, 376-77). Cano's second critical rule also concerns the reputation of historians, shifting the focus to their critical attitude as displayed in reporting events secondhand, which should be done without paying heed to rumors and unconfirmed sources. In Cano's words, in such cases, "those historians ought to be preferred, who combined a stern judgment with a discerning attitude, both in selecting and in examining [historical sources]" (377).[17] Finally, the third rule relies upon the authority of the Church as defined by the third, fourth, and fifth *locus*: historians that are declared to be reliable by the authority of the Church should so be considered (377), bearing in mind the abovementioned proviso about the rhetorical use of merely plausible historical arguments such as the Donation of Constantine.

These criteria have elicited different responses from Cano scholars. Praised by some for their critical spirit, others have discarded them as being founded upon merely probabilistic, subjective and thus "unscientific" notions such as that of one's reputation.[18] Yet, far from being subjective in character, Cano's methodical principles are "scientific" and critical precisely because of their probabilistic character or, better, because they are modeled after the scientific system of judicial assessment of probability, which included crucial elements such as the reputation of the witnesses and the *fama* of the crime.

With the shift from accusatorial to inquisitorial judicial paradigms, the *fama* of suspected crimes acquired a crucial function, personifying the accuser. It became the inquisitor's task both to give voice to the *fama* of a crime (in his capacities as prosecutor) and to critically evaluate the inherent plausibility of such *fama* (in his capacities as judge). What is more, inquisitors were also required to assess the reputation of witnesses in order to evaluate the reliability of their testimonies (cf. Cavallar and Kirshner 2020: 286-317; Vallerani 2008: 125-32). This process of evaluation was founded on the judicial notion of probability or verisimilitude, defined – in keeping with Cicero – as the attribute of the actions expected of a person in view of their individual character and social status (*Inv. rhet.*, 1.29; Cic. *Rhet. Her.*, 1.16).

[17] "Lex vero secunda in historiae iudicio sanciatur ut eos historicos reliquis anteferamus qui ingenii severitati quamdam prudentiam adiunxerunt et ad eligendum et ad iudicandum".

[18] Cf. for instance: Cotroneo (1971: 281-301).

In addition to the notion of *fama*, judicial criteria inspired other crucial features of Cano's critical methods such as the principle of consensus.[19] Cano considers consensus as the main factor in increasing the probability of topical arguments. This is true not only for the authority of the universal Church, but especially for less-than-certain arguments such as those extrapolated from the writings of ancient saints, philosophers, and historians. In such cases, Cano follows the well established judicial rule of multiple witness corroboration, which provided that uncertain testimonies should be considered highly probable or virtually necessary when corroborated by independent witnesses.[20] This is the case, for instance, with the many probable arguments drawn from the ancient saints that converge on proving that Peter founded the Church in Rome (Cano 1563: 235-236).

Cano's use of consensus calls into question another judicial notion. Since the adoption of written inquisitorial procedures as a legal standard, it became a requirement to base criminal sentences on proofs that needed to be "plenissimae", "indubitatae", "luce meridiana clariores", and "liquidissimae".[21] Cano shared this aspiration, seeking to provide defenders of the Faith with proofs "luce meridiana clariores" in order to refute heretics and other such enemies of the Church (1563: 435-436). Yet, both in the judicial and the apologetic context, the demand for certain proofs clashed with the inherently probable nature of most available evidence. In order to overcome this difficulty, medieval jurists devised a variety of methods whose common aim was to allow judges to reach necessary conclusions from merely probable premises. To this end, multiple probable arguments pointing to the same conclusion could be combined, thus increasing their overall probability, ultimately engendering the same measure of credence that was normally connected to an undoubted piece of evidence. For instance, two *provae semiplenae* could add up to a violent presumption, especially when corroborated by one or more adminicles (*adminicola*); a simple *adminiculum*, instead, did not have probative value per se, but could be considered as a remote *indicium*, when added to concurrent *adminicula*.[22]

Cano adapted the judicial practice of combining probabilities to the dialectical organon of the *Loci theologici*. In order to reach virtually certain conclusions, one could combine arguments drawn from the same *locus* but, most importantly, one could also combine probable arguments drawn from different

[19] The principle of consensus was also a crucial element in scholastic criteria for the assessment of probable opinions, cf. Schuessler (2019: 202-6, 217-38).

[20] On the judicial notion of multiple witness corroboration, cf. Alessi Palazzolo (1979: 12-13); Biondi (1973: xliv); Franklin J. (2001: 192-93); Shapiro (2003: 18-19).

[21] Cf. Alessi Palazzolo (1979: 5-7); Rosoni (1995: 70).

[22] Cf. Alessi Palazzolo (1979: 55-65); Rosoni (1995: 88, 143-44, 208, 251).

loci. For instance, Cano believes that even if the Sacred Scriptures are silent about the Roman bishops that immediately followed Peter, one can be certain of the unbroken tradition connecting the papacy to Peter by combining individually probable arguments drawn from ancient saints, human history, and natural reason (1563: 237). By the same token, he concludes that, unlike other Roman bishops, Peter never erred in his personal believes, as proven with virtual certainty by the combination of converging arguments drawn from the probable *loci* of ancient saints, scholastic theologians, and natural reason (238-39).

5. *Humanist tools and Cano's critique of the Antiquitates by Annius of Viterbo*

The critical principles illustrated by Cano have not been met with unreserved praise, being criticized for their allegedly quantitative rather than qualitative character (cf. Cotroneo 1971: 290-91; Franklin J.H. 1963: 110-11). Yet, it should be remarked, Cano's use of notions such as those of consensus and multiple witness corroboration is far from undiscerning: authorities are weighed, not counted. For instance, Cano demonstrates that consensus may be merely apparent if it does not originate from the convergence of independent witnesses but from the mechanical trasmission of probable opinions from one generation to the next. In such cases, when a probable opinion is reported secondhand, rather than increasing, its probability is diminished since – scholastic philosophers agreed – it becomes a merely probable probability (Cano 1563: 275-76, 329-30; cf. also: Schuessler 2019: 335-36).

These critical provisos, which originally belonged to the scholastic and judicial tradition, were perfected by Cano thanks to humanist tools.[23] Not only did Cano rely on philological considerations in order to clarify specific claims about the Holy Scriptures, Apostolic tradition, and ancient saints. Most importantly, he also used philology as an auxiliary tool in assessing the validity of consensus. In keeping with the principle we know as *eliminatio fontium descriptorum*, Cano recognized that claims that appear extremely widespread can often be reduced to the influence of one textual source. This critical notion informs Cano's discussion of the "double paternity" of Joseph, who was said to be the son of Jacob and Heli by Matthew (Mt. 1:16) and Luke (Lk. 3:23) respectively. Julius Africanus first solved the contradiction in suggesting that Jacob was Joseph's biological father, while Heli being his legal parent. Although this interpretation had been vouched by most ecclesiastical authors, consensus – Cano remarked – was merely apparent, since it derived from a single textual

[23] See for instance: Cano (1563: 331-32, 349).

source, namely Julius Africanus himself, who also admitted that his explanation was based upon mere hearsay and thus was markedly uncertain (1563: 322, 328-30; cf. also: Biondi 1973: xxv-xxvii).

The effectiveness of Cano's critical method is revealed by his treatment of Annius of Viterbo. The *Antiquitates*, published in 1498, marked the culmination of Annius' career as a forger. Thanks to a series of spurious annalistic fragments that he had allegedly discovered and edited, Annius advanced his highly idiosyncratic view of the history of the world. Most deceitfully, Annius included among his pseudo-fragments a bogus historiographical tract by a certain Persian priest Metasthenes, whose aim was to validate the kind of pseudo-annalistic texts published in the *Antiquitates.* According to Metasthenes, truth was not to be found in the ornate works of classical historians but in the raw data recorded by ancient priests, who "were once the notaries public (*notarii*) of the times and deeds" (Annius of Viterbo 1512: fol. 84v).[24] Metasthenes' rule was further qualified by another spurious text by the Greek Myrsilus, who established that one should trust above all the autochthonous annals of each ancient nation (fol. 53v) – precisely the kind of texts published in the *Antiquitates*.

In spite of the implausibility of his historical claims, Annius' grandiose "fiction of philology" (cf. Stephens 2004: S216-217) and his pose of antiquarian integrity misled many humanist authors, who were elated by the alleged discovery of precious classical fragments. Nevertheless, Annius' masquerade did not convince Cano, who penned one of the first and most influential censures of the *Antiquitates*. Metasthenes' rules – Cano remarked – were most detrimental, as proved by the fact that many a learned man kept prating (*hallucinari*) about them (1563: 361).

Annius rules offered Cano a negative example that served as inspiration in formulating a set of historiographical criteria aimed at defending the reliability of arguments drawn from human history against forgers such as Annius (Cano 1563: 325; cf. also: Biondi 1971: 50-51; 1973: xxxiii, xxxvii-xl; Cotroneo 1971: 293-94). To evaluate the reliability of historical accounts, Cano believes that one cannot rely upon mechanical and dogmatic rules such as Annius'. On the contrary, it is necessary to apply critical discernment to each individual case, combining assessment criteria that include the reputation of the examined historians, the philological plausibility of their accounts, and their degree of probability within the tradition independently validated by other witnesses and sources of knowledge.

Thanks to these criteria, Annius' forgeries were immediately exposed. A com-

[24] "Prima regula est ista: suscipiendi sunt absque repugnantia omnes qui publica et probata fide scripserunt. Et declarat quod sacerdotes olim erant publici notarii rerum gestarum et temporum".

parative analysis of surviving sources demonstrated that Metasthenes' rules hinged upon false premises concerning the archaic historiographical practices adopted by the Greeks and other Near Eastern peoples (Cano 1563: 360-362). Furthermore, by referring to the consensus of critically ascertained authors, Cano could show that Annius' pseudo-authorities were completely isolated and the archival documents they mentioned simply non-existent. Finally, a comparative philological analysis of the texts published in the *Antiquitates* revealed the spuriousness of authors such as pseudo-Berosus and pseudo-Philo, whose tracts clashed with surviving fragments attributed to the real Berosus and Philo (364-66).

Cano's condemnation of Annius is significant not only for its contribution to the history of early modern scholarship but also because it emblematizes the nature of Cano's criticism. Rather than owing its methodology to humanist innovations, Cano's criticism was grounded in scholastic and specifically judicial methodologies. These were perfected, however, through the adoption of humanist philological tools.

The skillful integration of different traditions guaranteed the success of Cano's critical approach. While many medieval authors had embraced probabilistic and critical assumptions not unlike Cano's, their assessment criteria in comparing probable opinions were hampered by the ignorance of philological notions that could help interpret the inherent characteristics of textual sources. By the same token, humanist philological tools per se were also insufficient to ensure the emergence of "modern" critical scholarship. In fact, the greatest critical feats were accomplished in the humanist milieu by authors, such as Valla and Poliziano, who combined critical acumen with a judicial and rhetorical method for comparing and assessing probabilities.[25]

6. *Conclusion: The multiple ways to modern historical scholarship*

Cano's critical method invites us to rethink some widespread assumptions about the rise of modern historical scholarship as the result of the humanist battle against the allegedly uncritical and authoritarian forces of scholasticism and Bartolism.

As a matter of fact, with the notable exception of the adoption of humanist philology, even in Baudouin's and Bodin's historiographical method, the most significant elements are hardly those that derive from the humanist theory of history, which was founded on "rediscovered" historiographical principles derived from Cicero, Lucian, Thucydides, Dionysius of Halicarnassus, and Varro. The need for historical impartiality, the conception of the historian's task as that of

[25] See in this regard my discussion of humanist criticism and judicial probability (2020).

seeking truth and truth alone, even the anti-rhetorical stance and the focus on the history of institutions, which were first adopted by Quattrocento antiquarians in opposition to the traditional current of humanist historiography – all these notions played a crucial role in revolutionizing fifteenth-century historiography but had become little more than trite topoi by the time they were rehearsed by Baudouin (1561: 33-34, 56-57, 206-8) and Bodin (2013: 88, 148, 160, 166, 182).[26]

Rather than resulting from a rejection of scholasticism and Bartolism, the critical strengths of the works produced in the environment of the *mos gallicus* were owed to a comparative approach that was not foreign to the medieval judicial tradition. For instance, in his *Institutio historiae universae*, Baudouin made an effort to distinguish the different degrees of probability that characterized diverse kinds of testimonies, ranging from highly reliable eye-witnesses and public documents to unreliable rumors via moderately reliable reported authorities (cf. Kelley 1970: 132; Shapiro 2003: 35-36). Bodin's *Methodus* was also inspired by markedly judicial procedures. Like Baudouin, Bodin placed great attention on the evaluation of testimonies and included among his assessment criteria traditional notions such as the reputation of witnesses, which he discussed with regard to Tacitus (2013: 192; cf. also: Melani 2006: 188).

Another example of the judicial background of Baudouin and Bodin's critical strengths is offered by their call to strike a balance between credulity and incredulity, as was required of inquisitors, who needed to assess probative elements so as to climb the scale of judicial conviction, reaching judicial certainty (Baudouin 1561: 49-52; Bodin 2013: 144). To this end, Baudouin and Bodin also insisted on the need to compare as many witnesses as possible, in the hope of reaching historical consensus. In this regard, their effort was in essence analogous to that of Cano, from whom they nonetheless differed in their universalistic aims. According to Bodin, by studying the history of all peoples and epochs, one could find a universal standard against which to comparatively assess the plausibility of all historical and legal claims (2013: 68-70, 102, 114, 154, 220, 388-90). One ought to embrace stances that seemed to cohere with the universal standards – for instance, many of Machiavelli's analyses – while rejecting as unreliable particular accounts that clashed with the consensus established by universal history – for instance Paolo Giovio's biographies (178, 388-90, 412-14). Similar critical intentions also underlay Baudouin's universalism, which was further qualified in line with Erasmus' irenicism (cf. Kelley 1964: 42-43; 1970: 128).

As these reflections suggest, there were many possible roads to modern his-

[26] Rather than resulting in a critical attitude, the adoption of humanist antiquarian stances might have been responsible for some of Baudouin's and Bodin's critical shortcomings, such as their acceptance of Annius' chronology: cf. Baudouin (1561: 77); Bodin (2013: 154, 555, 654-60, 688-90, 696).

torical criticism. All of them, however, required two distinct factors. First, a comparative methodology whose precedents could be found in scholastic and judicial probabilism. Secondly, an auxiliary set of technical tools introduced by fifteenth-century humanists and concerning the philological analysis of textual traditions in particular. These two components of the "modern" critical method were not uniquely available in one cultural milieu. On the contrary, as the history of modern historical scholarship demonstrates, they could be found both in the environment of the *mos gallicus* (which did not forsake the judicial comparative tradition, though wishing to revolutionize legal scholarship through humanist philology) and in more "traditional" or "conservative" contexts, as in the case of Cano (whose inquisitorial and scholastic background was open to at least some of the innovations introduced by humanist culture, despite being unwilling to embrace the humanist program on the whole).

Giuliano Mori
University of Milan
giuliano.mori@unimi.it

References

1. Manuscript sources

Vatican City, BAV, Ott.lat.286.

2. Primary sources

Aquinas, Thomas, 1948, *Summa theologiae*, ed. by Pietro Caramello, 5 vols, Marietti, Rome and Turin.

Agricola, Rodolphus, 1539, *De inventione dialectica*, Apud haeredes Simonis Vincentii, Lyon.

Annius of Viterbo, 1512, *Antiquitatum variarum volumina XVII*, Joannes Parvus et Iodocus Badius, Paris.

Baudouin, François, 1561, *De institutione historiae universae*, Apud Andream Wechelum, Paris.

Bodin, Jean, 2013, *Methodus ad facilem historiarum cognitionem*, ed. by Sara Miglietti, Edizioni della Normale, Pisa.

Cano, Melchor, 1563, *De locis theologicis*, Mathias Gastius, Salamanca.

—, 1981, "Qualificación hecha por los Maestros Cano y Cuevas del Catechismo (y de otros escritos) 1558-1559", in Ignacio J. Tellechea Idigoras, ed., *Fray Bartolomé de Carranza. Documentos históricos VI. Audiencias III (1563)*, Real Academia de la Historia, Madrid.

Cicero, Marcus Tullius, 1903, "Topica", in Marcus Tullius Cicero, *Rhetorica*, ed. by Augustus Samuel Wilkins, vol. 2, Clarendon Press, Oxford.

—, 1915, *Rhetorici libri duo qui vocantur de inventione*, ed. by Eduard Stroebel, Teubner, Leipzig.

[Cicero, Marcus Tullius], 1954, *Rhetorica ad Herennium*, ed. and trans. by Harry Caplan, Harvard University Press, Cambridge, MA.

Gandino, Alberto, 1560, "Tractatus de maleficiis", in *Tractatus diversi super maleficiis*, P. Hieronymus Lilius, Venice.

Ginés de Sepúlveda, Juan, 1730, "Joannis Genesii Sepulvedae epistolae duae ad Melchiorem Canum, et Cani ed eundem", in Juan Ginés de Sepúlveda, *Opera*, vol. 3, Ex typographia regia de la gazeta, Madrid.

Piperata, Tommaso da, 1563, "Tractatus de fama", in Giovanni Battista Ziletti, ed., *Tractatus criminales*, Aurelius Pincius, Venice.

Quintilianus, Marcus Fabius, 1970, *Institutionis oratoriae libri duodecim*, ed. by M. Winterbottom, 2 vols, Clarendon Press, Oxford.

Saxoferrato, Bartolus de, 1596, *Commentaria: In secundam Digesti veteris partem*, ed. by Iacobus Anellus De Bottis *et al.*, Apud Iuntas, Venice.

3. Studies

Alessi Palazzolo, Giorgia, 1979, *Prova legale e pena: La crisi del sistema tra evo medio e moderno*, Jovene, Naples.

Bassani, Alessandra, 2017, *Udire e provare: Il testimone de auditu alieno nel processo di diritto comune*, Giuffrè, Milan.

Bataillon, Marcel, 1966, *Erasmo y Espana: Estudios sobre la historia espiritual del siglo 16*, Fondo de cultura economica, México and Buenos Aires.

Belda Plans, Juan, 2006, "Introducción general histórico-teológica", in Melchor Cano, *De locis theologicis*, ed. by Juan Belda Plans, Biblioteca de autores cristianos, Madrid: xxxiii-cxli.

Beltrán de Heredia, V., 1933, "Melchor Cano en la Universidad de Salamanca", in *Ciencia tomista*, 48: 178–208.

Biondi, Albano, 1971, "Melchor Cano: La storia come *locus theologicus*", in *Bollettino della società di studi valdesi*, 92, 130: 43-53.

Cavallar, Osvaldo and Julius Kirshner, 2020, *Jurists and Jurisprudence in Medieval Italy: Texts and Contexts*, University of Toronto Press, Toronto.

—, 1973, "Introduzione: Melchiorre Cano e l'esperienza storico-filologica dell'Umanesimo", in Melchor Cano, *L'autorità della storia profana*, ed. by Albano Biondi, Giappichelli, Turin, vii-liv.

Cotroneo, Girolamo, 1971, *I trattatisti dell'"ars historica*", Giannini, Naples.

Di Liso, Saverio, 1995, "Melchor Cano e i *Loci theologici*", in Ada Lamacchia, ed., *La filosofia nel siglo de oro: Studi sul tardo rinascimento spagnolo*, Levante, Bari, 119-67.

Franklin, James, 2001, *The Science of Conjecture: Evidence and Probability before Pascal*, Johns Hopkins University Press, Baltimore.

Franklin, Julian H., 1963, *Jean Bodin and the Sixteenth-Century Revolution in the Methodology of Law and History*, Columbia University Press, New York.

Giuliani, Alessandro, 1961, *Il concetto di prova: Contributo alla logica giuridica*, Giuffrè, Milan.

Grafton, Anthony, 1991, *Defenders of the Text: The Traditions of Scholarship in an Age of Science, 1450-1800*, Harvard University Press, Cambridge, MA.

—, 2007, *What Was History? The Art of History in Early Modern Europe*, Cambridge University Press, Cambridge.

Hogenmüller, Boris, 2016, "Cano, Melchor", in Marco Sgarbi, ed., *Encyclopedia of Renaissance Philosophy*, Springer, Cham.

Huppert, George, 1970, *The Idea of Perfect History: Historical Erudition and Historical Philosophy in Renaissance France*, University of Illinois Press, Urbana, IL.

Kelley, Donald R., 1964, "Historia Integra: Francois Baudouin and His Conception of History", in *Journal of the History of Ideas*, 25, 1: 35-57.

—, 1970, *Foundations of Modern Historical Scholarship: Language, Law, and History in the French Renaissance*, Columbia University Press, New York.

Langella, Simona, 2007, "El comentario de Francisco de Vitoria a la I *quaestio* de la *Summa Theologiae* de Tomás de Aquino", in *Archivo Teológico Granadino*, 70: 55-83.

Mack, Peter, 1993, *Renaissance Argument: Valla and Agricola in the Traditions of Rhetoric and Dialectic*, Brill, Leiden.

—, 2011, *A History of Renaissance Rhetoric 1380-1620*, Oxford University Press, Oxford.

Maclean, Ian, 1992, *Interpretation and Meaning in the Renaissance: The Case of Law*, Cambridge, Cambridge University Press.

Melani, Igor, 2006, *Il tribunale della storia: Leggere la Methodus di Jean Bodin*, Olschki, Florence.

Menéndez y Pelayo, Marcelino, 2019, *La ciencia española*, ed. by Víctor Navarro Brotons *et al*., Fundación Ignacio Larramendi, Madrid.

Mori, Giuliano, 2020, "Truth, Verisimilitude and Criticism in Lorenzo Valla: Dialectics and Historiography", in *Quaestio*, 20: 417-38.

Muñoz Delgado, Vicente, 1978, "Lógica, ciencia y humanismo en la renovación teológica de Vitoria y Cano", in *Revista española de teología*, 38, 3: 205-71.

Olivari, Michele, 2001, "Le facce diverse di Melchor Cano", in Adriano Prosperi, ed., *Il piacere del testo: Saggi e studi per Albano Biondi*, Bulzoni, Rome, 149-76.

Ong, Walter J., 1958, *Ramus, Method, and the Decay of Dialogue: From the Art of Discourse to the Art of Reason*, Harvard University Press, Cambridge, MA.

Rosoni, Isabella, 1995, *Quae singula non prosunt collecta iuvant: La teoria della prova indiziaria nell'età medievale e moderna*, Giuffrè, Milan.

Sbriccoli, Mario, 1968, *L'interpretazione dello statuto: Contributo allo studio della funzione dei giuristi nell'età comunale*, Giuffrè, Milan.

Schuessler, Rudolf, 2019, *The Debate on Probable Opinions in the Scholastic Tradition*, Brill, Leiden.

Shapiro, Barbara J., 2003, *A Culture of Fact: England, 1550-1720*, Cornell University Press, Ithaca, NY.

Stephens, Walter E., 2004, "When Pope Noah Ruled the Etruscans: Annius of Viterbo and His Forged *Antiquities*", in *MLN*, 119, 1: S201-23.

Ullmann, Walter, 1946, "Medieval Principles of Evidence", in *Law Quarterly Review*, 62: 77-87.

Vallerani, Massimo, 2008, "Modelli di verità: Le prove nei processi inquisitori", in Claude Gauvard, ed., *L'enquête au Moyen Âge*, École francaise de Rome, Rome: 123-42.

Valverde Abril, Juan Jesús, 2006, "Teología y humanismo: La correspondencia entre Juan Ginés de Sepúlveda y Melchor Cano", in *Florentia Iliberritana*, 17: 291-335.

Vasoli, Cesare, 2007, *La dialettica e la retorica dell'Umanesimo: invenzione e metodo nella cultura del XV e XVI secolo*, La città del sole, Naples.