

IUS COMMUNE

Zeitschrift für Europäische Rechtsgeschichte

Veröffentlichungen des Max-Planck-Instituts
für Europäische Rechtsgeschichte
Frankfurt am Main

XXIII

Herausgegeben von DIETER SIMON
und MICHAEL STOLLEIS

JUST
LIT



Vittorio Klostermann Frankfurt am Main
1996

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Jurisprudentia Elegantior and the Dutch Elegant School

Jurisprudentia elegantior nobis hic est legum Romanarum notitia cum philosophia (Stoicorum in primis), antiquitatibus, lingua Graeca Latinaque, et criticae artis studio, historia item Romana litterariaque artissimo vinculo conjuncta.

This compact definition of the salient characteristics of the branch of legal science we know as legal humanism opens a short dissertation by Ioannes Fridericus Jugler published, significantly, at Leiden in 1755.¹ The dissertation is prefixed to an edition he procured of some of the works of the German legal humanist, Bernardus Henricus Reinoldus (1677–1726),² and it was written to advance the thesis that, contrary to popular opinion, the Germans had also made an important contribution in this field. After suggesting the above definition, he goes on to cite what he considers to be some of the most famous names among humanist jurists. Here I will quote those of the Dutch (whom Jugler, unaware of the importance that the latter were subsequently to attach to the distinction, seems to regard as more or less German in any case):³

Satis diligenter quoque hunc amoenissimum agrum inde a saeculo XVI. coluerunt Hispani, Itali, Galli, et (quos olim cives habuimus integerrimos) Belgae. Quis, quaeso, his in studiis vel mediocriter exercitatus ignorat ... Jac. Raevardum, Arnold. Vinnium, Ulric. Huberum, Joh.

¹ *Dissertatio de insignibus Germanorum in jurisprudentiam elegantiore merit.*

² *Bernardi Henrici Reinoldi ... Opuscula juridica adhuc rariora. Recensuit illa, notulis instruxit, in praefatione vitam auctoris clarissimi exposuit, ac dissertationem singularem de insignibus Germanorum in jurisprudentiam elegantiore merit praemisit Johannes Fridericus Jugler ... Lugduni Batavorum, apud Samuelem Luchtmans et filios, 1755. 8°.* On Reinoldus, who studied in Leiden under Noodt and Perizonius, see G. C. J. J. VAN DEN BERGH, *The Life and Work of Gerard Noodt (1647–1725). Dutch Legal Scholarship between Humanism and Enlightenment*, Oxford 1988, p. 99, n. 36.

³ JUGLER (note 1), pp. 4–5.

Voetium, Ger. Noodt, Corn. van Eck, Anton. Schultingium, Corn. van Bynkershoek, Jac. Voorda, Ge. d'Arnaud, Ger. Meermannum, et alia illustria in hoc doctrinae ambitu nomina?

This list immediately raises a fundamental question which continues to be debated to this day. What is the relationship of *jurisprudentia elegantior* to the Dutch Elegant School? Of the names quoted above,⁴ certainly Noodt, Van Eck, Schultingh, Voorda, d'Arnaud and Meerman would qualify automatically as exponents of elegant jurisprudence. Further, the arch-conservative Huber, and Bynkershoek, the President of the Supreme Court of Holland, Zealand and Friesland, also wrote works of importance in this field. Yet Huber also compiled the Dutch Heedendagse rechts-geleertheit,⁵ and Bynkershoek is at least as famous as one of the founding fathers of international law. The crucial question, however, is raised by the presence of two further names, those of Arnoldus Vinnius and Ioannes Voet. Together they compiled two of the most influential works of practical jurisprudence of the 17th and 18th centuries, commentaries for students and practitioners on Justinian's Institutes and the Digest.⁶ Neither jurist can remotely be considered to have made a contribution to legal humanism according to the definition offered by Jugler above; rather they are exponents of the *usus modernus Pandectarum*. Are they thereby excluded from membership of the Dutch Elegant School?

These questions are raised again in a short work (a bare 16 pages of text) which takes for its title: *Holländische Eleganz gegenüber deutschem Usus Modernus Pandectarum*, the title ending significantly with a question mark.⁷ The joint authors, A. M. M. Canoy-Olthoff (sadly

⁴ I here leave out of consideration Iacobus Raeverdus, who belongs to the different world of the Southern Netherlands of the 16th century.

⁵ Heedendagse rechts-geleertheit, soo elders als in Frieslandt gebruikelijk ... Leeuwarden, gedrukt bij Hero Nauta, 1686. 4° (Vyfde druk: Amsterdam, by Gerrit de Groot en zoon, en Petrus Schouten, 1768. 4°).

⁶ The full titles of these works are revealing; that of Vinnius (first edition: Lugduni Batavorum, ex officina Ioannis Maire, 1642. 4°) runs, "Commentarius locupletissimus, academicus & forensis, in quatuor libros Institutionum imperialium ...", that of Voet (first edition: Hagae-Comitum, apud Abrahamum de Hondt, 1698-1704, and Lugduni Batavorum, apud Johannem Verbessel, 1698-1704. fol.), "Commentarius ad Pandectas, in quo praeter Romani juris principia ac controversias illustriores jus etiam hodiernum et praecipuae fori quaestiones excutuntur ...".

⁷ A. M. M. CANOY-OLTHOFF (†) und P. L. NÈVE, *Holländische Eleganz gegenüber deutschem Usus Modernus Pandectarum? Ein Vergleich des privatrechtlichen Unterrichts in Leiden und an einigen deutschen Universitäten anhand einiger holländischer und*

since deceased) and P. L. Nève,⁸ have approached the question from a novel angle. The primary objective of the research is legal education in the Netherlands in the period from 1650 to 1750; the evidence brought under consideration in the present study is that provided by student dissertations. A number of legal dissertations submitted at the University of Leiden in this period has been analysed, and compared to analogous works submitted in the same period at German universities. The main question the authors have thereby sought to answer is that suggested by the title of the book, namely the extent to which the dissertations may be taken to reflect a humanistic approach or one more geared to contemporary legal practice.

In the end the enterprise seems to me to be fraught with difficulties, and the conclusions offered to be used with considerable caution. In fairness it should be said that the authors make no great claims for the work, and have no pretensions beyond advancing some tentative conclusions. Nevertheless the work seems to me to be open to the criticism of over-simplification. The authors have advanced specific, quantifiable, criteria, *Merkmale*, which are designed to distinguish two directions of legal studies, namely elegant jurisprudence and the *usus modernus Pandectarum*. The criteria they suggest for distinguishing the two movements are reminiscent of those in the definition of Jugler quoted above, but with the addition of two counter-indications. The list is as follows (p. 4):

1. Hinweise auf und Behandlung von Partikularrecht.
2. Anschluss an die mittelalterliche Rechtswissenschaft, sich äussernd in Hinweisen auf die Literatur der Glossatoren und Konsiliatoren und in der Behandlung der Kontroversen, die für diese Literatur kennzeichnend sind.
3. Hinweise auf klassische nichtjuristische Autoren.
4. Interesse für philologische Probleme.
5. Interesse für die Altertumswissenschaften.
6. Interesse für textkritische Probleme.

deutscher juristischer Dissertationen über *locatio-conductio* (1650–1750). (Rechtshistorische Reeks van het Gerard Noodt Instituut 17.) Nijmegen, Gerard Noodt Instituut, 1990. The work has been discussed at some length by ELTJO SCHRAGE in: *La scuola elegante olandese*, in: Studi Senesi 104 (1992), pp. 534–547.

⁸ In fact this study is based upon the lecture delivered by Anna Canoy-Olthoff at the 25. Deutscher Rechtshistorikertag in Graz in 1984. On her death in May of the following year, Paul Nève took upon himself the task of seeing to the completion and publication of the work (p. 17 n. 1).

The distinction between *philologische* and *textkritische Probleme* is unclear to me; if the term *Philologie* is being used in the narrow sense, they would seem to be identical; if *Philologie* is meant in the broader sense, then it would seem to be synonymous with *Altertumswissenschaften*. At any rate, the general direction is clear, and it is the same as that indicated by Jugler in the quotation cited above.

Omitted from this list of *Merkmale* is that which is in fact by far the most important for this study, namely the citation of works of juristic literature. Certainly, the authors are here aiming to set up criteria for determining what is a humanistic work, so naturally they did not wish to commit a circular argument by including the citation of such works as a criterion. In fact, however, the great preponderance of the research for this study has gone into listing the authors cited in the dissertations, and analysing whether or not these were humanistic in character. The authors need not have been so coy; we all know that Alciatus and Augustinus, Budaeus and Balduinus, Cuiacius and Connanus are famous legal humanists, and it is perfectly legitimate to use the citation of such works as a criterion for determining humanist interest or influence in the student dissertations.⁹

These, then are the criteria used to differentiate the two *Richtungen* in the dissertations. The above criteria are isolated in the 37 dissertations under examination. Chapters, pages and even the number of lines in each dissertation are counted; the *Merkmale* are identified and quantified; citations are listed and categorised; and the sums are presented at the end of each dissertation in the list in the appendix, as for example (p. 45, no. 25):

24 Verweisungen, davon 15 auf zehn Werke von zehn juristischen Autoren, sieben auf klassische nichtjuristische Autoren und zwei auf zeitgenössische nichtjuristische Autoren.

This information is then used to compare and contrast, first, different periods within the Leiden dissertations, and secondly the Dutch with the German dissertations. Thus the text of this study tends to read rather forbiddingly as follows (p. 11):

⁹ When the authors write (p. 11), "Zum ersten Mal treffen wir ... auf ältere, meist etwas weniger bekannte und hauptsächlich französische Humanisten," and set out in footnote 66 a long list of these jurists, they have not applied the six stated *Merkmale* to all these works to determine whether they were indeed humanists; they have accepted, from general legal-historical knowledge, that they were such, and applied the citation of such works as the seventh criterion for distinguishing the two approaches.

Die dritte Gruppe von (zwölf) Dissertationen, geschrieben zwischen 1716 und 1749, ist im Durchschnitt 20 Seiten lang. Die Zahl der Literaturhinweise beträgt in dieser Gruppe rund 500. Wenn wir die Dissertationen von A. Warin (Nr. 27) und von A. Perizonius (Nr. 30), die ca. 100 bzw. 200 Verweisungen enthalten, nicht berücksichtigen, dann zählen die übrigen jeweils durchschnittlich zwanzig Verweisungen, was eine Steigerung im Vergleich zu den vorangegangenen Perioden ist.

For me it is a question, in the first place, just how far it is possible to reduce such questions to an exercise in elementary arithmetic. Certainly, some interesting general tendencies might indeed emerge from such number-crunching. For example, a dramatic increase across the board in the number of citations of the French humanists and the work of Gerard Noodt at the beginning of the 18th century doubtless points to an increased interest in legal humanism. But the criteria have to be applied with care. The difference between a legal commentary of 1500 and one of 1600 is immense, and it is largely due to the influence of legal humanism. In the 17th century all jurists write an acceptable Latin; having received an education, they know Greek; they are aware of the existence of Byzantine legal sources; they cite classical non-juristic legal authors; they are sufficiently historically aware to know that the *Corpus Iuris* is not a unitary legal code; all know that the Digest was interpolated by Tribonian; all cite medieval Italian jurisprudence only with restraint. The result may be a form of legal writing which is more elegant in the non-technical sense; it does not imply that all jurists were exponents of *jurisprudentia elegantior*. Thus we will find examples, as the authors acknowledge (p. 4), of all such *Merkmale* in the works of Vinnius and Huber, but it is the purpose of their usage, the object of study, which marks out the work of the legal humanist.

That apart, the condition for the acceptance of conclusions based upon such a numerical analysis is, of course, that sufficient attention has been paid to ensuring that the results are statistically significant. It is here that I have my doubts about the present project. First, given the thousands upon thousands of student dissertations which exist, the number of such productions examined here is minute: only 28 Dutch, and 9 German.¹⁰

¹⁰ Of the nine German dissertations, it emerges that two were actually defended in Utrecht and Leiden by students of German origin. It might seem that the authors are thereby suggesting a kind of national Geist in the students, rather than comparing educational and institutional differences. In fact, however, it emerges that the two German students did indeed submit the longer, sophisticated dissertations more typical of their German Kommilitonen than their Dutch counterparts: see below, note 12.

Secondly, the dissertations chosen are restricted to a single subject matter, that of the contract of *locatio conductio*. How can we be sure that a different subject matter would not present a completely different picture? This difficulty is actually emphasized by the authors themselves, for they write (p. 2):

Wir haben die *locatio-conductio* deshalb gewählt, weil bei diesem Kontrakt in der niederländischen Literatur verhältnismässig viel partikulares Recht behandelt wird.

This is surely a *petitio principii*; as we have seen, the treatment of *Partikularrecht* is actually the first *Merkmal* listed as pointing towards the *usus modernus* when analysing the character of the dissertations. Thirdly, as regards the comparison of Dutch and German dissertations, it is clear that we are not comparing like with like. The Dutch dissertations belong to that class known as *pro gradu*, flimsy productions of a few pages, copied from some text-book or other, (when not actually plagiarised from a previous effort), with only a handful of citations of the legal literature.¹¹ The German dissertations are *exercitii causa*, and are much more serious, elaborate affairs, with many legal citations. Thus I calculate that in the Dutch dissertations the number of citations of legal literature averages 16; in the German no less than 105.¹² Moreover, within the German dissertations those of Straßburg are quite different; of the two cases evidenced one has eight citations, the other none at all. Since the literature cited in the dissertations is the single most important indication used for determining their character, we can see the seriousness of this objection.

¹¹ "In keiner der ... Leidener Dissertationen ist ein eigenständiger Gedanke zu finden: Alle sind eine Widerspiegelung der Unterrichtsliteratur und wahrscheinlich auch der Vorlesungen der Professoren ... Grosse Teile der Arbeiten sind aus der Literatur abgeschrieben, manchmal mit, manchmal ohne Quellenangabe. Es betrifft dann allerdings meistens nur einige Zeilen umfassende Zitate," (p. 10). "Nicht nur das Schrifttum wurde kopiert ... Die Dissertation von G. Pollius (Nr. 12) von 1687 ist zu einem grossen Teil - samt Literaturhinweisen und allem - bei der viel umfangreicheren Dissertation von Dittmann (Nr. 11) von 1681 abgeschrieben. Die Doktorarbeit von C. Westmynen (Nr. 14), am 10. April 1693 in Leiden verteidigt, ist zu drei Vierteln wörtlich abgeschrieben von der Dissertation A. Sprangers' (Nr. 6) von 1668, der Rest ist bis auf drei der 31 Thesen in leicht veränderter Form wiedergegeben," (p. 24, n. 44).

¹² In calculating these figures I have omitted the atypical dissertation of Antonius Perizonius (No. 30), with its 198 citations, and have followed Canoy-Olthoff and Nève in assigning the dissertations of the two students of German origin defended at Leiden and Utrecht to the German figures. The dissertations of the two German students (with their 114 and 80 citations respectively) do indeed have more a German than a Dutch character.

The authors are, of course, not unconscious of some of these difficulties. Thus at one point we read (p. 14), "Durch die geringe Anzahl können ein oder zwei gute Dissertationen das Bild natürlich ziemlich verzerren", while they begin their general conclusion with the words (p. 16), "Es scheint uns sehr voreilig, auf Grund einer Untersuchung von nur 28 Leidener und neun deutschen Dissertationen die Schlussfolgerung zu ziehen ..." Yet they sometimes undoubtedly fall into the trap they themselves warn against. Thus in this tiny number of dissertations, restricted to the subject of *locatio conductio*, there occurs – by chance, I dare to add – a citation of Grotius' *De iure belli ac pacis* in a German dissertation of 1677 and a Dutch dissertation of 1716. The authors are prepared to conclude (p. 35, n. 111):

Dies könnte bedeuten, dass „De iure belli ac pacis“ seinen Einfluss in den deutschen Dissertationen früher hat ausüben können als in den niederländischen.

This seems to me precisely the kind of conclusion that cannot conceivably be drawn from the evidence examined.

Questionable, too, are the efforts to identify more general influences, which predictably are also to be tabulated and quantified. Thus, for example, the dissertations of the third period into which they divide the Leiden dissertations (1716–49) (the basis of the periodisation is never explained) reveal an increasing influence of German legal writings. This "hängt ... vielleicht mit der Tatsache zusammen, dass die Professoren Westenberg, Rücker und Schwarz aus dem deutschen Sprachraum stammten und dort zum Teil auch studiert und gelehrt hatten" (p. 12). The evidence for this proposition is that of a total of some 500 citations in this period, some 80 are devoted to German legal literature. The authors seem prepared to persist in this conclusion even although in the same sentence they reveal that 58 of these 80 German citations are found in one long, detailed and wholly atypical dissertation.¹³

Again, we are asked to believe that the influence of Gerard Noodt predominated over that of Ioannes Voet, both colleagues at Leiden for over a quarter century between 1686 and the latter's death in 1713. The evidence for this influence is the following. In the previous period

¹³ The author is Antonius Perizonius (1721–80), nephew of the famous philologist, Iacobus Perizonius (1651–1715). The average number of citations in the other Dutch dissertations is 16; Perizonius has 198.

(1654–77), of nine dissertations examined, revealing 67 citations, three citations were of classical authors, three of legal humanists; in the Voet/Noodt period (1693–1711), of the seven dissertations examined, revealing 55 citations, fifteen were of classical authors and six of legal humanists. On this evidence, together with the *gepflegten Stil* which they detect, (and notwithstanding a “Mangel an Interesse an philologischen Problemen und Altertumswissenschaften”), the authors are prepared to conclude that the influence of Gerard Noodt on the students of Leiden was greater than that of Ioannes Voet (pp. 10–11).

The final conclusion actually serves to undermine the very distinction suggested in the title of this study; for according to the criteria applied the German dissertations are found to be *both* more humanistic *and* to have a greater interest in contemporary law. The authors themselves present this conclusion only tentatively (p. 16):¹⁴

Es scheint uns sehr voreilig, auf Grund einer Untersuchung von nur 28 Leidener und neun deutschen Dissertationen die Schlussfolgerung zu ziehen, der Unterricht in Deutschland sei in der zweiten Hälfte des 17. Jahrhunderts mehr humanistisch-antiquarisch gewesen und habe der einheimischen Rechtspraxis mehr Interesse entgegengebracht, als es in Leiden damals der Fall war.

If one can only express agreement with the authors' caution, it might be added that this general conclusion has at least the merit of pointing up the superficiality of the legal-historical cliché implicit in the title of the work.

Even if one remains sceptical about the validity of the conclusions which are here made to rest on such slender evidence, it seems to me that the authors have incidentally raised two points of fundamental importance. The first is the definition of elegant jurisprudence and its relation to the Dutch Elegant School; and the second is the state of our bio-bibliographical information on the jurists of the 16th to 18th centuries. On the first point the authors have uncovered a quite remarkable disarray in the understanding of the term Elegant School

¹⁴ The authors' position seems to be shared – in full measure – by a previous reviewer: “Wie die Autoren selbst bemerken, ist es sehr voreilig, aus einer Untersuchung von nur 28 Leidener und neun deutschen Dissertationen zu schließen, daß der Unterricht in Deutschland in der zweiten Hälfte des 17. Jahrhunderts mehr humanistisch-antiquarisch gewesen sei und der einheimischen Rechtspraxis mehr Interesse entgegengebracht habe, als es in Leiden damals der Fall war.” MARGREET AHSMANN, in: *Tijdschrift voor Rechtsgeschiedenis* 60 (1992), pp. 219–221, at pp. 220–221.

among Dutch legal historians. A long footnote merits consideration (p. 20, n. 18):

Manchmal reserviert man den Begriff „Holländische elegante Schule“ für eine bestimmte Gruppe Juristen, u. a. Vinnius und Huber, unter Ausschluss von Juristen wie Voet und Noodt, die nach anderen jedoch beide zur holländischen eleganten Schule gerechnet werden müssen. So zählt J. A. Ankum ... G. Noodt und J. Voet zur „holländischen Schule“, U. Huber jedoch zum „Usus modernus“. J. E. Scholtens ordnet J. Voet ebenfalls in der „Usus modernus“-Richtung ein ... P. Gerbenzon und N. E. Algra ... scheinen G. Noodt ausserhalb, Vinnius, Huber und Voet jedoch innerhalb der holländischen Schule einzuordnen. Am zufriedenstellendsten erscheint uns die Ansicht Van den Berghs, der Voet als einen reinen Vertreter der Usus modernus-Richtung ansieht, und Noodt als Repräsentanten der eleganten Schule, womit er wohl die elegante Richtung mit der antiquarischen gleichsetzt. Feenstra-Waal nennen alle „Humanist lawyers“, und zwar sowohl die Franzosen des 16. Jahrhunderts als auch die Niederländer des 17. und 18. Jahrhunderts, Anhänger der „Elegant school“.

This is all rather bewildering. A definition that brings Noodt and Voet together, and contrasts them to Huber, certainly excites surprise; and while the contrast of Noodt, the humanist, to Vinnius, Huber and Voet, the practitioners, makes good sense, the exclusion of *the former* from a Dutch school, however defined, takes surprise to the point of astonishment. These strange alliances seem to me merely to cloud the issue. I follow the authors of the present work in discerning much greater clarity in Van den Bergh's clinical distinction between two front-rank figures, both born in the same year, Ioannes Voet (1647–1713) and Gerardus Noodt (1647–1725). Both wrote a commentary on the Digest, which as Van den Bergh states, “are model expressions of the programme of the *usus modernus* and the elegant school respectively”.¹⁵

This raises the real question: are we to apply the term Dutch Elegant School to the totality of Dutch jurists active in the Netherlands in the 17th and 18th centuries, including Voet and Noodt? Or should we, as Van den Bergh prefers, restrict the term to those (relatively few) Dutch jurists who were exponents of *jurisprudentia elegantior*, in other words of the humanist direction in legal studies? Certainly the identity of the terminology *elegantia* in one and the same group of jurists is attractive. Yet if we were to follow Van den Bergh it must be absolutely clear that

¹⁵ VAN DEN BERGH (note 2), p. 263, quoted by the authors of the present study at p. 17, n. 5.

we have also to speak of a French, a Spanish, an Italian and a German Elegant School in the 17th–18th centuries; for assuredly great contributions were made to legal humanist studies in this period by scholars of all these nations. Legal humanism was from the beginning a European phenomenon, and it continued to be so in the 17th–18th centuries. The tendency to see legal humanism as the product solely of a French elegant school in the 16th century, and of its 17th–18th century successor in the Dutch elegant school, fails to acknowledge this fact.¹⁶

But is the division of the exponents of *jurisprudencia elegantior* into national schools really justified? In some cases it does seem particularly apt. The great Spanish legal humanists, active at Salamanca in the mid 17th century – Melchior de Valentia, Franciscus Ramos del Manzano, Ioannes Suarez de Mendoza, Iosephus Fernandez de Retes, Nicolaus Antonius – were all closely allied personally as well as intellectually. Moreover, their works tended to circulate in their own hermetically-sealed world, and they hardly penetrated the iron curtain which separated the juridical worlds of northern and southern Europe. True, in his *Interpretationes et emendationes iuris Romani*, published at Utrecht in 1735,¹⁷ Iacobus Voorda notes (cap. 20) that he had managed to borrow a copy of Melchior de Valentia's *Illustrium juris tractatum libri tres* from Ioannes van de Water. But this is already

¹⁶ Cf. R. FEENSTRA, C. J. D. WAAL, Seventeenth-century Leyden law professors and their influence on the development of the civil law. A study of Bronchorst, Vinnius and Voet, Amsterdam, Oxford 1975, p. 11, n. 8: "Elegant School" was the term which applied to all Humanist lawyers, the French of the 16th century as well as the Dutch of the 17th and 18th centuries." VAN DEN BERGH (note 2), pp. 112–13: "Legal humanism had its triumphs mainly in France – for that reason it was called *mos gallicus* – in the first decades of the sixteenth century ... The university of Bourges was the centre of legal humanism for nearly half of the sixteenth century ... [M]ost French humanistic jurists were Huguenots. Bourges, by the way, was an important Huguenot stronghold during the civil war. This allegiance decided the fate of the French elegant school. Those who did escape the massacre of St. Bartholomew's night 1572 fled the country ... The young republic, among other Protestant countries, took up the refugees, and the university of Leiden, founded in 1575, benefited greatly from it ... In the seventeenth century Leiden became the widely acknowledged centre of a new flourishing of legal humanism, the Dutch elegant school. It took over the lead in Roman legal scholarship from the French and had its heyday roughly between 1670 and 1730." This vision of the history of legal humanism, it seems to me, is sufficiently refuted both by the century which elapses between 1572 and 1670, and by the existence of an important school of legal humanism at Salamanca in the mid 17th century; see also note 20, *infra*.

¹⁷ *Interpretationes et emendationes iuris Romani, quibus accedit eiusdem oratio pro decretalibus pontificum Romanorum epistolis. Traiecti ad Rhenum, apud Iohannem Broedelet, 1735. 8°.*

late, and Melchior's work was much more accessible than the others through being reprinted at Lyon and Geneva. By contrast, when Gerardus Noodt published his monograph on the *Lex Aquilia* in 1691,¹⁸ he was completely unaware of the existence of the great humanist masterpiece published on the same theme by Suarez de Mendoza at Salamanca in 1640.¹⁹ Indeed, even the strenuous efforts made by Meerman to obtain copies and reprint their works in the seven volumes of his *Novus Thesaurus*, published at The Hague in 1751–53, seem to have done little to call attention to the importance of the Spanish school.²⁰

The German case is rather less clear. In the first place, several scholars of German origin who made an important contribution to legal humanism, such as Wissenbach, Heineccius, and Otto, actually spent periods teaching at a Dutch university.²¹ Back in Germany Heineccius retained close links to his Dutch colleagues, to whom he was certainly intellectually closer than to some of his German contemporaries. While we may readily concede with Jugler that many German scholars made an important contribution in this field, one wonders if we really ought to speak of a German "school", internally linked and distinct from that of the Netherlands.

Personally it seems to me preferable that the term Dutch Elegant School be applied globally to all Dutch jurists of the 17th and 18th

¹⁸ *Probabilium juris civilis libri quatuor, quibus accedunt De jurisdictione et imperio libri duo, & Ad legem Aquiliam liber singularis. Lugduni Batavorum, ex officina Felicis Lopez, 1691. 4°.*

¹⁹ *Commentarii ad legem Aquiliam, ad excellentissimum principem D.D. Garsiam de Abellaneda et Haro, Comitem de Castrillo, Supremi Indiarum Senatus praesidem. Salmanticae, apud Tabernier, 1640. 4°.*

²⁰ Comparing the monographs of Suarez and Noodt on the *Lex Aquilia* in the preface to volume two of the *Novus Thesaurus*, MEERMAN concludes (pp. II–III): "Qui vero sub exitum superioris aevi, et quinquaginta circiter post Suarezium annis idem argumentum libro singulari illustratum dedit jurisconsultus celeberrimus atque humanissimus Gerardus Noodt, etsi Balduino fuerit superior, palmam tamen Suarezio, quem non vidit, praeripere haud potuit; ut ut enim multa juris cognitione instructus, nec minori scribendi elegantia usus fuerit Noodtius, quin tamen hunc industria, amoenitate, variaeque doctrinae copia vincat Suarezius, neminem utriusque commentarium debita cum cura examinantem latere poterit." Nevertheless, treating of Noodt's monograph in his recent biography of the Dutch scholar, VAN DEN BERGH (note 2) writes, "... as far as I know, no humanistic monograph on the *lex Aquilia* was published before that of Noodt" (p. 174).

²¹ Ioannes Iacobus Wissenbach (1607–75) was at Franeker from 1640 until his death; Ioannes Gottlieb Heineccius (1681–1741) was at Franeker from 1724–27 (and later received a call to Leiden which he was unable to accept); Everardus Otto (1685–1756) was at Utrecht from 1720–1739.

centuries writing in Latin, including such as Vinnius, Voet and Huber. The tendency to apply this designation to the totality of Dutch 17th–18th century jurists is too prevalent to attempt to restrict it to only the legal humanists among them. Within the Dutch Elegant School there would then be an *elegante Richtung* and a *usus modernus-Richtung*, as the authors of the present study term them. There is perhaps a further justification for adopting this usage. While there were certainly important legal humanists in other countries, there is no denying the fact that, relative to the latter, *jurisprudentia elegantior* was pursued with particular intensity in the Netherlands. The roll-call of Dutch legal humanists is a long and distinguished one, including such names as D'Arnaud, Henricus Ioannes Arntzenius, Best, Bondam, Brenkman, Bynkershoek, Hermannus and Ioannes Cannegieter, Crusius, Van Eck, Laurentius Gronovius, Meerman, Noodt, Schulting, De Toullieu, Iacobus Voorda, Van de Water, Wieling. This galaxy of talent has surely to be seen in the wider context of classical studies in general, which flourished particularly in the Netherlands in this period. This was a small world: half a dozen universities, in which a legal faculty with a complement of as many as four professors was exceptional. The two directions were not isolated from each other, and it can hardly be that legal humanist studies, pursued so intensively, left no trace on the Dutch *usus modernus*. It is a reasonable hypothesis that the comparative importance of *jurisprudentia elegantior* in the Netherlands compared to other nations sufficiently permeated the whole general intellectual atmosphere of legal studies as to justify the global application of the term Dutch Elegant School.

The second question raised by this study – inseparable in fact from attempted definitions of legal humanism and elegant jurisprudence or schools of lawyers – is the current state of information on the sources. Since legal humanism postdates the invention of printing, the writings of the humanists have been handed down to us through the medium of print. The question, then, is one of the bibliography of juridical writings of the 16th to 18th centuries. Since I am personally cited several times in this connection by the authors of the present study, I am called upon to correct a fundamental misunderstanding which they display. As we have seen, a great part of the research that has gone into this study has been into listing the scores of jurists cited in the student dissertations, and then hunting down information on their lives and works. The information thus gathered occupies 121 detailed footnotes, filling

twenty pages, more than the text itself. Whence have the authors derived this information? The answer is not re-assuring (p. 20, n. 15):

Grundsätzlich haben wir uns für bio- und bibliographische Einzelheiten mit Bezug auf die in unserem Aufsatz erwähnten Autoren auf die Angaben in Coings Handbuch beschränkt.

The authors have sought out the reference to hundreds of juristic works in Coing's Handbuch,²² presumably by scanning its pages (for there is no index), and these references follow the vast majority of juridical works listed in their notes. At the outset I am cited as suggesting that the section of the Handbuch on legal humanism compiled by H. E. Troje²³ is "nicht ganz zuverlässig",²⁴ a judgement with which the authors are in full agreement.²⁵ However, while it is true that I wished to call attention to the unreliability of Troje's contribution, I by no means intended to imply that the other contributions were in any way better. The volume of the Handbuch of primary significance here, Band II. 1 on the Neuzeit, is divided into three relevant sections; one on southern Europe (Holthöfer), one on northern Europe (Söllner), and one on legal humanism (Troje). Legal humanists stem either from northern or southern Europe; yet such was the lack of editorial co-ordination of the Handbuch that the identical works of the same jurists are repeatedly duplicated in two sections. At the time of writing my critique I calculated the figure that of 237 entries on identical works, 227 resulted in divergent lists of editions. I thereby hoped to call into question the reliability of the whole enterprise; I did not expect to see the examples of this phenomenon which I printed cited, as here, as an aid to the user of the Handbuch (n. 61). My opinion of the Handbuch I endeavoured to clarify when I subsequently referred to it as, "a monster of misinformation, the frightful offspring of an unnatural connection between Fontana, Lipenius and the British Library General Catalogue of Printed Books, a monster now stalking the earth and which, for the sake of scholarship, had far better never seen the light of day".²⁶

²² Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte, hg. von HELMUT COING. Zweiter Band: Neuere Zeit (1500–1800). Das Zeitalter des gemeinen Rechts. Erster Teilband: Wissenschaft, München 1977.

²³ Vierter Abschnitt. Die Literatur des gemeinen Rechts unter dem Einfluß des Humanismus. Handbuch II. 1, pp. 615–795.

²⁴ p. 20, n. 14: "Leider sind die bibliographischen Angaben, die Troje macht, nicht ganz zuverlässig, was hervorgeht aus: D. OSLER, Desperately Seeking Donellus, in: Rechtshistorisches Journal 5 (1986) 58–70".

²⁵ See notes 14, 53 and 105.

²⁶ Turning the title-page, in: Rechtshistorisches Journal 6 (1987), pp. 173–182, at pp. 174–175.

The matter can be disposed of in a few words. In the *Handbuch* a list of supposed editions has been established through the admixture of some, but not all, reliable, modern, published library catalogues together with wholly unreliable para-bibliographical entities, ranging from antique bibliographical compilations of the 17th and 18th centuries to the sale catalogues of modern antiquarian book dealers. These sources have been mixed together in the *Handbuch* without indication of provenance and thus with no adequate means of discerning them. The user of the *Handbuch* is thus denied information available in the standard published catalogues, at the same time as being continually sent out on a *Phantomausgabenjagd*. If the reader wishes an example of the resulting confusion he may care to consult the information presented on the first great work of legal humanism, Budaeus' *Annotationes in Pandectas*.²⁷ As I have written elsewhere:²⁸

The entry ... omits the primary editions of Paris c.1519, 1521, 1524, 1527, not to mention a whole range of other editions, all noted in standard published library catalogues available at the time; *pari passu*, non-existent editions of 1528, 1531 and 1566 cloud the picture. At the same time, a parallel entry for the identical work some pages earlier in the very same *Handbuch* provides a wildly different list of editions, resembling the previous entry only in the degree of confusion and error it exhibits.

Or take the entry on Alciatus' first work, the *Annotationes in tres posteriores libros Codicis*, of which the first edition was published at Straßburg in 1515,²⁹ but of which an edition of Bononiae 1513 is listed in the *Handbuch*.³⁰ Can we lay the ghost of this *Phantomausgabe*? Such an edition is cited by Johann Christoph Adelung in his supplement to Jöcher's *Allgemeines Gelehrten-Lexikon*, the former being published in 1786;³¹ it is probable that the information has simply

²⁷ *Handbuch* (note 22), II. 1, pp. 174 and 681.

²⁸ Text and Technology, in: *Rechtshistorisches Journal* 14 (1995), pp. 309–31, at pp. 323–324.

²⁹ In tres posteriores Codicis Iustiniani [libros] annotationes, in quibus obiter quam plurima aliorum auctorum loca explanantur. Eiusdem opusculum quo Graecae dictiones fere ubique in Digestis restituuntur. Straßburg: Ioannes Schottus, 28 August 1515. fol.

³⁰ *Handbuch* (note 22), II. 1, p. 177.

³¹ Fortsetzung und Ergänzungen zu Christian Gottlieb Jöchers allgemeinem Gelehrten-Lexico, worin die Schriftsteller aller Stände nach ihren vornehmsten Lebensumständen und Schriften beschrieben werden, von JOHANN CHRISTOPH ADELUNG, Leipzig 1784 (reproduction: Hildesheim 1960), vol. I. col. 509: "Die Auslegung über die drey letzten Bücher erschien als sein erstes Werk schon 1513 zu Bologna, worauf die Ausgabe, Strasburg, 1515, Fol. folgte."

been tipped from this source directly into the Handbuch. Adelung's reference derives ultimately, I suspect, from the subscription of the dedication of Alciatus' work. The subscription is in fact Bononiae 1514; however this was written MDXIII, and from the second edition of 1518 onwards it was misprinted MDXIII. By this route a misprint from the beginning of the 16th century is still giving rise to a *Phantomausgabe* in the Information Age at the end of the 20th.

After the publication of Ahsmann and Feenstra's catalogues of the jurists of Leiden,³² and subsequently of Utrecht,³³ both exhibiting highly accurate lists of imprints, all individually inspected,³⁴ it is now possible to see at a glance just what has been perpetrated in the sections of the Handbuch covering the Dutch jurists (the responsibility of Söllner and Troje). It is a pointless exercise to list the catalogue of errors which such a comparison reveals; as one example *pro toto* we may be satisfied with the judgement of Govaert van den Bergh writing on Gerard Noodt:³⁵

³² Bibliografie van Hoogleraren in de Rechten aan de Leidse Universiteit tot 1811, door MARGREET AHSMANN en R. FEENSTRA, met medewerking van R. STARINK. Geschiedenis der Nederlandsche Rechtswetenschap, samengesteld in opdracht van de Commissie voor de uitgave van de Geschiedenis der Nederlandse Rechtswetenschap van de Koninklijke Akademie van Wetenschappen. Deel VII. Bibliografie Nederlandse Rechtswetenschap tot 1811. Afl. 1. Bibliografie van hoogleraren in de rechten aan de Leidse Universiteit tot 1811. Amsterdam, Oxford, New York 1984.

³³ Bibliografie van Hoogleraren in de Rechten aan de Utrechtse Universiteit tot 1811, door MARGRET AHSMANN, met medewerking van R. FEENSTRA en C. J. H. JANSEN, (note 32), Afl. 2. Bibliografie van hoogleraren in de rechten aan de Utrechtse Universiteit tot 1811. Amsterdam, Oxford, New York, Tokio 1993.

³⁴ Since I have also written critically of the bibliographical works of Ahsmann and Feenstra (see *Rechtshistorisches Journal* 10 (1991), pp. 84–91), I may perhaps take this opportunity to emphasize that my criticisms are directed towards the technicalities of descriptive bibliography, and are on a completely different register from those to be applied to the Handbuch. These criticisms have been partially (though not completely) met in the second volume on the jurists of Utrecht. Both volumes have constituted extremely useful *check-lists of variant imprints* (as we ought technically to describe them) for my own Census of the Dutch Elegant School. For a short description of this latter project, see for now my article, *Scoto-Dutch Law Books of the Seventeenth and Eighteenth Centuries*, in: *Lines of Contact*, ed. by JOHN M. FLETCHER and HILDE DE RIDDER-SYMOENS. Proceedings of the Second Conference of Belgian, British, Irish and Dutch Historians of Universities held at St. Anne's College, Oxford, 15–17 September 1989. (*Studia Historica Gandensia*, Publikaties van de Opleiding Geschiedenis van de Universiteit Gent 279), Gent 1994, pp. 57–74, at pp. 61–62.

³⁵ VAN DEN BERGH (note 2), p. 7, n. 29. At the time of writing I happen to be reading the draft of an article (forthcoming in the *Tijdschrift voor Rechtsgeschiedenis*) by Tammo Wallinga on the life and work of Laurentius Gronovius, whose important *Emendationes Pandectarum* were first published at Leiden in 1685. Troje's entry in the Handbuch (vol. II. 1, p. 655) lists only the edition of Halle 1730 (placed after

The bibliographical data concerning Noodt's works in Coing's *Handbuch* ii.I (Coing, 1977) are incomplete and absolutely unreliable.

In short, in the *Handbuch* we have to deal with lists of editions so inextricably penetrated by error and confusion that nothing can be salvaged. Tragic as it is to pronounce such a judgement on a work of this scope, what ought to have been the basic instrument for future research in the legal history of the modern period is nothing other than a *Corpus Errorum*. When I published my critique a decade ago I foresaw that this work constituted a dangerous virus, concealed behind a famous imprimatur, which was liable to pass into the bloodstream of our subject; in the work under review this premonition has come true. I dread to think how much time was wasted in tracking down the scores of references in the *Handbuch*; worse, the information culled from it here sits side by side with the reliable data painstakingly gathered by such as Ahsmann and Feenstra or Govaert van den Bergh. The virus continues to spread: in 1993 a modern edition and translation of the *Sacra Themiidis Hispanae Arcana* (Hannoverae, 1703), a proto-bibliography of Spanish legal history by (pseudo-) Gerardus Ernestus de Frankenau, was published by María Angeles Durán Ramas.³⁶ A sixty page *Bibliografía de autores y obras* is appended; and one of the basic sources used is Band II. 1 of the *Handbuch*.³⁷ Doubtless this *Bibliografía* will now be used by Spanish legal historians as a convenient, alphabetically arranged, source of information.

What is to be done? First, on every occasion to warn against the danger to research posed by Band II. 1 of Coing's *Handbuch*: *Qui malos non plectunt, bonis iniuriam inferunt*; second, to replace it as soon as possible. The latter is the task on which I have been engaged for the past decade. I hope to lay the results of this labour before the public in the proximate future.

Brenkman's *Historia Pandectarum* of 1722 since the works are listed in chronological order). The first edition, by no means rare, is listed even in the catalogue of the Bibliothèque Nationale (vol. 64, col. 1007).

³⁶ GERARDO ERNESTO DE FRANKENAU, *Sagrados Misterios de la Justicia Hispana*. Traducción y Edición de MARÍA ANGELES DURÁN RAMAS. Presentación de Bartolomé Clavero. Madrid 1993.

³⁷ The *Bibliografía* is at pp. 595–654; a list of the works used in its compilation is recorded at pp. 25–26. Predictably, the system of asterisks, which provides some minimal control on the unreliable sources used in one of the sections of the *Handbuch*, is here abandoned.