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Studi per il settantesimo compleanno di Mario Ascheri

IL CAMMINO DELLE IDEE DAL MEDIOEVO ALL'ANTICO REGIME

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The *chiaroscuro* of the Law

by Laurent Mayali

From Leonardo da Vinci and Raphael to Caravaggio and Rembrandt, its most famous proponents, the technique of the *chiaroscuro* brought an entirely new perspective to the portrayal of human actions in painting. The striking contrast between light and darkness captured the dynamic range of people's behaviors while revealing the intensity of their deeper passions. It was as if, in the eye of these artists, mankind bared its true nature in the taut interplay of light and shadow that delimited the visual borders of its daily life. While the artist's imagination met the public expectations with the representation of an artistic reality, the vibrant contrast that defined the respective area of light and shadow pointed to the more familiar conflict of good versus evil that governed human nature's timeless predicament.

At the same time, in literary circles, the same opposing forces shaped the debate on language's new requirements. It defined a linguistic style that was measured by the rhetorical categories of the ancient *ars dicendi* in its demand for clarity and exactness versus obscurity and vagueness. This long rhetorical tradition was infused with a renewed sense of intellectual discipline that reflected the recent promotion of a new social and political order. Demands for clarity of style versus obscurity of language defined true speech and rightful thinking. The literary *chiaroscuro* and its policing of language coincided with the rise of the absolutist State with its assertive claims to the control of the various forms of social discourse. As Delphine Denis perceptively observed, the distinction between obscurity and clarity was instrumental in establishing, in seventeenth century Western Europe, a public model of speech that expressed the ethical values of the new political order[1]. As in the paintings that had stirred the imagination of their viewers, the demand for clarity did not preclude the reference to obscurity. The esthetic model and the linguistic norm received their political validation from the bond connecting these opposing domains of expression. The stylistic *chiaroscuro* that resulted from this rhetorical model reflected a normative process that eventually governed forms of communication and validated the claims of true speech.

[1] D. Denis, *Approches de l'obscurité au siècle classique*, in *L'obscurité. Language et herméneutique sous l'Ancien Régime*, sous la direction de D. Denis, Louvain-la-Neuve 2007, pp. 23-38.

As surprising as it may sound, this normative function was more familiar to the artists and authors of the late medieval and early modern periods than to their present-day admirers[2]. The former were indeed familiarized with the legal concepts and jurisprudential debates that had shaped the boundaries of their social and religious environment for the past four centuries. With the birth of medieval jurisprudence in the first half of the twelfth century, both Roman and canon laws deeply influenced the cultural forms of representation[3]. They shaped political institutions and structured social practices in Christian society while merging faith with legal reason[4]. They also redefined the status of society's members as legal persons. But law's new cultural influence was perhaps nowhere more apparent than in its ability to function as a new form of communication and language in urban centers that experienced significant economic and social mutations. The new law's enduring success resided as much in developing this socio-linguistic function as in providing various assortments of legal techniques and procedures. The diffusion of this legal medium eventually lead to the creation of the *ius commune* that was perceived more as the cultural expression of a shared legal legacy than as a ready-made set of legal techniques. The language of the *ius commune* expressed the common belief in a legal order that structured the various manifestations of private and public life.

The significance of legal language as a system of political and social communication gradually increased with the centralization of power that characterized both the emergence of early modern states and the solidification of ecclesiastical institutions in the pontifical government of Christian society. This process of centralization highly valued the harmonization of various existing legal rules around some unifying principles. Justinian's compilations of Roman law provided the canonists with a useful model for the ordering of the textual space but Gratian's project resulted from a different perspective. As is well known, his *concordia discordantium canonum* conveyed the vision of a Christian society where norms of conduct not only affected people's public behavior but expressed also their more private beliefs. The «harmony from dissonance», observed by Stephan Kuttner in his subtle assessment of the medieval Church's ambition, resulted also in part from the intellectual process that aimed at substituting clarity for obscurity. It achieved it first, with the harmonization of ancient customs, recent statutory law and judicial decisions in accordance with the canonical principles that defined Christian norms and, second, with the classification of the diverse legal categories that increasingly charted people's social interactions. Mario Ascheri's work has shed new light on how this dynamic combination of stability and change governed the gradual transformation of political communi-

[2] See for instance P. Maffei, Tabula picta. *Pittura e scrittura nel pensiero dei glossatori*, Milano 1988.
[3] E. Kantorowicz, *The sovereignty of the artist. A note on legal maxims and Renaissance theories of Art*, in *De Artibus Opuscula. Essays in honor of Erwin Panofski*, New York 1961, pp. 267-279, reprinted in *Selected Studies*, New York 1965, pp. 352-365.
[4] E. Conte, S. Menzinger, *La* Summa trium librorum *di Rolando da Lucca (1195-1234). Fisco, politica, scientia iuris*, Rome 2012 (Ricerche dell'Istituto storico germanico, 8).

ties, their legal outcomes and the progressive mutation of feudal society into the more centralized structure of the early modern State. It is thus fitting to dedicate the following remarks to a scholar whose pioneering studies force us to rethink the role of law and legal institutions in medieval political culture.

The intellectual innovations that marked the end of the Middle Ages and gave birth to the Renaissance's intellectual change did not significantly alter the jurisprudential premises of the leading legal thought. To be sure, the Renaissance's ethos often deliberately presented itself in strong contrast with the culture and values of the medieval period. Yet, despite this manifest opposition and its most obvious cultural and political effects, the authority of legal norms and the nature of legal concepts were not profoundly challenged. The renewed historical sensibility combined with philological focus in assessing the content of ancient legal sources shed a different light on Roman and canon law[5]. But, like the distinctions between right and wrong, just and unjust, good and evil, the metaphorical dichotomy between light and darkness survived the intellectual tidal wave that redefined the Renaissance's interpretation of Law's ancient tradition. In the same way as the artists' treatment of the *chiaroscuro* during the sixteenth and seventeenth century, the medieval jurists' use of the contrast was another attempt, in Clifford Geertz's words, to imagine the reality[6]. Law's imagined reality was revealed in the interplay of darkness and light that eventually reinforced the authority of legal fiction as representation of truth (*fictio iuris / figura veritatis*). The jurisprudential construction of law's *chiaroscuro* was an indispensable building block of the medieval legal order. It opened new options to diversely consider law's preeminence and its role in the regulation of the social order.

Medieval legal sources rarely mentioned *obscuritas* as the unintended consequence of any legal statement. Its significance on the legal scene, however, was not ignored as jurists deplored this pervasive cause of confusion in various transactions and judgments. Roman law's compilations provided a first font of references in both the Digest and Codex's compilations. Obscure statements and ambiguous wording increased the risk of inconsistency and dissents in both public and private legal acts[7]. In this instance, an ambiguous statute, observed Accursius, was also an obscure one as the confusion was not induced by the multiple meanings of a word but resulted essentially from its overall obscurity[8]. It is worth noting that although the sources used a series of various adjectives such as dubious, ambiguous, uncertain, and obscure, the use of the concept of obscurity was more specific in its description of a fact-based occurrence. As such, it

[5] D. Maffei, *Gli inizi dell'umanesimo giuridico*, Milano 1964.
[6] C. Geertz, *The interpretation of cultures. Selected essays*, New York 1973, p. 4.
[7] Dig. 1.3.18: «In ambigua voce legis ea potius accipienda est significatio qua vitio caret».
[8] *Ad v.* ambigua: «id est obscura. Pone exemplum in verbum pervenire, ambiguo ut infra depetitione hereditatis l. virum. Sed quid differt haec a superiori lege benignius? Respondeo superior intelligitur cu interpretatio est necessaria propter obscuritatem non propter multiplicitatem: haec autem quando propter multiplicitatem est ambiguitas: ut quia verbum multum habet sensum. Vel ibi in toto hic in verbo».

was neither a fiction nor a conjecture, but a tangible reality that was an integral part of the law's mystery[9].

The adjective *obscurus* appeared more often in the canon law sources, as a distinct alternative to what was clear and to what was doubtful. The distinction between *obscurus* and *dubius* described two separate types of circumstances. While obscure declarations were considered as a factual outcome of law's inherent nature, dubious statements were viewed with more suspicion. A dubious statement pointed to the presumed untrustworthiness of its utterer. It posed a different kind of legal challenge that was not limited to the correct interpretation of ambiguous terms but implied also a rigorous evaluation of the suspicious individuals' intentions. Likewise obscurity was not equivalent to ambiguity. The former concerned the letter of the law while the latter resulted from the intent of its author[10]. This added distinction further reinforced the idea that obscurity was a more visible and concrete factor of law's inherent nature.

In canon law sources, obscurity retained initially a negative meaning that broadly described one of the hazards threatening the flawed human condition. As a synonym of darkness, it also suggested a more familiar connotation of the forces of evil. Out of the three mentions of "obscuritas" that can be found in Gratian's Decretum, only one described distinct legal circumstances[11]. Quoting Isidore's of Seville's definition of statutory law, among the various attributes required of a *lex,* Gratian listed clarity and warned against the deception encouraged by obscurity[12]. The Decretists were prompt to interpret this requirement as a denunciation of obscure legislative provisions. But they were well aware that the requirement for clear and intelligible legal provisions acknowledged the possibility of their obscurity. One aspect of law's nature was thus defined by the visible interplay of light and darkness that implicitly delimited the virtual norms[13]. The distinction *aut clarus aut obscurus* played a distinct role in both Roman and Canon law sources. In addressing the challenges created by the inherent diversity of legal language, medieval jurists attempted to provide acceptable interpretations of people's intentions and statements in both private and public spheres. In doing so, they did not simply construe obscurity as the opposite of clarity. But, to paraphrase M. Merleau Ponty, it also understood obscurity as clarity's other side[14].

[9] See E. Kantorowicz, *Mysteries of State: An Absolutist Concept and its Late Medieval Origins*, in «Harvard Theological Review», 48 (1955), reprinted in *Selected Studies* (*supra* note 3).
[10] Johannes Andreae, *In quinque decretalium libros novella commentaria*, Venice, apud Franciscum Franciscum, 1581, reprint Torino 1963, De constitutionibus, Quoniam, X. 1. 2.13, f. 20ra-rb: «Obscurum, quantum ad literam. Ambiguum, quantum ad mentem».
[11] D. 4. c. 2 and D. 37. c. 3, mentioning *obscuritas mentis* and *obscuritas sensus*.
[12] D. 4. c. 2: «Erit autem lex honesta, iusta, possibilis, secundum naturam, secundum consuetudinem patriae, loco temporique conueniens, necessaria, utilis, manifesta quoque, ne aliquid per obscuritatem inconueniens contineat, nullo priuato commodo, sed pro communi utilitate ciuium conscripta».
[13] Glossa ordinaria to the Decretum, D. 4. c. 2, *ad v.* captionem*:* «ne aliquis captiose possit eam interpretari vel etiam ne alicui loquens paretur per eam xxvii de viduis».
[14] M. Merleau-Ponty, *Le visible et l'invisible*, Paris 1964.

The perception of the symbiotic rapport between obscurity and clarity reflected also the jurists' awareness of people's variable behavior and changing expectations. Therefore obscurity in legal matters, stemmed from three different reasons that did not necessarily overlap: complex circumstances, the negligence of the jurists, and excessively late declarations. In other legal matters such as the interpretation of privileges, obscurity, observed Baldus, could result from a damaged document that had suffered from the passage of time and was no longer legible. Multiple interpretations and alterations made to the original record were also a source of confusion[15]. These distinctions suggest, that at least in the case of textual evidence, obscurity resulted from a double difficulty, both material and intellectual, that was caused by the failure to read the text and the inability to understand its meaning. These two factors defined the creative function of the jurist in revealing the meaning of the text. This artistic process, since law was also the art of the good and the equal, did not inevitably aimed at establishing the truth. By removing obscurity, it made the text more visible and intelligible. Therefore, obscurity, at least in the medieval legal system, did not always entail oblivion nor death. It helped define and address, distinct area's of human experience and actions that were not outside the usual realm of law since «nihil est in rebus humanis perfectum»[16]. Just as the technique of the *chiaroscuro* in the paintings of the Renaissance and the following century revealed a more complex picture of human passions, the use of obscurity's legal status made it possible for the medieval jurists to take into account the broader range of circumstances that governed human actions as they jeopardized the coherence of the legal order.

The twofold conception of obscurity produced diverse consequences. On one hand, obscure statements were denied any legal significance. They were simply considered as non-existent. Obscurity entailed nothingness. As observed by Hostiensis, quoting the glossa ordinaria on Gratian's Decretum[17], «quod enim obscure dicitur vel scribitur pro non dicto vel scripto habetur»[18]. The decretalists's misgivings were amplified by Gregory IX's repeated warning against the effects of obscure statements in both legislative and judicial processes. With the promulgation of the Liber Extra, the papacy strongly asserted the essential nature of the judicial process as foundation public order. Confusing claims, conflicting statements and endless litigations were not only disrupting the church's vision of harmonious society. They portrayed also varying degrees of human passions and people's flickering ambitions that were captured in the legal brushstrokes of the judicial process. Striking the right balance between the adherence

[15] Baldus de Ubaldis, *In decretalium volumen commentaria*, Venice, Iunta, 1595, reprint Torino 1971, *De renunciatione*, *Quia nos*, f. 94ra.
[16] Johannes Andreae, *In quinque decretalium* (*supra*, note 10), *ibidem*, «quia nihil est in rebus humanis perfectum (...) non credas tantum in eis esse claritatem quod nihil dubium relinquatur», see also, for a similar opinion expressed almost one century later, Petrus de Ancharano, *In quinque decretalium libros commentaria*, Bologna, apud societatem typographiae bononiensis, 1581, De constitutionibus, Quoniam, X.1.2.13, f. 78b.
[17] See *supra*, note 8.
[18] Hostiensis, Commentaria, *Cum clamor*, X.2.20.53, f. 105rb-va.

to justice's ideal and the more pragmatic upholding of social harmony, required a legal strategy that could not simply be based upon the unequivocal reference to absolute truth. Just as brightness's varying degree of intensity, obscurity entailed diverse amounts of confusion. Some amounts were more acceptable than others since they were not necessarily detrimental to people's interests and the broader pursuit of justice.

In the decretal *Cum clamor,* the pope declared that confusing statements made in a case of simony against the archbishop of Acerenza (Basilicata) were useless for establishing the truth of the accusations. Gregory did not explicitly use the term *obscurus* to qualify such testimony. But in its discussion of the pope's statement, the ordinary gloss resorted to the concept of *obscuritas* to outline the legal issues and considered the reason for excluding unclear testimonies. Arguably, observed Bernard of Parma, an obscure statement was not necessarily damaging to a person who could usefully rely upon it. The obscure testimonies however were a different matter since they could not be relied upon. The judge was thus required to search for the truth using "*clamor et fama*" then rule accordingly[19]. The insistence in demanding the judge's evaluation of the disputed testimony resulted less from the confusing declaration than from the suspicion aroused by an obscure witness[20] since a person who could not produce a clear testimony should be considered as not having testified[21]. The radical affirmation of the nullity of a testimony made in obscure words[22] expressed the view that people's actions were not visible in obscurity's darkest hue.

On the other hand, the jurists' misgivings about obscure statements did not extend to an outright rejection of obscurity's diverse manifestations. Jurists were often looking at a blurry legal landscape. Obscurity's multiple occurrences in daily transactions and business matters reflected a social reality that could not be ignored by the legal process. From a judicial perspective, obscurity might be viewed as an impediment to delivering justice but as it also justified the increasing reliance on the judge's power to seek out and identify the relevant information[23]. Since uncertainty was not an acceptable outcome, clarifying obscure legislation and legal provisions was an outright necessity. It required, however, an essential change of paradigm from truth-based expectations to likelihood- based interpretations. Thinking in terms of *verisimilitudo* instead of *veritas* presented some immediate advantages for the legal actors and the coherence of the legal

[19] Bernardus de Parma, *Glossa ordinaria,* X. 2.20.53.
[20] *Glossa ordinaria in Decretum Gratiani,* C. 4 q.2 c.3 in testibus, *ad v.* simpliciter: «id est sine adiectione cause vel simpliciter id est non obscure ut iii. q. ix. Pura sic supra dist. iiii erit. xxiii dist. Vi episcopus; nam obscurus testis est suspectus ut ff. de iure fisci, non intelligitur et obscure dictum pro non dicto habetur (…) et obscure scriptum pro non scripto».
[21] For an in-depth discussion of medieval legal doctrines on testimony, see Y. Mausen, Veritatis adiutor*: la procédure du témoignage dans le droit savant et la pratique française (XII*e*-XIV*e *siècles),* Milano 2006.
[22] Baldus de Ubaldis, *In decretalium volumen* (*supra* note 15), *Cum clamor*, X. 2.20.53, f. 234: «Item non dicitur examinatus qui obscure deposuit quia nullum est testimonium eius. Item verba obscura pro nullis habentur».
[23] Dig. 24.3.30.

process. It exempted jurists from the obligation to tie law's authority to an absolute truth that was perceived as the exclusive privilege of divine power. It focused instead the attention on limiting the unwanted consequences of human nature's imperfections on the stability and reliability of the legal order. This inclination was justified by the exegesis of a few Roman rules that were later adopted in canon law and inserted in the last title of the Liber Sextus on *De regulis iuris*. The Roman rules stated, first, that when facing obscure accounts, we should adopt the least damaging interpretation[24] and, second, that one should consider what is likely when dealing with obscure statements or what is most commonly admitted in such case[25]. In both cases, the glossators emphasized the necessity to rely on likelihood. They offered several examples taken from the legal sources where this approach provided a satisfactory solution. When Accursius compiled his ordinary gloss to the corpus iuris civilis, reliance on likelihood had become an indispensable source of legal coherence. It is therefore not surprising to find the same principle adopted in canon law, a few decades later, with its inclusion in the Liber Sextus.(VI. 5.18. 11; 30 and 45). The canonists' interest in this principle, during challenging times for papacy's authority, reveals the need to find an effective substitute to the absence of truth[26].

This pragmatic understanding of the authority of legal rules was further compounded by medieval culture's fluctuations between orality and literacy that created additional challenges to the jurist's role as interpreter of the law. Even if, as Pierre Legendre rightly observed, the concept of truth was viewed as the cornerstone of the legal order, legality did not uniquely function as a «discourse that staged the representation of truth in a theatrical form»[27]. In the twelfth and thirteenth century, the conception of this "*theatrum veritatis et justitie*"[28] was not yet fully expounded. The representation of truth adopted various mode of expression that combined the contrasting authority of legislations, customary rules, judicial process, and religious norms. By the turn of the thirteenth century, the comparative expression of this political balancing was increasingly reflected in the writings of jurists, canonists and civilians alike, who paid more attention to the multiplication of urban statutes and the transposition of customary practices in the *ius commune*[29]. In this changing legal landscape, the

[24] Dig. 50.18.9: «Semper in obscuris quod minimum est sequimur».
[25] Dig. 50. 18. 114: «In obscuris inspici solet quod verisimilius est aut quod plerumque fieri solet».
[26] Dinus de Mugello, *Tractatus De regulis iuris*, Baptista de Tortis, Venice 1498, f. 6vb: XXX: «Id est cum verum vel verisimilium non apparet» and f. 16v: XLV: «ubi dicit quod in obscuris minimum est sequendum. Dicendum est quod illa secundum istam intelligitur quia sequimur quod est minimum in obscuris id est ubi quod est verisimilius non apparet ut ibi dixi».
[27] P. Legendre, *L'empire de la vérité*, Paris 1983, p. 17.
[28] On this expression, see the later work of Giovanni Battista de Luca, *Theatrum veritatis & justitiæ, sive Decisivi discursus per materias, seu titulos distincti, & ad veritatem editi in forensibus controversiis canonicis & civilibus, in quibus in urbe advocatus pro una partium scripsit, vel consultus respondit* ..., Venice, ex typographia balleoniana, 1734, vol. I.
[29] E. Cortese, *Meccanismi logici dei giuristi medievali e creazione del diritto comune*, in *Il diritto fra scoperta e creazione. Giudici e giuristi nella storia della giustizia civile*, a cura di G. di Renzo Villata, Napoli 2003, pp. 329-355.

rules of interpretation acknowledged the significance of the *communis opinio doctorum*. The reliance on common sense as a source of interpretation alluded to more consensual understanding of rules' enforcement.

The jurisprudential presentation of civil and canon law as true knowledge still shaped the religious and political culture[30]. But the jurist's claim that nothing existed outside the legal realm[31] left open the question of law's dealing with a social reality that did not always conform to the normative ideal. In both law-making and judicial processes, truth's imperative did not allow for much flexibility in assessing the meaning of legal statements in a changing legislative landscape where royal power and pontifical authority asserted a precarious legitimacy as source of legal knowledge[32]. In this regard, Boniface VIII's claim to universal legal knowledge (VI 1.7.1), following the claim already made by the Roman emperor, was much debated. As Ennio Cortese observed, this pontifical allegation rarely achieved academic recognition and was met with significant resistance in legal circles[33]. In this instance as in others such as in the debate about the political power's contention to be above the law[34] or in the resistance against autocratic power[35], medieval jurists were well aware of the structural challenges to the permanence of the legal order that resulted from the confrontation between the political reality and the truth based normative ideal.

The heuristic switch from truth to likelihood in the attempt to anchor the legal system upon a stable and predictable foundation, created a normative space with, to quote Roland Barthes's observations on theater, the «naissance d'un lieu clair où tout se comprend enfin hors d'une nappe aveugle où tout est encore ambigu»[36]. Next to truth and distinct from presumption, likelihood constituted this "place of clarity" that became apparent in the judicial process. The theatrical representation of law's authority took place in this legal *chiaroscuro* where legality and justice could be defined independently from the truth's imperative. Likelihood, as observed by A. Gefen, was nothing other than «une

[30] G. Giordanengo, *Le droit féodal dans les pays de droit écrit: l'exemple de la Provence et du Dauphiné, XII^e^-début XIV^e^ siècle*, Rome 1988, and from the same author, *Féodalités et droits savants dans le Midi médiéval*, Hampshire 1992; R. Helmholz, *Magna Carta and the ius commune*, in «University of Chicago Law review», 66 (1999), pp. 297-371.

[31] Accursius, *Glossa ordinaria in Digestum vetus*, Dig. 1. 2. 1.

[32] See for instance the debate and commentaries around Dig. 1. 4.1: «Quod principi placuit legis habet vigorem, utpote cum lex regia quae de imperio eius lata est populus ei et in eum omne suum imperium et potestatem conferat».

[33] E. Cortese, *An papa qui habet totum ius in scrinio pectoris efficiatur doctor in utroque*, in *Studi in onore di Piero Bellini*, Soveria Mannelli (Catanzaro) 1999, pp. 277-290.

[34] D. Wyduckel, Princeps legibus solutus. *Eine Untersuchung zur frühmodernen Rechts- und Staatslehre,* Berlin 1979.

[35] E. Conte, *"Defensa": Resistance against unjust power in the Medieval Learned Law (12^th^-13^th^ centuries)*, in *Revolten und politische Verbrechen zwischen dem 12. und 19. Jahrhundert*, Frankfurt am Main 2013, pp. 121-133.

[36] R. Barthes, *Écrits sur le théâtre*, Paris 2001: «Le spectacle c'est cela, c'est ce démêlement, c'est cette angoisse et cette gloire d'une séparation sans cesse combattue, c'est cette lutte de deux espaces et c'est cette naissance d'un lieu clair où tout se comprend enfin hors d'une nappe aveugle où tout est encore ambigu».

forme d'imitation de la vérité qui substitue au critère formel et logique la rationnalité narrative et qui remplace l'exigence de la référence propre au vrai par l'exemplarité des mondes possibles à l'intérieur d'un contexte et d'un intertexte donné»[37]. With the concept of likelihood, medieval jurists were able to solve the challenge imposed by the initial requirement of truth for confirming the authority of law. The consequences of this doctrine were not limited to law's coherence but validated also the legitimacy of the judicial process. The distinction between divine law and human law could thus be fully developed without undermining the judge's power and the jurist's science. Truth was eventually declared in the outcome of a process that relied upon likelihood to reach a decision that cut through the various layers of obscurity concealing the nature of human actions[38]. It is indeed for its ability to provide a clear vision of their consequences that the "res iudicata" was received "pro veritate"[39]. Judicial truth ultimately rested upon the contrasting display of obscurity and clarity as true human nature was later revealed by the painter's use of the *chiaroscuro*.

The *clarus/obscurus* contrast provided medieval jurists with a range of legal options that reflected people's diverse emotions and frequently conflicting reactions. It thus expanded law's ability to sanction various expressions of individual behavior and social interactions. It also confirmed the medieval jurist's belief in a legal science that was Accursius' idea of universal knowledge[40] and Hostiensis' conception of a «scientia scientiarum»[41]. The belief that obscurity was not an exception to the enforcement of the legal rule, shaped the Western legal tradition. Modern legal systems later asserted their authority on the judge's ability to master the nuances of law's *chiaroscuro*[42].

[37] A. Gefen, *Atelier de théorie littéraire. Le vraisemblable comme vérisimilitude*, in «Fabula», ‹http://www.fabula.org/atelier.php?Le vraisemblable comme vérisimilitude›.
[38] M. Vallerani, *Il diritto in questione. Forme del dubbio e produzione del diritto nella seconda metà del Duecento*, in «Studi medievali», 48 (2007), 1, pp. 1-40.
[39] Dig. 1. 5. 25: «Ingenuum accipere debemus etiam eum de quo sententia lata est, quamvis fuerit libertinus quia res iudicata pro veritate accipitur».
[40] Accursius, *Glossa ordinaria in Digestum vetus*, D.1.1.10, *notitia*: «omnia in corpore iuris inveniuntur».
[41] Hostiensis, *Summa Aurea*, Lyon, 1556, Prooemium, f. 5ra.
[42] Article 4 of the French civil code exemplifies numerous codifications' provisions stating that «le juge qui refusera de juger sous pretexte du silence, de l'obscurité ou de l'insuffisance de la loi, pourra être poursuivi comme coupable de deni de justice»; see also Italy, Corte Costituzionale, Ordinanza 28 dicembre 2001; Code civil of Portugal, article 8: «O tribunal não pode abster-se de julgar, invocando a falta ou obscuridade da lei ou alegando dúvida insanável acerca dos factos em litígio».