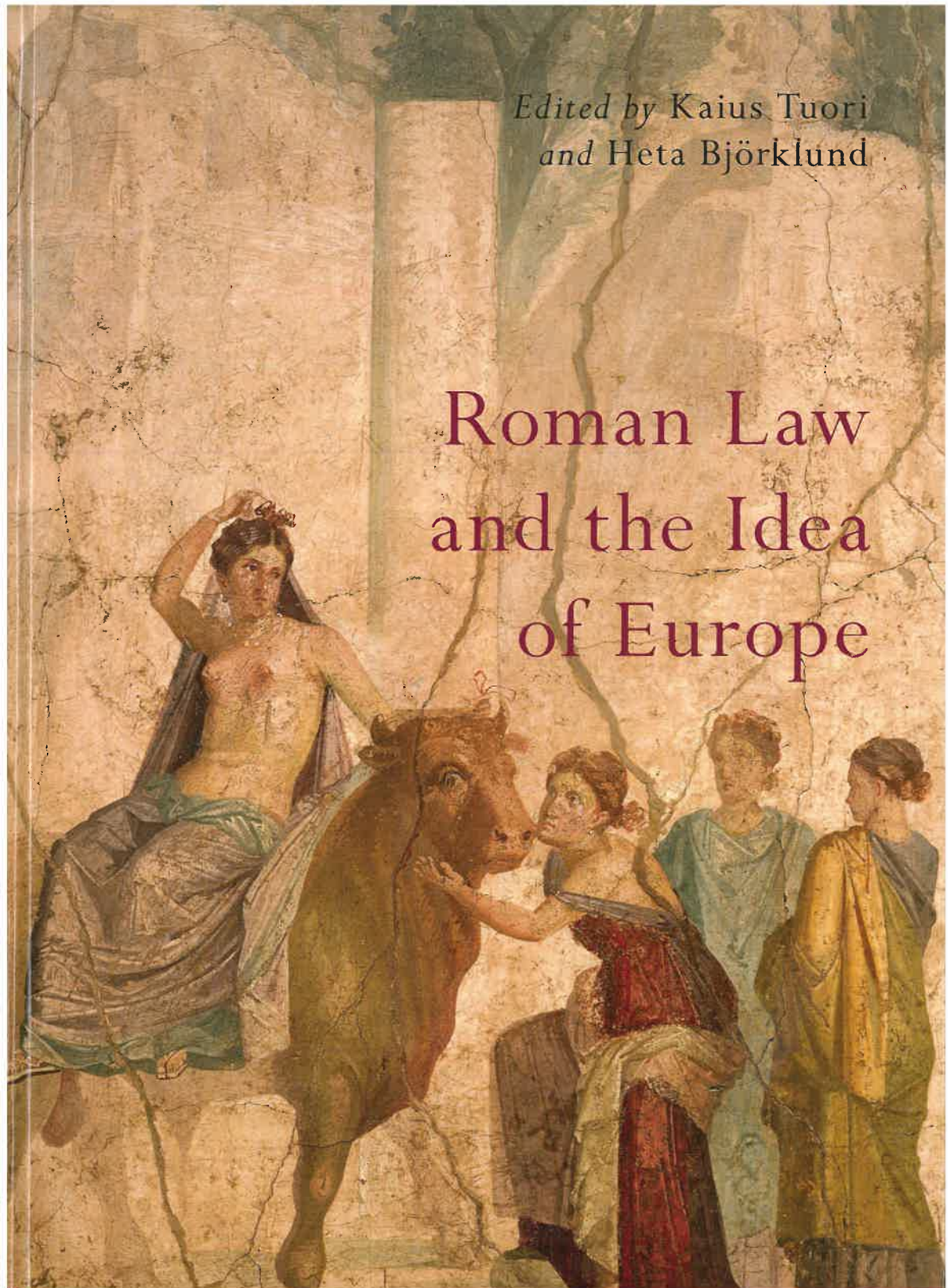


*Edited by Kaius Tuori
and Heta Björklund*

Roman Law and the Idea of Europe



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Francis de Zulueta (1878–1958): An Oxford Roman Lawyer between Totalitarianisms

Lorena Atzeri

Introduction

Reading about the lives of ‘German-speaking émigré lawyers in twentieth-century Britain’, to quote the subtitle of the absorbing book *Jurists Uprooted* (Beatson and Zimmermann 2004), there is, even if not immediately visible, a red thread that links the lives and destinies of many of the jurists of Jewish origin – in particular Roman lawyers – who sought refuge in Oxford during the Nazi regime. This thread is constituted by one man, Francis de Zulueta, Regius professor of civil law in Oxford between 1919 and 1948.¹ Together with William W. Buckland, who held the corresponding chair in Cambridge, de Zulueta was the most important Roman lawyer in Great Britain in the first half of the twentieth century.

Although of vital importance, the role played by de Zulueta in helping German scholars of Jewish origin has, it seems to me, never received adequate recognition. This is all the more striking because it was precisely three of the most famous of these refugees, Fritz Schulz,² Fritz Pringsheim³ and Hermann Kantorowicz,⁴ who received fundamental support from de Zulueta, both in their private lives and in their academic activity. Even David Daube,⁵ although based in Cambridge in the same years and linked rather to Buckland,⁶ enjoyed his help and support. It is no coincidence that in 1952 the private library of de Zulueta came to reside, at the instigation of T. B. Smith, in the University of Aberdeen,⁷ where the previous year Daube had been offered the newly established (and his first) chair in jurisprudence.⁸ Nor is it widely known that it was on de Zulueta’s recommendation that Daube became his successor in Oxford just a few years later (Carmichael 2004: 94), in 1955, after the short tenure of Herbert F. Jolowicz.⁹

The personal engagement of de Zulueta in supporting the lives of these scholars kept alive an important nucleus of Roman law scholarship, when the world seemed to be consumed in flames and the subject – at least in Nazi Germany – was in danger of annihilation:¹⁰ a nucleus which was going to bring important fruits.

This vital moment in intellectual history has never been sufficiently highlighted or properly investigated. The reason for this may lie, at least in part, in a more general

negative attitude towards de Zulueta, an attitude largely stemming from the sympathy and support expressed by him towards General Franco and his rise to power in Spain in the 1930s. This sympathy, shared by very few in the British academic elite, has certainly cast a shadow not only over de Zulueta's crucial role towards the émigrés, but even – I would argue – on his contribution as a scholar. Indeed, it has led to the simplistic syllogism, that de Zulueta must himself have been a fascist, a sympathizer of totalitarian regimes: a syllogism, as I would like to show, based on false premises, which misses the real reasons for his support for the Spanish insurgents.

It is therefore the purpose of the present chapter to dispel some false myths, first by briefly outlining the scholarly contribution of Francis de Zulueta, and then by investigating more closely his attitude towards the totalitarian regimes established in Europe in the 1930s, with a closer focus on *Franquismo* in Spain. I will try to highlight the deeper reasons which motivated him to support the Spanish *Generalissimo*, in marked contrast to the position taken by the vast majority of his scholarly colleagues at the time.

Francis de Zulueta: Myth and Reality

Among Romanists the name of Francis de Zulueta is mainly associated with the *Institutes of Gaius*, of which he produced a new edition with an English translation and commentary (de Zulueta 1946, 1953). Among legal historians he is known for his critical edition of the *Liber Pauperum* of Vacarius (de Zulueta 1927). It is probable that the association of his name with the didactical works of Gaius and Vacarius has contributed to creating his own reputation as primarily a 'teacher', who dedicated his life and work almost entirely to undergraduates and to the teaching of Roman law, and who addressed almost all his research effort towards didactical works. This reputation has been accompanied by another myth, namely that of being a rather 'unproductive' scholar, a notion which was first set down on paper immediately following de Zulueta's death, which occurred on 16 January 1958. In the anonymous obituary published two days later (*The Times*, 18 January 1958), almost certainly written by an Oxford colleague, his achievements are described as follows: 'Like many other learned men who set themselves a high standard, he did not publish much What remains are chiefly pamphlets and articles in learned periodicals.' This rather negative judgement, which spread around quickly, reaching even South Africa and the United States,¹¹ seemed to be confirmed a year later by the list of de Zulueta's publications (fifty items in all) given in the book *Studies in the Roman law of sale*, edited by David Daube in 1959,¹² which was originally intended to celebrate de Zulueta's eightieth birthday.

This reputation for unproductiveness was again reinforced in the biography published in the *Dictionary of National Biography* in 1971 by his friend and colleague, F. H. Lawson (Lawson 1971). According to Lawson, de Zulueta 'published much less than his contemporaries desired and expected'. In speaking of a 'relative unproductiveness' Lawson does add, significantly, that 'he became in truth too learned to see opportunities in a well-tilled field' (Lawson 1971: 1098). This judgement has

been echoed in more recent years by Alan Rodger, who again stresses de Zulueta's 'unproductiveness', describing him in addition as someone who 'seemed to lack the necessary confidence to advance his own views', concluding that 'rather than put forward fresh ideas on his own, he was content to survey the work of others'.¹³

On a more personal level, this negative opinion of de Zulueta is reinforced by more recent scholars: Calum Carmichael, in his memoirs of David Daube, also published in 2004, leaves us with a picture of de Zulueta as someone who 'from his home in a castle near the sea, well away from Oxford¹⁴ ... regarded his Oxford colleagues as plebeians' (Carmichael 2004: 95). The clue to this negative judgement can be found in Daube's view, reported by Carmichael, that 'de Zulueta's Oxford colleagues disdained him ... because he was a supporter of Franco'. According to Carmichael himself, de Zulueta 'was a fascist but not a socialist', to which he adds that he 'was not the first or last fascist (or anti-Semite) that Daube got along with'.¹⁵ This process of denigration reaches its apogee when H. L. MacQueen, misinterpreting those words, finally arrives at the (absurd) conclusion, certainly not intended by Carmichael, that de Zulueta had 'anti-Semitic attitudes'.¹⁶

The overall picture which emerges from these views is of an unproductive scholar lacking in original opinions or ideas, an upper-class snob looking with contempt on his Oxford colleagues, a fascist 'with repugnant views' and 'anti-Semitic attitudes'. What I wish to demonstrate is that not only is this *leyenda negra* a distorted image and an unjust assessment; it is also partly based on false premises. In particular, it completely ignores de Zulueta's incredibly generous engagement for colleagues and others in need, and his fundamental role in supporting the lives and the scholarly work of German émigré Roman lawyers of Jewish origin in Oxford: hardly the engagement of a fascist and anti-Semite.

As regards the charge of 'unproductiveness', it should be noted that the list of de Zulueta's publications produced by Daube in 1959, which is still the only one in existence, in the first place reveals a far from negligible literary production and secondly is by no means complete. A letter written by Daube and kept in the Oxford University Press Archives indicates that the basis of the list was an elementary and very incomplete record given to him by de Zulueta's widow,¹⁷ which in the end Daube could only partially supplement.¹⁸ After some research, I have been able to identify at least forty-five further contributions. These are, to be sure, mainly shorter articles, reviews, obituaries, contributions to encyclopaedias and the like: but it nevertheless almost doubles the number of items recorded by Daube. When the list of de Zulueta's publications is set out in full (almost 100 items),¹⁹ his scholarly production seems to me one of which any scholar could justly be proud, and, although this new material will not change the substance of his contribution to Roman law, it should at least help to dispel the myth of 'unproductiveness'.

The opinion expressed by Alan Rodger (which in fact goes back to the biography of Lawson) that de Zulueta was a scholar lacking in original thought, who was content to 'survey the work of others', is surely excessive. Leaving aside his numerous book reviews and bibliographical overviews, which in many cases go beyond a simple report, from the beginning of his career de Zulueta had shown an independent and critical attitude towards the various streams of Roman law studies pursued in the

rest of Europe. He was, for example, very sceptical about the value of the reigning interpolationist approach, which, to an Oxford – or, thinking of Buckland, we should rather say Oxbridge – mindset, was lacking in any solid foundation and often led to questionable conclusions. Open criticism of the almost universally accepted approach to Roman law at the time was already expressed by de Zulueta in his inaugural lecture, delivered in Oxford in 1919 (de Zulueta 1920). He also followed closely the evolution of Wenger's idea of an *Antike Rechtsgeschichte*, contributing an article to the debate (de Zulueta 1929) and exchanging opinions with Paul Koschaker on the subject (Atzeri 2010) – but here too, he had his doubts.

In short, de Zulueta was well aware of the contemporary streams in Roman law studies on the Continent, not just taking note of the discussions but actively participating in them and manifesting an open but above all critical mind to these currents. Not only was he in close touch with the new discoveries and directions in Roman law studies in his time, he was also in direct contact and correspondence with a constellation of major Continental Romanists – among the Italians, Riccobono, Arangio-Ruiz and Albertario; among the Germans, Wenger, Koschaker, Rabel, Schulz, Conrat, Kantorowicz; and with the Frenchmen Fournier, Collinet and Le Bras.²⁰ This is revealed by the letters found among his papers and books, together with the dedications written in the books and offprints of his personal library, which has survived intact in Aberdeen University.²¹ In short, his books and papers reflect the image of a Roman law scholar fully the equal of his European colleagues, while the latter, for their part, clearly considered him as a scholar of the highest repute.

Despite all this, it cannot be denied that in the field of Roman law scholarship the name and fame of de Zulueta, which certainly also suffers from being overshadowed by his Cambridge contemporary W. W. Buckland, is fading, and he has never really been fully admitted into the pantheon of Roman law scholars. Moreover, de Zulueta's role in opening up the Oxford (indeed English) Roman law world to international scholarship through his contacts with the Romanistic scene in Continental Europe is still underestimated. For it was these contacts, which had long been established, which form the background to the pre-eminent role he played from 1933 onwards in giving aid and support to the German Roman lawyers of Jewish origin who sought refuge in Oxford.

Opening Up Oxford

One of de Zulueta's most important contributions was the internationalization of Roman law studies in Great Britain,²² opening up Oxford to European scholars on Roman law.²³ It all started in April 1913, when the third International Congress of Historical Studies took place in London, a section (presided over by Vinogradoff) being dedicated to 'Legal History'.²⁴ Here de Zulueta, who had just become the All Souls Reader in Roman law, served as secretary. Some of the leading European scholars in the field of ancient law participated: from Germany there came Wenger, Seeck, Lenel, von Gierke, Hübner, E. Mayer and Koschaker; from France Caillemer, Esmein, Huvelin;

from Italy Arnò and Riccobono; as well as other scholars from many other countries, including some from outside Europe. The Congress gave de Zulueta the opportunity to make the acquaintance of some of the most important Continental Roman law scholars.²⁵ Indeed, in some cases, such as those of Riccobono and Koschaker, it proved to be the beginning of a lifelong friendship.

Following in the footsteps of his teacher, Paul Vinogradoff,²⁶ occupying the Regius Chair, to which he was appointed in 1919, de Zulueta was always keen to encourage contacts with international scholars and exchanges between Britain and Continental Europe. When he started his career, apart from a few isolated contacts, British Roman law scholarship was still not playing a full part in Continental academia. On more than one occasion de Zulueta lamented the fact that the participation of British Roman lawyers on the European scene was too limited, sometimes indeed non-existent. There were only very few or no British contributions at all in the contemporary *Festschriften* or *Atti di Congressi*. In a review of *The Girard Testimonial Essays*, de Zulueta expresses his regret: 'It is disappointing to find no English names in the list of forty-eight collaborators in these volumes, since his English colleagues are certainly not less in debt to him than those of other countries, and they would be the first to do him every honour in their power' (de Zulueta 1914: 215). And even at the important *Conferenze per il XIV centenario delle Pandette* held in 1930, as he pointed out later, no English scholars participated.²⁷ Even at that date, despite the efforts of de Zulueta and Buckland in surveying most of the Continental production, Roman law in Britain was rather isolated from the rest of Europe, where Roman law studies were flourishing and the connections between the various schools growing.

De Zulueta in particular made every effort to change this situation. Thanks to his exceptional knowledge of several foreign languages, he established and maintained contacts with many leading Roman law scholars throughout Europe. It is a highly learned correspondence,²⁸ where technical and philological questions were discussed at length. These contacts were also maintained at a personal level, in an era when international travel was much more limited. Thus he opened the doors of Oxford to guest lecturers like Pringsheim, Koschaker, Collinet and Fournier.²⁹ And, although not clearly stated in the accessible documents, we can be fairly sure that behind the honorary degrees in civil law conferred by the University of Oxford on Riccobono (in 1924),³⁰ Buckland (in 1932) and Koschaker (in 1934) lay the recommendation of de Zulueta.³¹

Helping the Refugees

When the Nazi regime came to power in Germany in 1933, Oxford was for many Roman law scholars their first place of refuge, and it was the name of Francis de Zulueta that naturally came to their minds in their moment of need. He did not fail them. One of the most moving aspects of investigating the life of Francis de Zulueta is following his engagement for the émigrés in Oxford.

As regards Fritz Schulz, Fritz Pringsheim and, above all, Hermann Kantorowicz, de Zulueta sought out financial support and at the same time provided them with

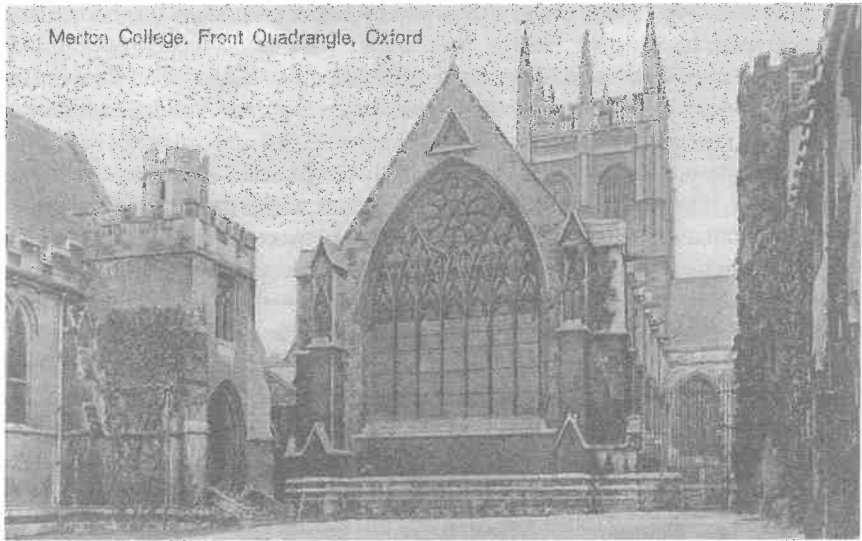


Figure 3 Merton College (Front Quadrangle, Oxford). Postcard from the 1900s. Photo by Culture Club via Getty Images.

the possibility of holding lectures and seminars,³² playing also a personal role in their organization. He sent students to them for private tuition.³³ He asked the Oxford University Press for funding for projects.³⁴ Although he was already working on his own edition of the *Institutes of Gaius*, he even offered to give this up in favour of Schulz, if it would help him to receive some payment from Oxford University Press, as emerges from the correspondence with its editor, Kenneth Sisam.³⁵ When de Zulueta was planning an *Oxford History of Legal Science* together with Kantorowicz, whom he wanted to be the co-editor,³⁶ a project 'of a then unprecedented international character' (Ernst 2004: 171) (even if it was not fully realized), he also asked Schulz for a contribution to replace that of de Francisci,³⁷ not least in order to allow Schulz to receive a small income. This contribution was eventually to become the seminal work *History of Roman Legal Science*, and it was again de Zulueta who personally translated the whole book into English, at the same time doing a great deal of editorial work (Ernst 2004: 173).

As for Kantorowicz, the help provided went even further: After Kantorowicz's death, de Zulueta obtained from All Souls College a grant for the education of his children.³⁸ Touchingly, Kantorowicz's wife Hilda wrote in a letter to him: 'Lucky the man who has won in life such a friend.'³⁹ Finally – surely an act of great self-sacrifice for any scholar – while still working on his commentary on Gaius, he gave away his own extraordinary private collection of Roman law and legal history books to the University of Aberdeen, which otherwise would have lacked the requisite library to enable David Daube – another German Jewish émigré – effectively to take up the newly established chair of jurisprudence.⁴⁰

In these years his personal engagement was not restricted solely to scholars. On the occasion of the conferment on de Zulueta of an honorary degree by the University of

Aberdeen, in 1953, the *laudator* T. B. Smith gives full recognition to this aspect of de Zulueta's character:⁴¹

His generosity is well known, despite his efforts to conceal it. Few people can have extended so much unselfish help to refugees of various creeds and races – from Spain, Germany, Poland. Entire books written by exiled scholars have been translated or revised by him, and during the recent war he was instrumental in establishing and maintaining the Polish University in Oxford.⁴²

All this should be sufficient to dispel the notion that de Zulueta was in any sense an anti-Semite. One further detail can be added: In the letter to Riccobono already mentioned,⁴³ in which de Zulueta expressed his appreciation of Daube, although he considered him as a suitable candidate for the vacant chair in Roman law in London, he seemed to think an appointment problematical. His remark is revealing: 'But he [Daube] seems to have made enemies, or possibly it is just anti-Semitism which makes his appointment doubtful (as I am told it is)': a comment which should dispel any doubt about de Zulueta's own position.

In his Introduction to the *Studies in the Roman Law of Sale*, David Daube could pronounce it to be 'the first collection of essays on Roman law produced exclusively by scholars from United Kingdom universities.' This flourishing of Roman law scholarship in Britain is surely also attributable in some measure to the lifetime dedication of Francis de Zulueta. So much is clear. However, much more than this, de Zulueta's quiet, unsung dedication behind the scenes also made a significant contribution to ensuring that the same could also be said about the flourishing of a pluralistic post-war Roman law scholarship in Continental Europe, where the discipline was able to rise again from the ashes of Nazi persecution.

Living his Catholic faith

But it was religion which played the crucial and defining role in de Zulueta's life. Francis de Zulueta belonged to an aristocratic Spanish family of diplomats, businessmen and bankers,⁴⁴ not only of the Catholic faith, but also deeply involved with the Roman Catholic Church: An uncle was a Jesuit father;⁴⁵ one of his mother's brothers – whose family was of Irish origins – was a priest;⁴⁶ a nephew, don Alfonso Manuel de Zulueta, became chaplain at the University of Oxford;⁴⁷ finally, a more famous cousin, Rafael Merry del Val, belonged to the upper echelons of the Church hierarchy, rising to be a cardinal and, in the years 1903–14, the secretary of state of Pope Pius X. Like other male members of his family on both sides, de Zulueta began his education at Beaumont College, a Jesuit boarding school situated in Berkshire.⁴⁸ He then went on to the Oratory School at Edgbaston, Birmingham.⁴⁹

De Zulueta was well known among his contemporaries as a devout Roman Catholic. His obituary published in *The Times* points out that 'his most outstanding characteristic was a burning religious zeal, which guided his conduct throughout life'.⁵⁰ When de Zulueta came up to Oxford, in 1897, religion was still an important issue.⁵¹ Catholic

students had been readmitted to the University only a few decades before, and they were given official permission by their bishops to attend the (Protestant) University only two years before, in 1895. In 1912 there were only two Catholic dons in Oxford: Francis de Zulueta and Francis Urquhart.⁵² When de Zulueta filled the Regius chair of civil law in 1919, he was the first Roman Catholic professor to hold the position since the Reformation, as was pointed out in an article in *The Times*.⁵³ In 1920, the year after, only six members of the teaching staff were Catholics.⁵⁴ In 1939, almost twenty years later, there were still only four Catholic professors in the whole of the University of Oxford, one being de Zulueta himself, another the famous writer J. R. R. Tolkien. With Tolkien, indeed, de Zulueta developed a deep friendship⁵⁵ and became godfather to his daughter, Priscilla (Ferrández Bru 2008; Stark 2014).

De Zulueta lived his religious life with great personal conviction and engagement. He was the secretary and an active member of the Oxford University Catholic Association,⁵⁶ and was close to the Oxford University Newman Society⁵⁷ (named after the famous English Catholic convert Cardinal J. H. Newman). He was also a member of the Universities' Catholic Education Board (*The Tablet* 23 April 1921, 18) and was more generally engaged in questions relating to the participation of Catholic students at universities.⁵⁸ He was a member of the local branch of the Society of St. Vincent de Paul,⁵⁹ of which he became president, and was part of the circle which included such eminent English Catholics⁶⁰ as Ronald Knox, Martin D'Arcy, Evelyn Waugh, G. K. Chesterton and the aforementioned Tolkien.

Francis de Zulueta actively participated in Roman Catholic ceremonies in Oxford, such as the one held on the occasion of the visit of the Archbishop of Birmingham, commemorating the death of the Franciscan monk sent to England to found a province of his religious order;⁶¹ or the visit of Cardinal Bourne on the occasion of the ceremony of the stone laying of the new Dominican Priory.⁶² During the Festival of Corpus Christi he used to carry the Baldacchino of the Blessed Sacrament in St Giles.⁶³ De Zulueta was not simply a very welcome guest, nor was he just playing a role: He was and felt himself to be fully part of that world. The importance of his contribution to the religious life in Oxford was fully acknowledged after his death by the master of Campion Hall, Father Thomas Corbishley S. J.⁶⁴

This deep religious faith⁶⁵ and his personal involvement with Catholic institutions led him on various occasions to intervene publicly on the pages of the leading British newspaper, *The Times*, defending the religious orders and the position of the Church,⁶⁶ especially when this came to collide with that of the 'State'. One example is given by his letters to the editor of *The Times* on what had been considered, by general public opinion, unwarranted papal interference with domestic political affairs in Malta, at that time part of the British Empire. In the summer of 1930, most probably following higher dispositions, Maltese bishops had denied absolution and administration of the sacraments to – and even menaced with excommunication – those Catholics who, at the coming political elections, intended to cast their vote for Lord Strickland, then prime minister of Malta, who had clashed in the past with the ecclesiastical authorities and was therefore considered by them to be anticlerical. Critical voices and protests were heard in Britain. De Zulueta wrote to *The Times* fully justifying the Church's intervention: 'In the judgment of the Maltese Bishops, the continuance of Lord

Strickland's Government would have been a serious injury to religion Their right so to act is a fundamental Catholic position.⁶⁷ De Zulueta's letter provoked a series of irritated replies, among them one of Isaac Foot, a Member of Parliament for the Liberal Party.⁶⁸ In a further letter,⁶⁹ de Zulueta clearly called the administration of Lord Strickland 'inimical to the Church', renewing his support for the Church and linking it this time to the defence of the democracy and the right of self-government of the Maltese people.⁷⁰

De Zulueta's public intervention on such a minor political dispute perhaps gives us a fundamental insight into his motivations and attitude in a much more serious conflict, which has done so much to colour his reputation. This is the savage and highly divisive Spanish Civil War, in which he had of course a special interest. His decision openly and vociferously to take the side of Franco in the pages of *The Times* (5 October 1936, 13; 7 November 1936, 8; 7 December 1936, 15; 18 March 1937, 17) certainly made him unpopular, not least among his Oxford colleagues (*The Times*, 8 October 1936, 10). But they were hardly political reasons of Left or Right which lay behind his sympathies. The main reason for de Zulueta's position is succinctly described in his obituary published in *The Times*: 'in later years devotion to the Church underlay his passionate support of the cause of General Franco' (*The Times*, 18 January 1958, 8).

The gravity and complexity of the situation in Spain was well known to de Zulueta: Not only could he follow the events day by day in England in the columns of *The Times*, he also had an insider's view of Spanish affairs, since his cousin, Alfonso Merry del Val, was the Spanish ambassador in London, and his brother Pedro Juan was also working in the embassy as attaché. Moreover, the family had, as we have seen, direct links to the Vatican. Francis de Zulueta, Spaniard by birth, nobleman, conservative, educated in Catholic schools and, as we have seen, devotee of the Catholic Church, could not remain indifferent to the terrible events which were taking place in Spain.

Conclusion

Where should Francis de Zulueta be located in his attitude to the totalitarian regimes of the twentieth century? He was a Catholic conservative, without any doubt firmly against communism,⁷¹ and was wholly on the side of Franco from the beginning of the insurrection, making no attempt to hide his sympathy and support. Fritz Schulz, the Jewish refugee given so much help by de Zulueta, could nevertheless describe him as 'a Spanish fascist' (Ernst 2004: 169 and note 503). It is true that British newspapers at the time tended to call the 'Falangists' (the supporters of Franco in Spain) 'Fascists'. Yet this identity had already been criticized at the time⁷² as a possible cause of misunderstanding. De Zulueta's support for Franco was motivated by his religious convictions and was deeply rooted in his reaction to the oppression of the Church in Spain under the Republican government. Such a reaction in the particular circumstances of the Spanish struggle cannot be equated with support for the other totalitarian regimes – Italian fascism and German Nazism (which were helping the Spanish insurgents) – or with support for totalitarian ideology in general. On the contrary, de Zulueta's 'unselfish help' (in the words of T. B. Smith) to German refugees who had to flee their country,

and to Polish soldiers who were fighting against the Germans, together with his deep friendship with Kantorowicz, reveals just how much he detested Nazism.

Of course, de Zulueta was living in a Europe deeply marked by totalitarian regimes, whose influence extended also to academic enterprises, and this aspect could simply not be ignored. A remarkable example is de Zulueta and Kantorowicz's famous project of an *Oxford History of Legal Science*.⁷³ As a letter of de Zulueta to Kenneth Sisam, editor of the Oxford University Press, shows, the choice of the contributors inevitably had to be carefully weighed on the basis of political affiliations.⁷⁴ What emerges, for example, is the need to counterbalance the presence of Kantorowicz, who was 'persona ingrattissima' to the Nazis; otherwise someone like Koschaker – who had been preferred to a 'strong Nazi' like San Nicolò for the part on oriental laws – could 'harm himself by contributing to a work part-edited by Kantorowicz'. In a pragmatic attempt to find a balance and avoid complications, de Zulueta suggested involving the Italian Romanist Pietro de Francisci, partly for his political position: 'this whole trouble ... will be cured if the most important contribution to Vol. I [i.e. the one on Roman legal science] comes from the pen of a prominent, though not a violent, fascist'. This compromise would avoid involving an outright Nazi, as he considered Kunkel (the other candidate for that section). The letter clearly shows him seeking the lesser of two evils. No adhesion can be seen here to totalitarian ideologies: just an attempt to secure the success of an important project without having to renounce the best scholars in their respective fields.

Finally, very few know of the adhesion of de Zulueta to the originally ecumenical movement known as the 'Sword of the Spirit'.⁷⁵ This was a lay organization founded in 1940 by the Archbishop of Westminster, Cardinal Hinsley,⁷⁶ after the fall of France and Italy's entry into the war. It was intended to contribute to the defeat of totalitarian regimes of both Left and Right (especially Nazism) and to the promotion of higher religious and spiritual principles. The first two points of its programme significantly read as follows: '(1) The movement stands for the principles of Christianity and the Natural Law; (2) Our opposition to Nazism and other totalitarianisms is the result of their denial of these principles.' Pamphlets were to be issued 'to make clear the principles of Christianity and of the Natural Law'.⁷⁷ It was intended that Francis de Zulueta should contribute with a pamphlet on 'The Natural Law'.⁷⁸ This single detail encapsulates very clearly de Zulueta's moral position.

The conclusion is clear: de Zulueta was a devout Catholic, who oriented his opinions, acts and deeds according to the values of his religion. Defending the Church and its institutions, rejecting who and what was against it, giving his help and support to people in need: All these are different facets of one and the same individual. Well informed on Spanish atrocities, from an insider's point of view, he inevitably chose to support the side which was acting in defence of the Church. This was the motivation that informed his actions, as was clearly discerned by Peter Stein, who had known de Zulueta personally. In his obituary he writes:

De Zulueta was fearless in his advocacy of policies in which he believed and was unconcerned by the unpopularity which they sometimes gained him. He was criticised for his strong support of the cause of General Franco during the Spanish Civil War. This was certainly due to his zeal for the Catholic Church, to which he was passionately devoted. (Stein 1958: 240)

The same conclusion was drawn by another of his colleagues, F. H. Lawson, in his biography of 1971. Nevertheless, the shadow of fascism cast on de Zulueta because of his support for Franco has never wholly abandoned him. Interestingly, a similar fate befell J. R. R. Tolkien, de Zulueta's fellow Catholic at Oxford, who shared with him the ignominy of being labelled a fascist for his 'discreet moral support' of the insurgents led by Franco.⁷⁹ What has been written on Tolkien (Ferrández Bru 2011) in precisely this context can equally be applied to de Zulueta:

When historical events are analysed from a distance and evaluated according to contemporary parameters and not according to the circumstances when they developed, it is easy to attain wrong conclusions, or at least get a distorted view of the different attitudes of the participants and witnesses of those events.

In reading his obituary published in *The Times*,⁸⁰ one cannot help but already detect a certain tendency to diminish de Zulueta's achievements as a scholar. There seems to be a vein of criticism and dislike which the anonymous author cannot completely conceal. One wonders how much this was due to a lingering distaste for this outspoken supporter of Franco and his brutal regime, which is hard enough for us to overlook even today, and must have been all but impossible for contemporaries who had lived through this deeply polarizing struggle.⁸¹

This impression is confirmed by a very revealing reaction which came two weeks after the publication of the obituary. In a letter to *The Times* H. G. Hanbury, the famous legal author of one of the most important manuals of English law, submitted a supplement to the obituary which was clearly meant as a protest, to re-establish the truth and to give the deceased his due.⁸² It begins with the ringing affirmation:

De Zulueta was one of the most brilliant and learned jurists who ever lived. His obituary notice really does him less than justice in saying that he published little No one who attended his classes could bear to miss a moment of his exposition and his textual criticism.

The original obituary had clearly been read by Hanbury as an attempt to 'damn with faint praise'. Yet, in the judgement of history, this intervention did not succeed in repairing the damage which had been done. To be Spanish (although naturalized British), a devout Catholic and a supporter of Franco in Oxford: This was an explosive mixture which has left a permanent mark. A 'black legend' has enveloped the reputation of de Zulueta, projecting its long shadow up to the present day.⁸³

Notes

- 1 The main surveys of de Zulueta's life are *The Times* 18 January 1958, 8 ('Prof. Francis de Zulueta. The Teaching of Civil Law'); *The Catholic Herald* 4 June 1948, 4 ('Catholic profiles: 159'); Stein 1958; Nicholas 1958; Lawson 1971; Ferrández Bru 2008, unfortunately without any indication of sources.

- 2 On Schulz, see the excellent biography of Ernst 2004.
- 3 On Pringsheim, see Honoré 2004.
- 4 On Kantorowicz, see Ibbetson 2004.
- 5 On Daube, see Rodger 2004; Carmichael 2004.
- 6 On the relationship between Daube and Buckland, see Rodger 2010.
- 7 Sold by de Zulueta at a low price, as reported in the *Minutes of the University Court of the University of Aberdeen*, vol. XVII. *Meetings*, MXI-MLIV (10 October 1950 to 6 July 1954), p. 401 (*Meeting of the University Court of the University of Aberdeen*: 11 November 1952): '(c) A letter was submitted from the Librarian intimating that Professor F. de Zulueta, Banbury, Oxon., had given his valuable books on Jurisprudence and Roman Law to the University for the nominal sum of £ 300 plus carriage'. In a letter to the editor of the Oxford University Press, P. J. Spicer, de Zulueta manifested his satisfaction for having taken that decision: 'The price was reasonable, and it is a satisfaction that the collection has gone where it will be appreciated and used' (OUP Archives: PB/ED/017846 Box OP 2442, letter of 20 November 1952). The generosity of de Zulueta was also stressed in the *laudatio* given by T. B. Smith, the promoter of the initiative, on the occasion of the conferment upon de Zulueta of an honorary degree by the University of Aberdeen on 10 July 1953, an account of which was published in *The Aberdeen University Review* 1953-1954: 295: 'only last year he most generously made over to this University his excellent library of Roman and Canon Law, which contains works not available in any other Law Faculty in Britain.' The importance of de Zulueta's library for the teaching of Roman law under Daube in Aberdeen, indeed for the revival of the Civilian tradition there, was again stressed by the same T. B. Smith in an article dedicated to the memory of the Oxford professor: 'It was appropriate ... that while Professor Daube ... was still at Aberdeen, the law library there should have received a most generous benefaction of the de Zulueta collection of Civil and Canon Law works' (Smith 1958-1959: 629). See also Stein 2001: 434 ('de Zulueta had generously transferred his private collection of Roman law books to Aberdeen to help David's work'); Carmichael 2004: 94; MacQueen 2013: 827-8.
- 8 This designation, peculiar to Aberdeen University, effectively means the chair in Roman law.
- 9 In an unpublished letter to Riccobono dated 19 December 1948, written by de Zulueta soon after the appointment of Jolowicz (formerly professor of Roman law in London), he comments that, in his opinion, the best choice for the now vacant London chair would be Daube ('I do not know who will succeed him at London. The best scholar is Daube, and I myself find him a very agreeable person'). A copy of this and of other letters (twelve in total), which are kept in Palermo and form part of the correspondence between the two scholars, has been kindly put at my disposal by Riccobono's heirs Lilia and Mariella through the courtesy of Professor Mario Varvaro (University of Palermo). To all of them I would like to express my gratitude. De Zulueta's great admiration for Daube, his work and the depth of his erudition we find expressed again a few years later in various unpublished letters addressed to Peter Stein (de Zulueta to Stein, 8 July 1956: 'David's work on Legislative Forms seems to me a brilliant performance. What a man!'; 28 January 1957: 'I was very glad too to get first-hand news of Daube. It does me good to hear what a success he is') and to Eleanor Rathbone ('Stein is asking Daube who is almost omniscient'). These letters are preserved among the papers of Peter Stein, which have been entrusted by his daughter, Barbara Judkins, to Douglas J. Osler (MPIER, Frankfurt a.M.), a pupil of Peter Stein. I am very grateful to them for putting the letters at my disposal.

- 10 It is well known that, from the very beginning (1920), clause 19 of the *Parteiprogramm* of the NSDAP foresaw the substitution of the subject 'Roman Law' by 'German Common Law' (*deutsches Gemeinrecht*) in the curriculum of law faculties: on this, see Landau 1989.
- 11 Harding-Barlow 1958 (in fact an obituary of Francis de Zulueta); Beck 1959. In the former the very same words used by *The Times* and reported above are repeated, but without acknowledgement of the source. Other obituaries also seem to have been inspired by it: Stein 1958: 240 ('he set himself a very high standard and was reluctant to publish much'); Nicholas 1958: 138 ('he allowed himself perhaps to be too restricted by his own very high standards ... he published relatively little').
- 12 Daube 1959; the list is found at pp. ix-xi.
- 13 Rodger 2004: 238. According to him, 'de Zulueta was, in many ways, like an old-fashioned war correspondent, not embedded with any of the fighting forces, but watching and reporting the battle from a safe vantage point': an opinion not entirely justified.
- 14 The author means here Oxburgh Hall, a country house in Norfolk which was in fact owned by the family of his wife.
- 15 Carmichael 2004: 96. It continues: 'Stressing their humanity, Daube put much emphasis on forgiving people with repugnant views', associating de Zulueta with the latter.
- 16 MacQueen 2013: 827-8: 'They [Daube and de Zulueta] first met in Oxford in the 1930s, when Daube discovered that de Zulueta's Spanish origins led him to sympathize with Franco's brand of fascism. But some anti-Semitic attitudes did not prevent him [de Zulueta] rendering much support to Jewish refugees from Nazi Germany and, subsequently, to Polish exiles as well.'
- 17 OUP: PB/ED/001310: Daube to Sutcliff, letter of 12 February 1958: 'My dear Sutcliff, this morning I received from de Zulueta's widow a list of his publications ... It is not long, 27 items ...'
- 18 OUP: PB/ED/001310: Daube to Sutcliff, letter of 20 August (?) 1958: 'I am glad you agreed to the list of de Z's publications. I am just verifying it.'
- 19 I am currently working on a biographical and academic profile of Francis de Zulueta, which will provide a new and more complete list of his publications.
- 20 As for the correspondence with Riccobono, on the letters in Palermo see note 9. An earlier letter, sent by Riccobono to de Zulueta in 1921, I found in the Law Library of Aberdeen inside the offprint of an article by the same Riccobono (Riccobono 1921) presented by him to de Zulueta (AUL, Taylor Library, p. 34089.25/4 [olim ZU 34089.25/4]).
- 21 Respectively kept in the University Archives (Francis de Zulueta: Papers and Notes, Aberdeen University Library - Special Collections, MS 2785 [3 Boxes]) and in the Taylor Library.
- 22 A role often anachronistically assigned to Daube: see, for example, MacQueen 2005: 336.
- 23 On the teaching of law in Oxford, see Lawson 1968.
- 24 The papers given within this section were collected and published the same year by Vinogradoff (Vinogradoff 1913).
- 25 His first encounter with Riccobono in 1913 was recollected by de Zulueta in a letter written 19 December 1948 to the Italian scholar (see note 9).
- 26 In his obituary of Vinogradoff, de Zulueta describes himself as 'one who had the privilege of being among Vinogradoff's first Oxford pupils, and later his colleague' (de Zulueta 1926: 206).
- 27 de Zulueta 1932: 272: 'The lecturers were seven Italians, three Germans, one Frenchman and one Belgian. Why no Englishman, when we possess so eminent an exponent [meaning Buckland]?'.

- 28 See notes 20 and 21.
- 29 Collinet had been invited to give a series of lectures in March 1922; Pringsheim in October 1930; Fournier in November 1931; Koschaker in February 1934.
- 30 During his stay in England for the occasion, Riccobono also gave two lectures on 'The formation of Roman Law' at the University College in London: de Zulueta was in the chair (*The Times* 29 May 1924, 13).
- 31 Officially the conferment was recommended by the Board of the Faculty of Law. In the case of Riccobono, we know that the qualifications for the degree were stated by the Warden of All Souls: see the *Hebdomadal Council Papers* No. 128 [April 22–July 19, 1924], xxxi.
- 32 As for Kantorowicz, in the *Oxford University Gazette* (OUG) seminars were advertised on 'Mediaeval Legal Manuscripts' (for 1936: OUG 20 March 1936), 'Roman and Canon Law in Bracton' (for 1937: OUG 11 December 1936), 'Latin Textual Criticism, with special regard to Mommsen's Praefatio to his edition of the Digest' (for 1938: OUG 10 December 1937); 'The nature of Law and Legal science' (for 1939), the last of which he had the intention to repeat the subsequent year (OUG 15 December 1939). Some seminars were held in the rooms of All Souls. Pringsheim, on the other end, supported also by H. Lawson and other scholars, was giving lectures at Merton College on 'The general character of Justinian's legislation' (1939: OUG 17 March 1939), 'Classical and Post-classical law' (1939: OUG 23 June 1939) and 'Greek private law (guarantee and sale)' (1940). On the offer made by Merton, see Honoré 2004: 220.
- 33 As was the case with Pringsheim, 'rescued' by de Zulueta after the grant from Merton had run out. He recommended him among his law colleagues to offer coaching work for the students coming to Oxford after the war, as emerges from a letter written by de Zulueta to Kenneth Sisam, the editor of the Oxford University Press (OUP Archives: PB/ED/010382 Box OP 1390: letter of 31 May 1948). The recommendation was successful: see Honoré 2004: 224.
- 34 Like the *Manual of Roman Law*, to be written by Schulz in order to provide him with financial support (Ernst 2004: 147).
- 35 OUP Archives, PB/ED/010382 Box 1390: Sisam to Schulz, letter of the 15 February 1939.
- 36 More details on this enterprise in Ernst 2004: 171–9.
- 37 One of the original contributors: Ernst 2004: 172.
- 38 The decision had been taken already in March at a general meeting of the Finance and Research Fellowships Committee of All Souls, where it was decided to assign a sum not exceeding 200 pounds for the education of Kantorowicz's children 'in the event of an application being received'. A colleague informed de Zulueta with an informal note of the successful meeting (Aberdeen University Library – Special Collections, MS 2785/2/2).
- 39 Aberdeen University Library – Special Collections, MS 2785/2/2, Hilda Kantorowicz to de Zulueta, letter of 3 March 1940.
- 40 See note 7.
- 41 The *laudatio* was reported in *The Aberdeen University Review*, 35 (1953–1954): 296.
- 42 The Polish Faculty of Law at Oxford was created in March 1944 after an agreement between the Polish Government in exile and the British authorities. (Other Polish universities abroad had already been established in Britain in the previous years.) Inaugurated at the end of April of the same year, this university was to help young Polish soldiers and airmen to keep up their university studies while they were serving in the Armed Forces in Britain during the Second World War. Part of the teaching staff

was made up of professors and teachers from the University of Oxford: de Zulueta was among them. On the Oxford Polish Faculty of Law, which was to remain active, according to its statute, until the conclusion of an armistice with Germany, see the *Oxford University Gazette* 16 March 1944, 350; *The Oxford Magazine* 4 May 1944, 1.

- 43 See note 9.
- 44 On his family background, see Lawson 1971.
- 45 Francis M. de Zulueta, S.J.
- 46 Father Denis F. Sheil, who became Superior of the Oratory in Birmingham. He was the last novice received by Cardinal John Henry Newman, founder of the Oratory. Other members of his mother's family also entered religious orders.
- 47 As the successor of Monsignor Ronald Knox.
- 48 On the Spanish students at Beaumont College from its foundation (in 1861) up to 1892 see Rodríguez Caparrini 2007, 2011 and esp. (on the members of de Zulueta's family) 2012, 2014 and 2016.
- 49 Both boarding schools had been founded with the aim of constituting a Roman Catholic alternative to Eton, the most famous public school in England: see Rodríguez Caparrini 2003 (on Beaumont College); Shrimpton 2005.
- 50 See note 1.
- 51 On the presence of Catholics in Oxford, see Martindale 1925.
- 52 Sire 1997: 33. Urquhart was lecturer in History and Fellow at Balliol College, later becoming its Dean.
- 53 *The Times* 10 November 1919, 15 ('New professor of Civil Law at Oxford').
- 54 *The Tablet. The International Catholic News Weekly* 7 February 1920, 5 ('Catholics at the universities').
- 55 In February 1930 we find Tolkien attending a dinner at All Souls College, given by de Zulueta in honour of the Archbishop of Birmingham, who the previous day had held an ordination at the Dominican Priory. The dinner was attended by the superiors of the Congregations in Oxford, by the Senior Fellow of Balliol College Francis Urquhart, and 'one or two others': *The Tablet* 12 April 1930, 488 ('University Notes').
- 56 *The Tablet* 31 December 1927, 24 ('University Notes. Oxford'). Sometimes meetings were held in All Souls.
- 57 As was Tolkien.
- 58 On this issue he gave various papers: *The Tablet* 6 August 1927, 20 ('Catholic education notes'); 5 November 1927, 19.
- 59 *The Catholic Herald* 4 June 1948: see note 1.
- 60 Most of them converts: see Allit 1997.
- 61 *The Times* 31 October 1924, 7 ('Franciscans at Oxford. 700th Anniversary'): de Zulueta figures among the guests invited at luncheon afterwards. Again, on the 4 October 1931, de Zulueta (together with Tolkien, Ronald Knox and other guests) attends the formal opening of the new Franciscan friary at Oxford: *The Tablet*, 10 October 1931, 478 ('The New Franciscan Friary at Oxford'). See also *The Times* 19 May 1936, 28 ('Roman Catholic ceremony at Oxford').
- 62 *The Times* 16 August 1921, 5 ('Dominicans at Oxford. Stone-laying of new Priory'); *The Tablet* 20 August 1921, 20-5 ('The Dominicans at Oxford. Foundation-stone of new Priory'): de Zulueta figures again, representing the University, among the guests invited at luncheon afterwards. See also note 54.
- 63 *The Catholic Herald* 4 June 1948 (see note 1).
- 64 *The Tablet* 1 February 1958, 19 ('Professor de Zulueta'): 'In more tangible ways ... he contributed to the building of a strong Catholic life there [i.e. Oxford] ... so modest

- and unostentatious was he that few can do more than guess at the range of his charities.'
- 65 Not without prejudice are the recollections of Rowse, who describes de Zulueta as 'not only an ardent Catholic but an ultramontane, a real reactionary': Rowse 1993: 96.
- 66 In 1928 he made a public intervention with a letter to the editor (*The Times* 15 June 1928, 12 'The Jesuits'), entering into the heated debate around the 'Prayer-book Measure', which had just been defeated in the House of Commons, when Roman Catholic members had abstained from voting. The intervention – a passionate defence of the Jesuits – was a reply to the letter of Sir Frederick Milner (former Member of Parliament for the Conservative Party), published on the same newspaper a few days before (*The Times*, 13 June 1928, 17). Milner had expressed his criticism in a negative way, describing certain tactics used by the Catholics to influence the vote as typical 'of the Jesuits'.
- 67 *The Times* 1 July 1930, 12 ('The dispute in Malta. Suspension of the Constitution').
- 68 *The Times* 2 July 1930, 10 ('The dispute in Malta. Right of electoral freedom'): 'While Parliamentary Roman Catholic members ... walk delicately [referring to a recent debate within the British Parliament], Professor de Zulueta marches into the controversy with a challenging stride ... it is at least difficult to reconcile his soft sentences [on the Maltese bishops] with the hard facts.' 'If England becomes predominantly Roman Catholic – Foot polemicized – are we to expect these methods of political persuasion whenever they are deemed to be appropriate by the clerical hierarchy of the day?' Ironically regretting the 'disapproval of the learned Professor', Foot claimed that the opposite position represented that of 'the overwhelming majority of the English people'.
- 69 *The Times* 4 July 1930, 12 ('The dispute in Malta. Episcopal authority').
- 70 The exchange between de Zulueta and Foot on the dispute in Malta went on for weeks (*The Times* 8 July 1930, 12; 15 July 1930, 10; 17 July 1930, 10), with de Zulueta on the one side rhetorically and repeatedly appealing to the liberty of the Maltese people to choose their own representatives – the elections having been cancelled in the meantime and their Constitution suspended – while on the other side there were accusations that this was minimizing the gravity of the interference of the bishops and of their threats towards the Maltese electors.
- 71 On more than one occasion in his letters to *The Times* he criticizes the 'left [or 'Red'] propaganda'.
- 72 By Douglas Jerrold, for example, the editor of the *Catholic English Review* and an active supporter of Franco: see his letter in *The Times* 24 April 1937, 8.
- 73 On the project in general, see Ernst 2004: 171–9.
- 74 An extract of this letter is published by Ernst 2004: 172.
- 75 Walsh 1980; Walsh 1982; Mews 1983. The movement was subsumed, in 1965, into the 'Catholic Institute for International Relations', which then became 'Progressio'. It also involved friends of de Zulueta, like M. D'Arcy.
- 76 It would go beyond the limits of this contribution to analyse the profile of Cardinal Hinsley, but it is noticeable that, unlike some members of the Catholic hierarchy, he was openly against all forms of totalitarianism and absolutism, viewing both communism and fascism (or Nazism) equally as enemies.
- 77 The programme and more information on the planned activities were published in *The Catholic Herald* 30 August 1940, 8.
- 78 *Ibid.* It is therefore all the more perplexing when Lawson 1971: 1098 observes in his biography of de Zulueta: 'His scepticism in matters of legal scholarship ... led him ...

- to entertain a radical and very un-Catholic disbelief in natural law.' So far I have been unable to find any trace of such a pamphlet.
- 79 Ferrández Bru 2011. The text is also available at <http://www.josemanuel.ferrandez.com/ENguerra.html> (unpaginated, accessed on 17 January 2017). Like de Zulueta, Tolkien too was driven by personal motives: his guardian, Father Francis Xavier Morgan, whom he regarded with much affection, was a Catholic priest of Spanish origins, who had also studied at the Oratory School in Birmingham. And, again like de Zulueta, 'Tolkien's support to the Franco movement rests precisely on his perception of him as the champion of the Catholic Church against communist menace' (Ferrández Bru 2011).
- 80 See note 1.
- 81 Especially in Oxford, where even in 1939, when the final victory of Franco was evident, many academics still took a public position against the official recognition of Franco's administration 'so long as the Spanish Government holds territory and Italian or German troops remain in Spain.' A telegram urging this position and signed by forty-two professors and tutors was sent to the chancellor of the University, Lord Halifax, and published in *The Times* 17 February 1939, 16 ('Oxford professors and General Franco'). This is all the more striking, considering that the general opinion by that time, shared even by a liberal like Salvador de Madariaga, considered such a recognition as the only means to put an end to the bloodshed which was still continuing in Spain.
- 82 *The Times* 10 February 1958, 14 ('Professors R. W. Lee and F. de Zulueta').
- 83 Only very recently the World Wide Web (the authors hidden behind its anonymity) is starting to restore a fairer picture. Thus the German version of the website dedicated to Francis de Zulueta in Wikipedia added the following note to the existing entry in April 2015: 'Obwohl er kein Faschist war, unterstützte Zulueta, wie viele katholische Spanier seiner Zeit, Franco im Spanischen Bürgerkrieg. Diese Unterstützung brachte dem hoch angesehenen Juristen einen schlechten Ruf in Oxford ein, wo er als faschistischer Aristokrat dargestellt wurde. Dieser Darstellung widerspricht allerdings seine Unterstützung prominenter deutscher Juden wie Fritz Schulz und David Daube, der eine tiefe Freundschaft zu Zulueta entwickelte' (trans.: Although he was not a fascist, like many other Catholic Spaniards in his time Zulueta supported Franco in the Spanish Civil War. This support gave to this highly regarded jurist a bad reputation in Oxford, where he was depicted as a fascist aristocrat. This picture contrasts with his support to prominent German Jews like Fritz Schulz and David Daube, who developed a deep friendship with Zulueta).

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