My friends in the room know that I like to begin my presentations with a very dry statement about my thesis, its relevance, and how it works in the context of my larger project. This is also what I recommend my students to do: focus on the thesis of the thesis and then you will be free to write however you fancy. I have used this technique to discipline myself in two different ways: in the first place, this disciplining serves the purpose of subduing the European scholarly instincts gained during my training and many years of professional life; in the second place, it serves the purpose of allowing me to be in control of my new scholarly language –English. If I have spent one hundred and twenty nine words to explain this, it is because today I am simply exploring a different approach. Forgive me, please, if the result is the proverbial ridiculous mouse.

The fact of the matter is that I do not need to demonstrate the spatial affinities between poetry and law, as I promised. It would be tantamount to demonstrate that Cervantes wrote the first part of Don Quijote, or that Calderón did never set foot in the Americas. I know, the most mischievous among you are thinking that I have chosen ambiguous statements. But it is true. How can I demonstrate that the space of the court is an ongoing collaborative process of production between poetry and law? You all know that. Even I knew that before. Likewise, if I were thinking of a different kind of space –let’s say the imaginary, rhetorical spaces of writing—I would not need to demonstrate it either: you all would already be thinking of the recent edition by Henrique Monteagudo of a notarial archive on which the very same notary and notarial handwriting has been jotting cantigas in Galician Portuguese by a poet going by the name of Alfonso Paez. The history of poetry is full of poems discovered in the legal archives. By the same token, you would yawn hyperbolically if I were to demonstrate that poetry and the law are always in search of each other in the literary space, like when Gonzalo de Berceo establishes a compelling precedent...
about the binding power of a contract in some miracles, or when Raimon Vidal de Besalú reinvents the love trial and the possibility to present poetical allegations—a problem that plagued legal scholars for several centuries—in *So fo l'gens qu'on gais*. Maybe you would even come up with the archi-example for these spatial affinities by looking at Guiraut Riquier, who, in the court of Alfonso X, suggested, in a notarial-poetical style, the necessity to legislate about poetry and poets. In other words, there is nothing to demonstrate there.

What about the poetic institutions in al-Andalus? Rafael Alcocer devoted a whole book to the poetic corporations in al-Andalus; more recently, as recently as April 15th 2015, Muhsin Al-Musawi has delved into this question in his recent book on *The Medieval Islamic Republic of Letters*—thus introducing the different processes of networking as part of the spatial affinity between poetry and law. *Leis d'Amor, Consistoris poetics*, and other institutions will complete the Iberian-Mediterranean import of all this: there is nothing else but a pervasive spatial affinity between poetry and law across the Iberian world and beyond. Everything is demonstrated already. I could be calling this with many different fancy names: heterotopies, *des espaces autres*, include them in the Actor-Network-Theory (or ANT) with Latour, or I could be reading this with Lefebvre, or even with Sloterdijk and the world interior of capitalism. All that would not make more interesting something that is hardly news. To demonstrate that something did not need any demonstration, I have consumed six hundred and sixty-five words. Six.

Besides, this affinity is far from being a medieval affinity at all. You probably remember how Michel Foucault studied the emergence of the *enquête* in the space of the Athenian theater, and in particular in Sophocles’ plays, for his Brazilian lectures on *La vérité et les formes juridiques*, as well as in his seminar at the Collège de France on *Théories et Institutions Pénales*, that will be out in the bookstores from tomorrow, May 15th 2015. Brigitte LeGuen has demonstrated the crucial affinities between the space of the theater, the emergence of legal issues, and the activism of the *technitai* or corporations of theatrical actors, in ancient Greece. I don’t think it would be particularly difficult to flesh out a global and chronologically rich erudition on the spatial affinities between poetry and law. Here I can only be sorry I don’t have the immense erudition of some Global scholars who jump from classical Latin literature to Chinese calligraphic poetry with admirable ease.
Let me take a small detour—yet another one. At the beginning of his article on “Troubadours et juristes”, published exactly fifty years ago (that is, the first time Kalamazoo hosted a Medieval International Congress, whose political underpinnings and revolutionary character one should not ignore), Paul Ourliac declared this: “Jamais les juristes et les poètes n’ont eu des relations moins intimes qu’au XIIe siècle: les uns et les autres participent, comme les philosophes, comme les artistes, à l’ivresse intellectuelle de l’époque; mais ils appartiennent à des mondes qui s’ignorent ou s’opposent.” (159) It looks like I would completely disagree from this position. In the first nine hundred odd words of my talk I was saying that it was quite evident that there was nothing to demonstrate regarding the affinity between poetry and law in terms of spaces, the production of different spaces, and the practice of those spaces.

You may have thought that I wanted to trick you into following my reasoning while avoiding defining either affinity, or space. I always recommend my students to identify the concepts they are discussing or even inventing, and define them right away, because that allows them to get a strong grip on their own theses. I can do it now: affinity is originally a Weberian concept whose complications were first raised by Richard Howe. It constitutes his non-teleological, non-causal reciprocal approach to explain certain preferred relationships between phenomena; his main example is the affinity between Calvinism and Capitalism. When I look at the spatial affinities between poetry and law I am looking at the different processes whereby the social production of some spaces cannot be understood as the result of one of those phenomena alone—for instance, I cannot think of the social production of the court as the result of judicial activities. I am looking at them as preferred reciprocal relationship. As you know, the origin of the Weberian concept stems from Goethe’s poetization of the chemical term for a series of reactions in which some elements seemed to elect others in order to do things together. So, now I am combining a couple of concepts, one of them clearly Weberian, as I said, and the other one linked to Henri Lefebvre’s study on La production de l’espace published in 1974, in which I am trying to locate the action of those affinities between the legal and the poetical phenomena. One would say that Ourliac—for instance—may have perceived certain elements that populate similar spaces; elements that participate of the “intellectual inebriation” of the era, as he puts it. However, he clearly removes the ones from the company of the others, as a hypothetical philosopher (whom we can call Plato, if we want to imagine him with very broad shoulders) who, intending to
design the perfect political system, would expel the poets from within the city walls were
new legal systems need to be sovereignly enforced.

Now, this is interesting. Not the fact that there is an affinity between poetry and law,
but rather that this affinity has been actively undermined, denied, questioned. As if the
spatial affinity between poetry and law—the *polis* space, for instance—entailed some sort of
inherent danger.

One could say that the spatial affinity between poetry and law causes perplexity. Or
perhaps you prefer to listen to this word in Arabic; not perplexity, which is a very regular
word, but rather *hîra*. *Hîra*, however, or those who feel it—*al-ba‘îrin*—is what worried
Maimonides toward the end of his life, when he was already an inhabitant of Fustat. That’s
why he wrote a whole handbook in installments about that feeling, and, better yet, about the
epistemology of this feeling. Perplexity is what you feel when you realize the affinity between
poetry and law, how they produce certain spaces, and in particular the legal institution. One
can embrace perplexity and think philosophically about the affinity between law and poetry,
but one can also consider this philosophical approach as incoherent and unproductive—
going rid of this perplexity. In other words, one can consider that the amount of doubt and
disorientation caused by the way in which poetry and law establish their affinity is too
disruptive, that the “intellectual inebriation” is troubling, and that one needs to separate
them as if undergoing a detoxification and rehab treatment, even though their affinity seems
to run quite deep.

In her admirable book first published in German in 2000, and then translated in
English in 2008, two years before her sudden and untimely death, Cornelia Vismann
considered that the legal fictions of Kafka in *Der Prozess*, and Hermann Melville in *Bartleby,
the Scrivener*, “stand at the end of a process of differentiation [of law and literature] that also
entailed a removal of literature from the law” (xiii). It looks like on word one thousand six
hundred and five, I finally have a problem that looks interesting: why the spatial affinities
between law and poetry have been undermined, denied, or otherwise considered a source of
perplexity and even incoherence, and how is it that it caused the long and lasting removal of
literature from the law? I have slightly less than 1400 words to try to explain it, given the fact
that in twenty minutes, one can read about three thousand words, if one wants to respect the
space of the other speakers in the panel.
It may look like I am going to engage in the historical question that poetry and literature are disruptive disciplines, as they use fictions and so on. There is a lot of bibliography on this, from, let’s say, saint Augustin to, for instance, many modern authors on medieval literary theory. Poetical fictions have been deemed disruptive not because they inherently, ontologically are disruptive, but because claiming its disruptiveness is a verified useful way to segregate fiction from fiction. What we do in the Humanities is to question the terms in which this segregation has taken place, in order to evince the artifacts and the subjects of truth-telling. By examining legal reasoning, one can say that poetry, literature, and fiction is not only not disruptive, but rather completely necessary for the constitution of the legal discipline—the legal discipline could not exist without that. I could be citing a long tradition from Montaigne’s idea of the fictions légitimes to Jeremy Bentham, or even Vaihinger, or Hans Kelsen. Instead, I am just going to quote a fragment from a Royal decree of law published in the Spanish Boletín Oficial del Estado on February 28th, 2015 (that’s exactly seventy five days ago):

“El concepto de persona jurídica es una de las creaciones más relevantes del Derecho. La ficción consistente en equiparar una organización de bienes y personas a la persona natural ha tenido importantes y beneficiosos efectos en la realidad jurídica y económica. Mediante dicha ficción, las personas jurídicas, al igual que las naturales, nacen, crecen y mueren. Además, el principio de limitación de responsabilidad inherente a determinadas sociedades de capital hace que éstas puedan liquidarse y disolverse (o morir en sentido metafórico), extinguéndose las deudas que resultaren impagadas tras la liquidación, y sin que sus promotores o socios tengan que hacer frente a las eventuales deudas pendientes una vez liquidado todo el activo.”

Fiction here is a pretty powerful concept, because it allows the law to create a rule according to which the corporation can be considered a person—a juridical person, or, in medieval legalese, a persona ficta. Note, also, the incoherence of the legislator (another persona ficta) who, having already established the terms of the fictio legis, highlights nevertheless the “metaphorical death” without realizing that such metaphor would be already working in the world interior of the fictio itself—as a logical world. Fictio, here, is legislation, not legal interpretation, or, in other words, it is a heuristic device, not only a hermeneutical one. Here, the affinities between poetry and law constitute as well a form of transfer of heuristic devices. However, the legal discipline does not simply accept the transfer, or reciprocate it.
The legal discipline is much more interested in the appropriation of the device itself, while it removes the poetical heuristics from the very legal institutional space.

The very discipline of Law needs, by means of its guardians, scholars, practitioners, and other necessary officials of the institution, to create an autonomy that Niklas Lühmann described as “autopoetical”, that is, a discipline that is capable to generate its own rules from within. This autonomy was criticized by Pierre Bourdieu in his “Force de loi”, but it is now and always alive and kicking in contemporary discussions on legal hermeneutics. A good example of this is the recent alliance between conservative Justice of the Supreme Court, Antonin Scalia, with Bryan Garner, the lexicographer that David Foster Wallace considered nothing short of a genius. When Richard Posner reviewed Scalia and Garner’s book, he, using an expression made famous by al-Ghazali and ibn-Rushd, spoke about “The Incoherence of Antonin Scalia.” Even the conservative killer of the almost extinct field of “law and literature” considered that this autopoiesis and autosemiosis could go too far in its separation from the world. In other words, autopoiesis is about undermining affinities, about cleaning up the space, and about specializing it, purifying it from the ways in which such space may be produced and practiced by other disciplines and epistemologies. However, the legal discipline cannot survive without the very affinity itself, that is, without the reciprocal ways in which, in this case, poetry and law, produce and practice spaces. Fiction is a case in point, but it is not the only one.

It would be possible to modify Vismann’s diagnose according to which literature needed to be removed from the law. What is removed from the law is not literature or poetry, not even the heuristics of poetry, not even the fictions, tropes, and stories, not the extreme cases or the narrative, not the speculative poetry claimed by Maimonides as central to legal scholarship. What is removed from the law is the institution of poetry, the discipline itself as a discipline. Law cannot recognize the affinity between the two disciplines, perhaps under the idea that two solid bodies cannot occupy the same space at the same time.

Maybe the spatial affinity between poetry and the law is an interesting theoretical fiction to understand how the construction of the legal discipline is a process to turn all possible spatial affinities into spatial subalternities, into spatial submissions. One could say that legal spaces, the legal production of spaces, is a way to summon up different artifacts, disciplines, corpora of knowledge, epistemologies, with the purpose of incorporating them in the legislative process, and in the space of the commons —that is, the process of codification in
the tradition of the *ius commune*, and the jurisprudential precedent and exemplum in the case of the tradition of the *common law*; it is perhaps not totally useless to mention that both Wael Hallaq’s project and Laurence Rosen’s project have the purpose to demonstrate that the *shari’a* is one of the traditions of the *common law*.

In the less that 350 words I have left I cannot give a good example of all this in the way Alfonso X embraces perplexity in the *Siete Partidas*. This is part of my larger project, I mean, the book I am about to finish. In it I study in depth the way in which legislation is made out of the interconnection between narrative, poetic devices, and philosophy. By doing it, the legislator does not intend to acknowledge the network of affinities in the production of legal and cultural spaces. He (because the *persona ficta* called legislator is a man) needs to subsume the other disciplines in the common spaces of an all encompassing legalistic system in which the main principles are dominated by the affects and by the concept of love as the center of Alfonso’s interpretation of natural law. And Alfonsine legislation is a good case in point, not only because it is extremely rich, but also because it is still active. Remember that I mentioned a decree from February 27th 2015? Well, this legislation does not only talk about *fictiones legium*—it also creates one of its lines of allegations with the *Siete Partidas*.

Let me conclude very quickly: the reason why I study medieval law is not because I want to know medieval law worked—although, of course, I do. There is another, more urgent question: what are the ways in which we can create a legal critical thought from the vantage point of historical research and Humanistic endeavor. Medieval law and medieval culture must be taken outside of their old “radical alterity” to become sources of concepts to analyze how we know, what we know. As I said at the beginning of this paper, today I wanted to question, rather than to present a thesis. And medieval culture is a fantastic way to undertake complex questions.

I still have two more words to add after having said two thousand nine hundred and ninety-eight of them: thank you.