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## When Worlds Collide: How *europäische Rechtsgeschichte* came to Oxford

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## When Worlds Collide: How *europäische Rechts-* *geschichte* came to Oxford

Leafing through the six volumes of the Oxford International Encyclopedia of Legal History,<sup>1</sup> I am reminded of many institutions which coexist in the city of dreaming spires alongside its ancient seat of learning. They have names similar to that of the present publication, names like Oxford International School of Language. Their true character, however, emerges more clearly when we read the proud boast on their website: »Founded in 1992«. What is revealed behind the soubriquet is that some enterprising Modern Languages graduate, finding his talents in low demand in a cruel world, has discovered the possibility of turning a relatively honest penny by hiring other unemployed Modern Languages graduates to Teach English as a Foreign Language. The carefully chosen location and designation of the resulting institution is calculated to entice the unwary foreign student into signing up for Advanced Conversational English through the subliminal suggestion of some connection with the world's most famous repository of higher learning. Only on closer examination does the actual relationship between the Oxford International School of Language and the University of Oxford prove to be purely nominal. The present publication would seem to function on precisely the same principle – even to the extent of a *verhängnisvolle* dependence on its European guests.

### I. The Middle Ages

The two most famous jurists of the Middle Ages are Bartolus de Saxoferrato and Baldus de Ubaldis. Everyone knows that. And while the Oxford Encyclopedia includes an entry on the former,<sup>2</sup> there is, mysteriously, none on the latter. In its stead is an entry on a certain Petrus Baldus de Ubaldis.<sup>3</sup> Now, it has been known for six centuries that Baldus had a brother called Petrus de Ubaldis, but a jurist known as Petrus Baldus de Ubaldis has hitherto escaped the attention of legal historians. However, since the editor of the

<sup>1</sup> Editor in chief, STANLEY N. KATZ.  
Oxford: University Press 2009.  
Hereafter cited as OIELH.

<sup>2</sup> OIELH vol. 1, pp. 280–81.

<sup>3</sup> OIELH vol. 1, pp. 250–51.

Oxford Encyclopedia, Stanley N. Katz of Princeton University, is sublimely confident that »this Encyclopedia is by far the most comprehensive available in English – or so far as we know, in any language«,<sup>4</sup> it certainly cannot be excluded that a hitherto unknown jurist has been brought to light. A priori, it seems inconceivable that the editors of such a publication could confuse one of the two most famous jurists of the Middle Ages – much as if an Oxford International Encyclopedia of Art History might speak of Leonardo Michelangelo Buonarroti, or an Oxford International Encyclopedia of Literary History offer an entry on Christopher William Shakespeare. And yet, unlikely as this may seem, I find myself driven to the conclusion that we have here to deal with one and the same man. I would like, if I may, to submit to the judgment of a learned audience the evidence upon which I have arrived at this conclusion.

I set about researching the biography of Baldus de Ubaldis by turning to another prominent work of legal historical scholarship entitled »Juristen. Ein biographisches Lexikon«, edited in 1995 by Michael Stolleis, director of the Max-Planck-Institut für europäische Rechtsgeschichte.<sup>5</sup> The entry on Baldus de Ubaldis in the Lexikon was written by Peter Weimar, professor of Roman Law in the University of Zürich, but much more prestigiously, former Mitarbeiter of the very same Max-Planck-Institut für europäische Rechtsgeschichte. So I began to compare the information contained in the Stolleis Lexikon on Baldus de Ubaldis with that provided by the Oxford Encyclopedia on the life and works of Petrus Baldus de Ubaldis. Definite similarities began to emerge, as the reader may conclude from the following:

Baldus de Ubaldis (1327–1400) entstammte einem begüterten, adligen Peruginer Geschlecht. Sein Vater war Professor der Medizin. Seine Brüder Angelus und Petrus wurden wie er Rechtslehrer. Angelus (1328–1404) hat Kommentare zum Corpus iuris civilis und Gutachten hinterlassen. Auch mehrere Nachfahren der drei Brüder waren bekannte Juristen.

Baldus de Ubaldis, Petrus (1327–1400). ... Baldus came from a prosperous patrician family of Perugia. His father was professor of medicine. His brothers were law professors like him. Angelus (1328–1407) left important writings on civil law and examples of his legal opinions (*consilia*), which have been printed. Several descendants of the brothers also became well-known jurists.

Certain details are remarkably similar. For example, the father of both is recorded as a professor of medicine, while both are said

4 OIELH, Editor's preface, vol. 1, at p. xxiii.

5 Beck Verlag, 1995; second edition, 2001. Hereafter cited as STOLLEIS. There have been no changes to the text of any of the entries cited here between the first and the second edition, »gründlich überarbeitet und aktualisiert« though it claims to be; page references are therefore to the second edition alone.

to have famous jurists among their descendants. On the other hand, there were no doubt many doctors and lawyers floating around in those days. Besides, some of the details do not wholly coincide. Baldus is said to have a brother Petrus, but no mention is made of such a brother in the case of Petrus Baldus. And while both have a brother Angelus, the brother of Baldus dies in 1404, whereas the brother of Petrus Baldus lives on till 1407. And yet, when we turn to the teaching career attributed to both jurists, the argument for their identity appears to grow in strength:

B. studierte in Perugia Zivilrecht, besonders bei Bartolus de Saxoferrato, sowie kanonisches Recht bei Federicus de Petrucciis. Von 1347 bis zu seinem Tode lehrte er, v.a. Zivilrecht, in Perugia und, seit 1390, in Pavia, wo er auch starb (Grabmal in der Universität), dazwischen in Pisa (1357–58), Florenz (1358–64) sowie Padua (1376–79). Unter seinen Schülern waren sein Bruder Angelus, Paulus de Castro, die Kanonisten Petrus de Ancharano (–1416) und Pierre-Roger de Beaufort, der spätere Papst Gregor XI. (–1378).

Baldus studied civil law in Perugia under Bartolus of Sassoferrato, and canon law under Federicus Petrucci. He then taught primarily civil law in Perugia (1347–1357, 1364–1376, and 1379–1390), Florence (1358–1364), Padua (1376–1379), and Pavia (1390–1400). His brother Angelus and Paulus de Castro (d. 1441) were among his students, along with the canonists Petrus de Ancharano (d. 1416) and Petrus Belforte (Pierre-Roger de Beaufort, 1329–1378, from 1370 Pope Gregory XI).

Moreover, their writings show a similarity which is hard to believe could be the work of two different hands:

Aus dem Unterricht des B. sind umfangreiche, aber zum Teil lückenhafte Kommentare zu den Digesten und zum Codex Iustinianus einschließlich der »Tres libri« sowie zu den ersten drei Büchern der Dekretalen Papst Gregors IX., des sog. Liber Extra, und zum Liber feudorum hervorgegangen. B. schrieb mehrere Traktate und einen Glossenapparat zum Frieden von Konstanz von 1183, der mit diesem in die glossierten Ausgaben des Corpus iuris civilis aufgenommen wurde, und bearbeitete das *Speculum iudiciale* von Guilelmus Durantis.

Baldus's extensive lectures and commentaries, though they contain many gaps, deal with the *Digest*, the *Codex Iustinianus*, including the last three books (*Tres libri*), the *Institutes*, and also the *Decretales* (or *Liber Extra*, 1234) of Pope Gregory IX and the *Liber feudorum* (these last lectures from 1393–1394). He also wrote a commentary on the Peace of Constance of 1183 between Emperor Frederick I (Barbarossa) and the Lombard League – which was incorporated into the glossed editions of the *Corpus iuris civilis* – and numerous monographs (*tractatus*), and produced a new edition of the *Speculum iudiciale* of Guilelmus Duranti, the most important handbook of civil procedure.

Another strong argument lies in the similarity of their professional careers:

Als Gesandter und als Rechtsberater der Zünfte nahm B. am öffentlichen Leben seiner Vaterstadt teil. Nach Ausbruch des Schismas sprach er sich 1378 und nochmals – auf Ersuchen des Papstes – 1380 gutachtlich für die Gültigkeit der Wahl Urbans VI. aus. Von seiner umfangreichen Gutachterpraxis, durch die er ein großes Vermögen erwarb, zeugen mehr als 2500 Consilien.

Baldus took an active role in the public life of his city, being counsel to the guilds and serving as an ambassador. At the time of the Great Schism in 1378 and again in 1380 he declared in favor of the validity of the election of Pope Urban VI. His private practice, from which twenty-five hundred opinions (*consilia*) are extant, made him wealthy.

But what seems to put the matter beyond doubt is the posthumous fame of each:

B. ist neben seinem Lehrer Bartolus wohl der berühmteste der italienischen Kommentatoren. Durch gründliche, bisweilen breite Untersuchungen, die seine philosophische Neigung erkennen lassen, hat er auf den verschiedensten Gebieten Wichtiges zur Weiterentwicklung des Rechts geleistet.

Next to his teacher Bartolus, Baldus was the most famous of the Italian commentators, renowned well beyond his country. His often extensive studies, which reveal a special liking for philosophy, have exerted important influence in many areas of the development of law.

It may seem inconceivable that any legal historian, let alone the editors of an Oxford International Encyclopedia of Legal History, could be unfamiliar with the jurist Baldus de Ubaldis and might actually conflate him with his brother Petrus. Nevertheless, the evidence set out above would appear to argue for the identity of the two men.<sup>6</sup>

## II. The Legal Humanists

Petrus Baldus de Ubaldis is not, it would seem, the only case of mistaken identity in the Oxford Encyclopedia.<sup>7</sup> An analogous problem is raised by the entry on the French jurist, Andreas Tiraquellus (1488–1558). This entry is signed by Jonathan Otto. Jonathan Otto? Jonathan Otto?? Who is Jonathan Otto? This was to prove one of the hardest cases I ever had to crack. He was not listed in the Directory of Contributors of the Encyclopedia.<sup>8</sup> I asked all my usual contacts: nobody had ever heard of Jonathan

<sup>6</sup> Lest it be thought that the Oxford Encyclopedia is offering its learned clientele merely second-hand goods, the reader should consult the entry on Baldus de Ubaldis by PETER WEIMAR in the *Lexikon des Mittelalters* (München und Zürich 1980, fascicles from 1977), vol. I, coll. 1375–76. Since it emerges that the entry in the Stolleis Lexikon was already reproduced *verbatim* from this source, it follows that the Oxford Encyclopedia is in fact purveying third-hand Wissenschaft: not the state of research in 2009 then, as the ingenuous purchaser of the Oxford Encyclopedia might assume, but that of thirty years previously. Precisely the same applies to the same author's entries on Accursius (Lexikon I. 75–76; STOLLEIS pp. 18–19; OIELH vol. 1, p. 19), Azo (Lexikon I. 1317–18; STOLLEIS pp. 53–54; OIELH vol. 1,

p. 248), and Bartolus de Saxoferrato (Lexikon I. 1500–01; STOLLEIS pp. 67–68; OIELH vol. 1, pp. 280–81). The entry on Irnerius in the *Lexikon des Mittelalters* (V. 663) has been supplemented by material on the *Quattuor doctores* in STOLLEIS (pp. 325–27), but once again the Oxford Encyclopedia (OIELH vol. 3, p. 314) merely reproduces the text published in STOLLEIS.

<sup>7</sup> For another grandiose example, see the confusion of the Glossator Accursius with his son Franciscus: Accursius, Franciscus, OIELH vol. 1, p. 19; cf. Wikipedia, sub voce *Franciscus Accursius*: »Franciscus Accursius (Italian: Francesco d'Accorso; 1225–1293) was an Italian lawyer, the son of the celebrated jurist and glossator Accursius. The two are often confused«. <sup>8</sup> Cf. OIELH vol. 6, p. 191, col. 1.

Otto. Finally I tracked down Jonathan Otto to a small, ramshackle town in rural Kansas. It was just a dustbowl that looked like it had been left behind in the Depression. Jonathan Otto pulled Budweisers in the local sports bar. He had never written a word on European legal history. He even seemed to resent the suggestion. »You wanna drink, buster, or you gonna get the \*\*\*\* out the way?«. This was not our man.

Every lead drew a blank. Then she walked into my office. Blonde hair cascading over her shoulders, and legs so long I thought she would hit her head on the model Mustang hanging from the ceiling. Yeah, I had flown Mustangs back in '44, but things hadn't gone so well since then. The way she smoked that cigarette I knew she was my kind of broad. Turned out she was a legal historian too. She leaned across my desk and tossed back her hair. Why don't you try ... *Jochen* Otto, she hissed.

I was on the case faster than a raccoon with a bloodhound on its tail. As soon as she left the office I started going through my files. Still, there wasn't much to go on. Jochen Otto was just another failed academic who ran some kind of used book dealership downtown. He traded under the pretentious name of Vico Verlag. Seems he scraped together some kind of living by selling reprinted law books at astronomical prices to gullible librarians. But he had been a pupil of Hans Erich Troje, and Hans Erich Troje had been a Mitarbeiter of the Max-Planck-Institut für europäische Rechtsgeschichte. Now the pieces were beginning to fit.

I looked again at Jonathan Otto's entry on Tiraquellus and re-read the bibliography. I had read it again and again but still couldn't figure it out:

De iure constituti possessorii tractatus, Ort? 1549  
 De nobilitate et iure primigenitorum, Ort? 1549  
 De poenis, Ort 1559  
 Tractatus varii, Ort 1559  
 Opera omnia, Ort 1588–1589

Ort, Ort, Ort. What did it mean? And what about the two question marks? Ort – Orto – Otto: was there a connection? Was there a clue to be found in any of the Jochen Otto entries? Then, Bingo!, I hit it.

I checked out the Jochen Otto entry on Antonius Faber (1557–1624). And there, in the bibliography, it was staring me right in the face:

*De erroribus pragmaticorum et interpretum iuris Chiliades wie viele chiliades*, 1596.

I turned over in my mind all the cases I'd handled since opening the agency. For two decades I'd been reading Latin titles of early printed law books, but never had I come across the Latin phrase *Chiliades wie viele chiliades*. Then it came to me. It was something that blonde dame had said back in the office, something about Otto being a German name. I pulled my Oxford German Dictionary off the shelf, and there it was: Chiliades, *how many* chiliades. So it was some kind of riddle. Yeah, but it didn't fool me for long. It wasn't a number of *chiliades* you wanted. It was *chiliadis* in the genitive, and you wanted it followed by *pars prima* or *tomus primus*. What a schmuck!

So hidden behind these Latin imprints there were secret messages in German, were there? I flicked through the pages of my Oxford German Dictionary. Ort: Place. That was it. I had cracked the code. Jonathan Otto was asking where Tiraquellus was published and Jochen Otto was asking how many *chiliades* make up a chiliad. The trail was beginning to turn warm.

It was just what I expected. There was another secret German message hidden in Jonathan Otto's bibliography. It was the last work listed: »Juristas universales (noch zu ergänzen)«. <sup>9</sup> Looks like he had to leave town in a hurry. And that was all the clue I needed. There in Jochen Otto's entry for Ulrich Zasius there was the same cryptic message: »Juristas universales (zu ergänzen)«. <sup>10</sup> It was not exactly the same, but it was good enough for me.

I decided to widen the search. There was another piece of evidence that Jonathan Otto had left behind. He translated *apparatus criticus* as »critical abstract«. <sup>11</sup> Clearly he hadn't a clue about Latin – or very much else for that matter. And Jochen? Yep: there it was, plain as day, in his entry on Jacques Cujas (1522–1590). The title was *Opera, quae de jure fecit in hunc usque diem*. And the translation: *Works: How the Law Functions Nowadays*. Howdya like that?! »How the Law Functions Nowadays«!! I couldn't help chuckling to myself. There I was, suddenly back in the Latin class, a scruffy teenager at a small village school, forty years before. Ol' Bob Eadie. Boy, did we break that kind old man's heart! *Opera, quae de jure fecit in hunc usque diem* he would intone in his sonorous voice, and sure as fate some complete dumbbo would translate it: »Works:

<sup>9</sup> OIELH vol. 5, p. 467, col. 2.  
Zu ergänzen: San Julián, Verónica.  
In *Juristas universales*, edited by  
Rafael Domingo, vol. 2, pp. 134–  
137. Madrid and Barcelona, 2004.

<sup>10</sup> OIELH vol. 6, p. 160, col. 1.  
Zu ergänzen: Bressler, Steffen.  
In *Juristas universales*, edited by  
Rafael Domingo, vol. 2, pp. 89–  
92. Madrid and Barcelona, 2004.

<sup>11</sup> OIELH vol. 5, p. 467, col. 1,  
para. 2.

How the Law Functions Nowadays«. There would be a long pause, and then the inevitable »Where do you get THAT?!! *Fecit* the perfect tense, he would patiently explain; *in hunc usque diem* up to the present day. You could almost see him weakening as he continued this labour of Sisyphus day after day. Poor old Bob – I guess he’s long gone by now.

But there was no time to muse about the past. Was there any pattern behind the choice of jurists listed in the Oxford Encyclopedia? Everyone swore blind it was entirely random and totally devoid of any rational explanation. But would the Oxford University Press, even in its New York division, really publish an encyclopedia completely without rhyme or reason? There had to be some explanation. I had only one last piece of evidence to go on and I was determined to use it. The final entry by Jonathan Otto on works by Tiraquellus was *De legibus connubialibus*, Lyon 1569. But it was what followed this title that got me thinking: *reprint Frankfurt am Main, Germany: 2007*. Wasn’t it Jochen Otto’s business to sell reprints of books out of Frankfurt am Main? I started going through all the entries by Jochen Otto. The first was Andrea Alciati (1492–1550). And there it was, plain as a priest at a Bar Mitzvah:<sup>12</sup>

Hans Erich Troje, *Graeca leguntur* (Cologne: Böhlau, 1971. Reprint Frankfurt am Main, Germany: Vico-Verlag, 2006). See also *Opera omnia Andreae Alciati*. (2 vols, Basel, 1557–1558. Reprint Frankfurt am Main, Germany: Vico-Verlag, 2006).

Next, Jacques Cujas (1522–1590):<sup>13</sup>

Cujas, Jacques. *Observationum et emendationum libri XXVIII*. Halle, 1737. Reprint Frankfurt am Main: Vico-Verlag, 2008.

Cujas, Jacques. *Opera omnia Iacobi Cuiacii*. 10 vols. Paris, 1658. Reprint Frankfurt am Main: Vico-Verlag, 2008.

Now it all made sense! Why else would anyone cite an edition of Cujas published at Halle in 1737?! I leafed through to the next jurist: Antonius Faber (1557–1624).<sup>14</sup>

Faber, Antonius. *Codex Fabrianus*. Leipzig, Germany, 1706; reprint, Frankfurt am Main, Germany, 2006.

Another pointless late German edition reprinted in Frankfurt am Main: now I knew I was on to something. And in his entry on Johann Oldendorp (c. 1488–1567) there it was again:<sup>15</sup>

12 OIELH vol. 1, p. 119, col. 1.

13 OIELH vol. 2, p. 304, col. 1.

14 OIELH vol. 3, p. 27, col. 1.

15 OIELH vol. 4, p. 261, col. 1.

Oldendorp, Johann. *Opera omnia*. 2 vols. Originally published in 1559; reprint, Frankfurt am Main, Germany, 2006.

Only one entry left: Ulrich Zasius (1461–1535). And here I thought I had drawn a blank, until I came to the very last entry of the bibliography:<sup>16</sup>

Zasius, Ulrich. *Opera omnia*. Lyon 1590, reprint Frankfurt am Main, Germany, 2006.

So *Jochen* Otto advertises his products in every one of his entries, I mused, and *Jonathan* Otto cites the very same reprint series! All of a sudden I began to wonder if Jonathan Otto really existed. I tried to get hold of some of these reprints, and soon began to wonder if they existed either. Library catalogues, bibliographies, the Vico Verlag's website: nothing, not a trace. What was going on here, I wondered: some kind of attempt to drum up future business?<sup>17</sup> But there was no time to think about that now. I knew I had to nail this Jonathan Otto or die trying.

Soon I found myself following up another clue. In Jochen Otto's entry on Cujas he actually cites himself:<sup>18</sup>

Otto, Jochen. »Cujas, Jacques.« In *Juristen: ein biographisches Lexikon*, edited by M. Stolleis. 2d ed., pp. 152 ff. Munich: C. H. Beck, 2001.

I got hold of a copy of this Lexikon and started checking out the two entries on Cujas.<sup>19</sup> Not very much in common – if you discount that both were just a typical antiquarian bookdealer's muddled concoction of biographical lore and random old editions. I thought I was stuck up a canyon without so much as a rattlesnake for company. But then I noticed that there were other entries in Stolleis' Lexikon compiled by Jochen Otto. And there they all were: Alciatus, Cujas, Favre, Oldendorp, Tiraqueau, Zasius – yeah, every last damn one of them! But I kept asking myself: why? Why does Otto cross-reference his own Lexikon article in his Oxford Encyclopedia entry in the case of Cujas, but not in one single other Encyclopedia entry? A bit of scratching around and I had the answer: the Cujas article is significantly different in the Lexikon, whereas the rest of the entries are all but identical. So Otto was one and the same man after all – and he had just polished up the chrome, boot-blackened the tyres, and sent off his old Stolleis junk-boo to the Oxford Encyclopedia to have it translated and republished. Never trust a used book salesman!

<sup>16</sup> OIELH vol. 6, p. 161, col. 2.

<sup>17</sup> An enquiry in 2009 to the Vico Verlag received the response that the works of Cujas (2008) and Oldendorp (2006) were scheduled for publication in December 2009, while the works of Troje (2006), Faber (2006), Tiraquellus (2007) and Zasius (2006) were scheduled for 2010. A final visit to the Vico website (26 July 2010) reveals that in the summer of 2010 we are still

awaiting the appearance of all those titles which the OIELH informs us were published several years ago. But then again, who ever trusts the imprint dates recorded by an antiquarian book dealer?

<sup>18</sup> OIELH vol. 2, p. 304, col. 1.

<sup>19</sup> Cf. STOLLEIS pp. 152–53 and OIELH vol. 2, pp. 303–04.

### III. Parallel Lives

The following parallel entries taken from the Oxford Encyclopedia and what may now be revealed as their – published – German source have been divided into sections in order to facilitate comparison. They may thus also serve as working material for the Reading and Comprehension Seminar at the Oxford International School of Language – although even the Advanced Class might have difficulties with such unconventional Oxford English as, »He was called to the parliament of Paris in 1541 after the continuation of his career as a magistrate in Bordeaux, for the parliament there (starting in 1535)«. <sup>20</sup> Those readers who prefer not to exercise their German at quite such length – or who fear that the English version may be of little assistance where such is required – may be satisfied with a random dip into the following pages before proceeding with the story at page 156.

#### 1) Andreas Alciatus (1492–1550).<sup>21</sup>

Alciatus, Andreas (1492–1550), Sohn einer Kaufmannsfamilie aus Alzate bei Como, studierte zunächst Latein und Griechisch, bevor er sich ab 1507 in Pavia dem Rechtsstudium widmete. Nach einem Wechsel an die Universität Bologna 1514 promovierte A. 1516 in Ferrara, um anschließend in Mailand als Advokat tätig zu sein. 1518 wurde er an die Universität Avignon berufen, wo er mit einer Unterbrechung (1521 wegen der Pest) bis 1522 als Rechtslehrer wirkte.

ALCIATI, ANDREA (1492–1550). Andrea Alciati, Italian jurist, was born in 1492 to a merchant family in Alzate – whence his surname – near Como. He studied Latin and Greek before turning to law in Pavia (probably in 1507) where he attended lectures by the leading jurist of the time, Jason de Mayno, the last great commentator of the Middle Ages. After moving to Bologna University in 1514, Alciati received his doctorate in Ferrara in 1516 and became a lawyer in Milan. In 1518 he received a call to Avignon University, where he taught law until 1522.

Aufgrund finanzieller Differenzen kehrte A. in seine Mailänder Kanzlei zurück, nahm aber 1527 in Avignon die Lehrtätigkeit wieder auf. Ein Ruf nach Bourges, der glänzend honoriert war, führte ihn 1529 an die dortige Universität, bis er schließlich 1533 an die Mailänder Universität in Pavia zurückkehrte.

Following a dispute with the city of Avignon over his salary, Alciati went back to his chambers in Milan but then returned to teach in Avignon in 1527, albeit on less favorable financial terms. A call to Bourges, with much better remuneration, led him in 1529 to the University there, but he returned to Pavia in 1533.

<sup>20</sup> This gibberish has somehow been elicited from the simple German sentence, »Nach der Fortsetzung seiner Richterlaufbahn in Bordeaux am dortigen Parlement (1535) wurde er 1541 an das Parlement von Paris berufen«; see p. 152, *infra*.

<sup>21</sup> STOLLEIS pp. 27–29; OIELH vol. 1, pp. 118–19.

neration, took him to the university there in 1529, where he stayed until returning to the legal faculty in Pavia in 1533.

Einen Ruf nach Bologna – den ersten mußte er 1537 auf Druck des Mailänder Herzogs ablehnen – nahm er 1541 an, mußte jedoch aufgrund der kriegerischen Ereignisse noch im gleichen Jahr nach Ferrara ausweichen. Ab 1546 lehrte A. bis zu seinem Tode wiederum an der Universität Pavia.

The Duke of Milan prevented his moving to Bologna in 1537, so Alciati was not to reach the pinnacle of his university career until 1541. Military conflict in the same year forced him to move to Ferrara, and he once again taught at Pavia from 1546 until his death in 1550.

A. gilt als Begründer der humanistischen Jurisprudenz, die in Frankreich durch Guillaume Budé initiiert und in Deutschland durch Ulrich Zasius gefördert worden ist. Schon das Erstlingswerk des noch sehr jungen A. – *Annotationes in tres posteriores libros Codicis Iustiniani* (1515) –, in dem griechische Stellen aus den letzten drei Büchern des Codex Iustinianus erklärt werden, zeigte den neuen Grundansatz: profunde Kenntnisse der klassischen Sprachen und der antiken Kultur in Verbindung mit der Jurisprudenz.

Alciati was the founder of humanist jurisprudence, legal analysis employing the critical, historical, and philological study of texts, which was promoted in France by Guillaume Budé and in Germany by Ulrich Zasius. Even Alciati's earliest work, *Annotationes in Tres Posteriores Libros Codicis Iustiniani* (annotations in three later books [!]) on the code of Justinian, Strasbourg, 1515), demonstrated the new general approach, a profound knowledge of the classic languages and ancient culture coupled with jurisprudence.

Das Werk, das den juristischen Anspruch auf die Interpretation des Corpus iuris civilis auch in philologischer Hinsicht begründete, war zu ungestüm gegen die wenige Jahre zuvor erschienenen Annotationen zu den Digesten von Budé und kam über eine schwache Signalwirkung nicht hinaus. In seiner Mailänder Zeit beschäftigte sich A. neben juristischen mit antiquarischen, philologischen, historischen – *Rerum patriae libri IV* (1625) – und epigraphischen Studien.

The work, which also founded the philological approach to the interpretation of the *corpus iuris civilis*, was too vehement in its criticism of Budé's annotations of the *Digest* published in 1508, and it remained no more than Alciati's first venture. In Milan, Alciati also took up the study of antiquity, philology, history, and epigraphy. The fruits of those studies would be honored and edited only decades later. Alciati's historical work *Rerum Patriae Libri IV* (four books on matters of the nation [!]), for instance, was not published until 1625, and his epigraphical achievements were later honored in particular by Theodor Mommsen in the nineteenth century.

Seinen Ruf an die Universität zu Avignon bereitete A. mit der Publikation eines Sammelbandes von kleineren, teils philologisch ausgerichteten textkritischen Schriften vor, den er, der stets mit Eifer und bisweilen mit Verschlagenheit die Vermarktung seines eigenen Ruhmes betrieb, mit dem schillernden Titel »Paradoxa« versah. Das Werk, das ihn mit einem Schlag in ganz Europa bekannt machte, *Paradoxa iuris civilis* (1518), demonstrierte erstmals eindrucksvoll die Überlegenheit A.s bei der Erklärung juristischer Texte mit philologischen Mitteln.

Alciati laid the groundwork for his call to Avignon with the publication of a collection of smaller, partly philological text-critical writings to which – always with one eye on the shrewd marketing of his publications and his own fame – he gave the enigmatic title *Paradoxa*. At a stroke, the work made him known throughout Europe. Alciati also assembled several small works (including his first) in one volume, *Dispunctiones* (investigations) or *Praetermissa* (omissions), and had it printed in Milan in 1518. The collection was the first impressive demonstration of Alciati's superiority in the interpretation of juristic texts by both philological and juristic means.

Die Vorlesungen in Avignon, von denen einige in selbständigen Publikationen ediert worden sind – *De verborum obligationibus* (1519); *De praesumptionibus* (1538) –, erfuhren in den Lektionen des Wintersemesters 1520/21 zu dem Digestentitel *De verborum significatione* (Dig. 50.16) ihren Höhepunkt.

The lectures in Avignon, some of which have been edited as independent publications – published partly as unauthorized lecture notes (*De Verborum Obligationibus*, 1519), and partly with Alciati's approval by his pupil Ioannes Nicolaus Arelatanus as *De Praesumptionibus* (1538) – reached a zenith in the winter semester of 1520–1521 when he dealt with the *Digest* title *De Verborum Significatione* (concerning the meaning of words, 50.16).

[*Passage omitted in OIELH:*–] Seine hohe Anziehungskraft in Avignon muß jedoch insgesamt mehr seiner faszinierenden Persönlichkeit als Rechtslehrer als der Gründung einer neuen Rechtsschule zugeschrieben werden. Erst der Ruf an die Universität zu Bourges drängte A. in die Rolle eines Reformators der Jurisprudenz. Erasmus von Rotterdam in Basel, später Philipp Melancthon in Wittenberg begründeten den hohen philologischen Anspruch, der vor allem an den protestantischen Universitäten Inhalt der Reformen wurde. Die Universität zu Bourges reformierte erstmals die rechtswissenschaftliche Fakultät auf der Grundlage dieser neuen Akzentuierung, gewann A. als Begründer der neuen Methode für einen neuen Lehrstuhl und wurde für die meisten europäischen Universitäten beispielhaft in der Einrichtung einer neuen Rechtsschule (*mos gallicus*). A. verhielt sich jedoch wegen der Nähe zum Protestantismus und mit Blick auf die italienischen Universitäten zwiespältig.

1529 begann A. seine Vorlesungen in Bourges mit einem feierlichen Vortrag – *De quinque pedum praescriptione* (1529). Wenig später sah sich A. einer

Revolte seiner Studenten ausgesetzt, die dem verheißungsvollen Reformator der Jurisprudenz den gewohnten, scholastisch ausgerichteten Vorlesungsstil (*mos italicus*) ankreideten. Auf Druck der Studenten änderte er seine Methode. Er publizierte nun endlich sein glänzend und elegant geschriebenes Hauptwerk *De verborum significatione* (1530) und seine in Bourges gehaltenen Vorlesungen zum Codex Iustinianus – die *Commentarii ad rescripta principum* (1530).

In 1529 Alciati began his lectures in Bourges with a special address, *De Quinque Pedum Praescriptione*, and in Lyon in 1530 he finally published his elegantly written *De Verborum Significatione*. In the same year, in order to beat unauthorized lecture notes to the press, he sent to the printer his Bourges lectures on the first two books of the Codex Justinianus, the *Commentarii ad Rescripta Principum*.

Mit der Verpflichtung nach Italien verebbte die Produktivität A.s, der seine Werke nur noch geringfügig verbesserte und ergänzte. Nunmehr wurde der Büchermarkt ein Spiegelbild des Interesses an A. Viele Neuauflagen, unzählige Nachdrucke vielfach im Raubdruck, nicht autorisierte Editionen von Vorlesungsmitschriften und sogar ein fälschlicherweise ihm zugeschriebenes Werk, *Iudicarii processus compendium* (1536), verdeutlichten, daß A. europaweit ohne konfessionelle Grenzen hoch geschätzt wurde und wohl kaum eine juristische Bibliothek ohne seine Werke auskam.

With the long awaited call to Italy, Alciati's productivity waned, with only minor improvements and additions to his works. The book market, however, began to mirror the growing interest in Alciati, and the many new editions, reprints, pirated printings, and unauthorized editions of lecture notes – and even a wrongly attributed work, *Iudicarii Processus Compendium* (Cologne 1530) – show that Alciati was highly appreciated throughout Europe.

A. war zugleich ein gesuchter Rechtsgutachter, der für seine Konsilien einen immer höheren Preis forderte und deren Edition er zeitlebens mit dem Hinweis der Parteilichkeit derartiger Gutachten verhinderte – *Responsa iuris* (1561).

Alciati was also sought after for his legal opinions, as an advisor who always demanded a high price for his counsels and prohibited their publication, pointing out that such opinions were never impartial. These opinions were finally edited posthumously by his nephew and testator Francesco Alciati as a supplement to a newly arranged collected edition, *Responsa Juris* (legal opinions, Lyon, 1561).

[*Passage omitted in OIELH:*–] In der Folgezeit löste sein Verhalten Ende des 16. Jh.s eine Debatte über den Dissens von Katheder- und Konsiliarjurisprudenz aus, eine Kontroverse, die in der Auseinandersetzung zwischen Rechtspraxis und Rechtslehre bis heute ihre Fortsetzung fand.

A. gründete mit seinen 1531 in Augsburg erstmals edierten *Emblemata* (1542, ND 1991), einem von A. stets vermehrten Sammelband von einzelnen Bilderrätseln mit unterlegten Versen aus dem antiken Bildungsgut, eine ganze Literaturgattung.

Alciati's *Emblemata*, which first appeared in Augsburg in 1531, was a collection of picture puzzles with verses from antiquity that marked the beginning of a new literary genre.

[*New material*:–] Shortly before his death, Alciati initiated the publication of his collected works (Basel, 1546–1547), which was intended to stop the flood of unauthorized Alciati works. Following the death of his uncle, Francesco Alciati published a second edition of the collected works, which was printed the last time in 1616–1617. A final work by Alciati, *Contra Vitam Monasticam ad Bernardum Mattium Epistola* (a letter to Bernardus Mattius against the monastic life), long believed lost and not edited until 1695, was written when Alciati was a young scholar with the purpose of dissuading a friend from entering a monastery. This letter, with its anticlerical tone, fell into the hands of Erasmus of Rotterdam, and Alciati harbored a lifelong fear that its publication would delay or even destroy any career of his at an Italian university.

## 2) Antonius Faber (1557–1624).<sup>22</sup>

Favre (Faber), Antoine (1557–1624), adeliger Herkunft, studierte in Paris und Turin, wo er auch promovierte. Anschließend betätigte er sich als Advokat in Chambéry, wurde 1585 Mitglied des dort ansässigen savoyischen Gerichtshofes, dessen Präsident er ab 1610 war.

FABER, ANTONIUS (Antoine Favre) (1557–1624). Faber was an unusually well-educated French judge and professor of law, who is still relevant today because of his textual-critical work on the *Corpus Iuris Civilis*. Of aristocratic descent, he studied in Paris and then Turin, where he earned his doctoral degree in 1579. Thereafter, he took a position as an advocate in the Senate of Chambéry in Savoy, was appointed chief justice in Bresse in 1581, became a member of the Senate of Savoy in 1584, and served as president of the Council of Genevois in Annecy, for the duke of Nemour; finally, in 1617, he was appointed governor of Savoy, and from this position carried out numerous diplomatic and political missions for the duke of Savoy.

F. war gelehrter Jurist und Rechtspraktiker. Seine Interpolationsforschungen, die Trennung der justinianischen Einfügungen von den klassischen römischen Texten, hat er mit so großer Kenntnis und Behutsamkeit vorgenommen, daß seine *Coniecturae iuris civilis* (1591 u. ö.) und die *Rationalia in Pandectas* (1605), die mit dem 19. Buch unvollendet blieben, bis in die Gegenwart von Wert blieben.

22 STOLLEIS pp. 207–08; OIELH vol. 3, p. 27.

Faber counts among the great French jurists of the epoch of humanistic jurisprudence, and may certainly be placed together with such notables as Jacobus Cuiacius (1522–1590), Hugo Donellus (1527–1591), and Dionysius Gothofredus (1549–1622). He undertook his research into interpolation – specifically, into the separation of the Justinian interpolations from the classical Latin texts of the *Corpus Iuris Civilis* – with both vast knowledge and great caution. His *Coniecturae iuris civilis* (1591 and frequently thereafter) and *Rationalia in Pandectas* (1605), the latter of which was still unfinished after the nineteenth volume, have retained their scholarly value up to the present day, and are classics of European legal literature.

Vorbildhaft in Europa wurde seine Entscheidungssammlung des savoyischen Gerichtshofes – *Codex Fabrianus definitionum forensium* (1609) –, in der er die Urteilsprüche seines Gerichts in die Systematik des Codex Justinianus eingehängt hat, wobei er die einzelnen Urteilsbegründungen thematisch untergliederte und den betreffenden Stellen des Codex beordnete.

His collection of the decisions of the Savoyen Court of Justice in the *Codex Fabrianus definitionum forensium* (1609) was exemplary throughout all Europe. Therein, he referenced the judgments of his court in terms of the schema of the Codex Justinianus, in the process both dividing the individual decisions thematically and associating these with the relevant parts of the Codex Justinianus.

Die Präzision und auch die Schönheit seiner Fachsprache machte den *Codex Fabrianus* zu einem forensischen Meisterwerk, das auch Benedikt Carpzov zum Vorbild nahm.

The precision and also the beauty of his legal terminology made of the *Codex Fabrianus* a forensic masterwork, which was taken by – among others – the great German jurist Benedict Carpzov (1595–1666) as the template for his collection of Saxon decisions. In Leipzig, it was still being reprinted in the eighteenth century.

### 3) Ioannes Oldendorp (c. 1488–1567).<sup>23</sup>

Oldendorp, Johann (ca. 1488–1567), studierte in Rostock, Köln und Bologna, hielt ab 1516 Vorlesungen in Greifswald, promovierte dort 1518 und erlangte 1521 eine Professur. Während seines Rostocker Aufenthaltes, wo er 1526 zum Stadtsyndikus und Professor ernannt wurde, konvertierte er zum Protestantismus, mußte in den Wirren von 1534 nach Lübeck fliehen und übte dort für zwei Jahre wieder das Amt eines Stadtsyndikus aus.

OLDENDORP, JOHANN (c. 1488–1567). Oldendorp was a German jurist during the early years of the Reformation and the founder of a great academic reform; he studied at the universities in Rostock, Cologne, and Bologna, held

<sup>23</sup> STOLLEIS pp. 474–75; OIELH vol. 4, pp. 260–61.

lectures in Greifswald starting in 1516, earned his doctoral degree there in 1518, and was appointed Professor of Law in 1521. After his move back to Rostock in 1526, where he was also the city syndic, Oldendorp converted to Protestantism and, as a result of the religious disturbances, had to flee to Lübeck in 1534. There, for two years, he exercised the role of city syndic.

Nach einer kurzen Zwischenstation in Frankfurt/Oder wurde er 1538 Professor in Köln, wechselte nach zwei Jahren an die Marburger Universität, kehrte 1543 wieder nach Köln zurück, mußte aber wegen seines Glaubens noch im gleichen Jahr seinen Lehrstuhl verlassen und nahm das Angebot Landgraf Philipps II. für eine Professur auf Lebenszeit in Marburg an.

After a brief transitional position in Frankfurt an der Oder (Viadrina), he accepted a call to teach at the university in Cologne, then moved two years later to the newly founded Protestant university of Marburg. In 1543 he returned to Cologne, but had shortly thereafter to leave the newly re-Catholicized city, and accepted the Hessian landgrave Philipp II's offer of a tenured professorship at Marburg.

O.s herausragende Leistung, die unterschiedlichen Strömungen innerhalb der Rechtswissenschaft der frühen Neuzeit zu einer Reform des juristischen Studiums verbunden zu haben, trug ihm 1553 den Titel »Reformator der Universität Marburg« ein. Zunächst bestimmten einführende Unterrichtsschriften sein Œuvre.

Oldendorp's methodical efforts to bind together the various and partially contradictory methods of teaching law, as a general reform of juridical-legal studies, earned him in 1553 the title »Reformer of the University of Marburg.« Primarily, his publications were characterized by introductory and companion texts for teaching, including a quite usable legal dictionary, *De copia verborum* (An abundance of words, 1546).

Den Einfluß der humanistischen Jurisprudenz mit ihrem Anspruch auf Reinigung der ursprünglichen Texte des Corpus iuris civilis, verknüpfte O. mit dem protestantischen Suchen nach einem originalen Urtext (z. B. die Bibel). Seine Rekonstruktion der römischen XII-Tafel-Gesetze erwies sich letztlich als Irrweg, führte jedoch bei O. zur Vorstellung, daß unverrückbare, juristische Grundwahrheiten, die auch historisch nachvollziehbar sind, existieren müßten: *Eisagoge iuris naturalis* (1539).

In the spirit of humanistic jurisprudence, which called for critical textual studies in research dealing with the original Justinian grouping of texts, Corpus Iuris Civilis, he sought to reconstruct the Twelve Tables of law, a project that was, however, quickly made obsolete. From his search for irreducible legal truths in the grouping of texts that had survived from antiquity, itself similar to the new Protestant approach to the Bible, emerged the pathbreaking piece *Eisagoge iuris naturalis* (1539).

In einem frühen naturrechtlichen Ansatz, zunächst skizzenhaft formuliert in einer kleineren Schrift, *Wat byllich unn recht ys* (1529), verband O. in einer erweiterten Fassung die Suche nach allgemeingültigen Gerechtigkeitsvorstellungen mit rechtspraktischen Anwendungsmöglichkeiten.

In an early natural-law effort, first sketched out in the short piece *Wat byllich unn recht ys* (1529), Oldendorp combined the search for generally valid, timeless concepts of justice with legal-practical modes of application. With his explicit goal of training »erudite« judges, Oldendorp was – in the realm of the teaching and scholarship of law – pointing the way toward the era of humanism. Participation in legal-practical programs of study became, indeed, a significantly greater part of the training of jurists.

Seine Schrift *De iure et aequitate forensis disputatio* (1541) war schließlich bahnbrechend für die Entwicklung der freien Beweiswürdigung des Richters. Gedrängt auch durch die mangelnde juristische Ausbildung der Richter, verfaßte O. eine Reihe von Unterrichtsschriften, die der rechtspraktischen Ausbildung innerhalb des Studiums verpflichtet waren: u. a. *Practica actionum forensium* (1540).

Oldendorp's *De iure et aequitate forensis disputatio* (1541) was absolutely pathbreaking for the development of the notion of a judge's free consideration of evidence. This long monograph was embedded in a series of teaching texts, which were published almost all at the same time and which were intended for legal-practical training, such as the *Practica actionum forensium* (1540).

O. kann zu Recht als Vorreiter der allgemeinen Juristenausbildung, der »Befähigung zum Richteramt«, angesehen werden.

Oldendorp may, without question, be seen as a pioneer of the general education of jurists with the goal that they attain »the capacity to fulfill the post of magistrate,« as this concept would be put into full practice in Germany toward the end of the nineteenth century.

#### 4) Andreas Tiraquellus (1488–1558).<sup>24</sup>

Tiraqueau (Tiraquellus), André (1488–1558), stammte aus französischem Adel, studierte in Poitiers und wurde zunächst Richter in seiner Heimatstadt Fontenay-le-Comte. Nach der Fortsetzung seiner Richterlaufbahn in Bordeaux am dortigen Parlement (1535) wurde er 1541 an das Parlement von Paris berufen.

TIRAQUELLUS, ANDREAS (André Tiraqueau) (1488–1558). Tiraquellus was a humanistically trained and practical law-oriented French judge and professor of law. He came from the French aristocracy, studied in Poitiers, and was first a judge for his hometown of Fontenay-le-Comte. He was called to the parliament of Paris in 1541 after the continuation of his career as a magistrate in Bordeaux, for the parliament there (starting in 1535).

<sup>24</sup> STOLLEIS p. 631; OIELH vol. 5, p. 467.

T., ein humanistisch gebildeter Jurist, war stets bestrebt, in die Kommentierung der römischen Textstellen seine rechtspraktische Erfahrung einfließen zu lassen. Dieser forensische Schwerpunkt bewirkte eine breite Aufnahme seines Werkes vor allem im protestantischen Deutschland. Seine erstaunliche humanistische Bildung verdeutlichte T., als er den berühmten *Dies geniales* von Alexander de Alexandro (1461–1525) einen »apparatus criticus« beifügte (*Semestria in genialium dierum libris* [!] VI, 1586).

Tiraquellus was always anxious to ensure that his practical legal experience influenced his commentary on the Latin texts. This forensic strength resulted in a wide reception for his work, above all in Protestant Germany. Tiraquellus also demonstrated the astonishing breadth of his humanistic education when he offered an *apparatus criticus* (critical abstract [!]) for Alexander ab Alexandro's (1461–1525) famous *Dies geniales: Semestria in genialium dierum libri* [!] <sup>25</sup> VI (1586).

1513 edierte T. Francesco Barbaros *De re uxoria* (1536) und im gleichen Jahr seine Kommentierung des eherechtlichen Teils des Coutume von Poitou (*De legibus connubialibus et jure maritali*, 1513–15). Das Werk ist allerdings überfrachtet mit Einfügungen klassischer Autoren, die in der Summe dem Werk abstruse Formen gaben, so daß es teilweise mehr wie eine Ehedisziplinierungsanleitung denn als juristischer Kommentar zu lesen ist. Gleichwohl hatte das Werk europaweit immensen Erfolg.

He developed his knowledge of marriage law into another great strength, beginning by editing Francesco Barbaros's [!] *De re uxoria* (On marital law [!]) in 1513 and, in the same year, offering his famous commentary on the section of the *Coutume* of Poitou dealing with marriage law: *De legibus connubialibus et jure maritali* (published 1513–1515 and often thereafter). The work itself went well beyond the scope of a commentary, containing abundant references to classical authors of antiquity, so that besides juridical illumination, it also offered a code of conduct for marriage and worldview-level concepts of marriage and family.

[*New material*:–] The reach back into antiquity was paradigmatic for the sixteenth century, an effort to gain mastery of the stark social changes then taking place. Alongside this, the beginning of the heyday of the humanistically oriented reform university of Bourges – with the professorial brilliance there of Andrea Alciati (1492–1550), Jacques Cujas (1522–1590), and Francois [!] Duaren (1509–1559) – often induced Tiraquellus to go overboard in demonstrating his knowledge of the antique authors. All the same, his work experienced great success across all Europe.

1543 folgte der Kommentar zum Gewohnheitsrecht von Poitou *Commentarii de utroque retractu et municipali et conventionali ex integris in Pictonum consuetudines commentariis*. Ebenso grundlegend wurde seine Monographie zum Stiftungsgeschäft *De privilegiis piaae causae* (1560).

25 Cruelly, the title of the 1586 edition contains the abbreviation *lib. VI*, thus leaving some later scholars of legal humanism with an insurmountable challenge.

In 1543 came his commentary on *Retractsrecht* (also called *Näherecht*;<sup>26</sup> similar to English odal right), following Poitou's principles of city and common law: *Commentarii de utroque retractu et municipali et conventionali ex integris in Pictorum consuetudines commentariis*. Together with Carolus Molinaeus (1500–1566) and Bertrandus de Argentraeus [!] (1519–1560), Tiraquellus helped create a grand tradition of commentary on the French *Coutumes*, which was to be of lasting significance for the development of international civil law. Equally seminal was his monograph on foundation and trust law, *De privilegiis piae causae* (On the privileges and exemptions [!] of charitable use, 1560).

5) Ulricus Zasius (1461–1535).<sup>27</sup>

Zasius, Ulrich (1461–1535), studierte zunächst in Tübingen, war danach als Schreiber am geistlichen Gericht in Konstanz tätig, übte ab 1494 das Stadtschreiberamt in Freiburg i.Br. aus, wo er dann 1499 sein Rechtsstudium fortsetzte, 1501 promovierte und schließlich 1506 Rechtsprofessor wurde.

ZASIUS, ULRICH (1461–1535). Zasius was the first German jurist of international significance, and a great champion of humanistic jurisprudence. He studied first in Tübingen, worked after that as a recorder in the religious court in Konstanz, performed the office of city recorder in Freiburg in Breisgau starting in 1494, and there recommenced the study of law in 1499. He received his doctorate of jurisprudence in 1501 and finally, in 1506, attained to the rank of professor of law.

Z. ist der entscheidende deutsche Jurist des Spätmittelalters, der das in breiter Rezeption in den deutschen Rechtsraum vordringende römisch-kanonische Recht italienischer Prägung modifizierte und damit die Grundlagen für eine neuzeitliche, eigenständige deutsche Rechtswissenschaft schuf.

Zasius was the German jurist of the late Middle Ages who, through both teaching and practicing law, was responsible for focusing critical attention within the German legal world on the dominant Roman-canonical legal system, influenced as it was by Italy. He wanted to teach only »that which accords with the situation in Germany.« From this stance, he developed the basis for a modern, self-contained [!] German jurisprudence.

Auf legislativem Gebiet förderte er bei der von ihm gestalteten Reformation des Freiburger Stadtrechts 1520 wesentlich den Einfluß des römischen Rechts.

In the legislative realm, he increased significantly the influence of Roman law through the introduction of a 1520 reform of Freiburg's city laws, but did so without thereby simply making Roman law primary.

Seine vielfältigen Beziehungen zum europäischen Humanismus, der v.a. im nahe gelegenen Basel eine Heimstatt gefunden hatte, lösten bei Z. eine tiefe Bewun-

<sup>26</sup> The German is of course that of the German author of the entry, not of Tiraquellus, and required to be translated, not cited.

<sup>27</sup> STOLLEIS pp. 686–87; OIELH vol. 6, pp. 160–61.

derung der humanistisch geprägten Jurisprudenz aus. Er förderte intensiv die neue, stark philologisch ausgerichtete Rechtsmethode, schickte Schüler zum Rechtsstudium an die humanistisch geprägten Rechtsfakultäten Frankreichs (→ Alciat).

His many ties to European humanism, which had found its particular haven in nearby Basel, bred in Zasius a deep admiration for humanistically shaped jurisprudence. He promoted intensively the new, strongly philologically oriented legal methods, and sent some of his favorite students – among them Bonifacius Amerbach (1495–1562), later to become a printer and jurist in Basel – to study law at the University of Avignon. There, Andrea Alciati (1492–1550), the founder of humanistic legal studies and a man he deeply admired, taught.

Mit seiner Autorität öffnete Z. der humanistischen Jurisprudenz den Wirkungskreis in Deutschland. Wissenschaftlich gesehen kann Z. selbst nicht als humanistisch geprägter Jurist angesehen werden. Seine Schriften folgten nicht dem philologisch hohen Anspruch, was teilweise auf seine mangelnden Sprachkenntnisse zurückzuführen ist. Seine Werke, u. a. die *Lucubrationes* (1520) und die *Intellectus singulares* (1526), gingen aus seiner Lehrtätigkeit hervor und behandeln ausgesuchte Stellen aus dem Corpus iuris civilis.

It was Zasius's authority, then, that opened the German legal sphere to humanistic jurisprudence. That said, from a scholarly perspective, Zasius himself cannot be properly said to have been a humanistically oriented jurist. His works could not meet the high philological standards of the humanists because of his lack of mastery of the ancient languages. Nonetheless, his best known works – *Lucubrationes* (Night musings, 1520) and *Intellectus singulares* (Individual essays [!]) on the law, 1526) – sought both in title and in style to align themselves with humanistic legal scholarship. These developed out of his activities as a teacher, and dealt with selected points from the Corpus Iuris Civilis.

Sein enormer Lehrerfolg beruhte auf seinem Grundanliegen, die juristische Exegese müsse auch praktikabel sein und den Gesetzestext wieder in den Vordergrund rücken. Damit leitete er eine allmähliche Loslösung von den juristischen Autoritäten Italiens ein.

His enormous success as a teacher had to do with his fundamental position: that juridical exegesis needed to both be practicable and return the wording of the laws to the foreground. From this position, he spearheaded a general dissociation from Italy's juridical authority, a turning away from the scholastic method of teaching, and a movement toward a self-contained [!] German legal scholarship.

Z. war auch ein gesuchter Rechtsgutachter, seine Konsilien sind in seinen *Opera omnia*, von J. Mynsinger und J. U. Zasius 1550/51 und 1590 (ND 1964–66) herausgegeben, enthalten.

Zasius was also a highly sought attorney; his counsels were recorded in his *Opera omnia* (Complete works) which was published by a student of his – Joachim Mynsinger – and by his son J. U. Zasius in 1550–1551 and 1590.

#### IV. Desperately Seeking Duplication

Times are hard. Money is tight. And legal history was never very rewarding financially. What to do? Why, think Pop Wissenschaft, that's what! If the Beck Verlag will pay good money to publish »all the old clichés, romances, and misinformation purveyed in the secondary literature of the preceding centuries«,<sup>28</sup> who is going to protest with hollow talk about academic principles? And if you can get your paws on another dollop of hard cash from the Oxford University Press by sending them the same old junk you already sold to the Beck Verlag, who is going to deny the financial acuity of the transaction? After all, since the »audience is by definition English-speaking«,<sup>29</sup> it's not as if anyone is likely to make a comparison. Could that have been the consideration which led Ernst Holthöfer, former Mitarbeiter of the Max-Planck-Institut für europäische Rechtsgeschichte, to dust off the typescript of his entry on Hugo Donellus (1527–1591) in the Stolleis Lexikon, and send it off for translation and republication in the Oxford Encyclopedia?<sup>30</sup>

Mwaaaa Mwaaaa Mwaaaa ... a child is born in Chalon-sur-Saône, a child destined to be a great luminary of the law:

Doneau (Donellus), Hugo (1527–1591), aus einer dem Ämterpatriziat angehörenden Familie in Chalons-sur-Saône stammend, absolvierte die Humaniora am Kolleg in Tournon und nahm, wahrscheinlich 1544, in Toulouse das Rechtsstudium auf, wo De Coras und Le Ferron (ca. 1508–1585) bereits die neue, humanistische Unterrichtsmethode eingeführt hatten. Wohl 1546 wechselte er nach Bourges, dessen Fakultät gleichfalls schon in der Hand der Humanisten war ...

DONEAU, HUGUES (Hugo Donellus) (1527–1591), was born into one of the politically powerful families in Chalon-sur-Saône, and attended college in Tournon. He took up the study of law, probably in 1544, in Toulouse, where Jean Coras and Arnoul Le Ferron had recently introduced the new humanistic method of instruction. Around 1546 Doneau went to Bourges, where the law faculty was already in the hands of the humanists.

28 DOUGLAS J. OSLER, »Einige neuere Forschungsergebnisse ...«, in: Rechtshistorisches Journal 14 (1995) 171–73.

29 OIELH, Editor's preface, p. xxiii.

30 STOLLEIS, pp. 182–84; OIELH vol. 2, pp. 359–61. The author has forgotten to cite his former article in the bibliography of the latter.

Five years after arriving in Bourges, Doneau is the proud possessor of a doctor's title:

Dort schloß er sich Duaren an ... 1551 wurde er von ihm zum Doctor iuris civilis promoviert und anschließend vom Kanzler De l'Hospital auf einen der Zivilrechtslehrstühle dieser Universität berufen. Hier wurden außer Duaren bald auch Cujas und Le Conte seine Kollegen ...

Doneau was awarded the Doctor of Laws degree by Douaren in 1551, and was subsequently called to a teaching post in civil law by Chancellor Michel de l'Hospital at the same university. His colleagues here included Jacques Cujas (Cujacius), Antoine Le Conte (Contius) ...

Alas, his career was not destined to proceed peacefully:

Er mußte aber dann als Calvinist wegen der im Anschluß an die Bartholomäusnacht einsetzenden Hugenottenverfolgungen 1572 nach Genf fliehen, wo auch Hotman schon Zuflucht gefunden hatte und wo bald auch der ältere Godefroy Aufnahme finden sollte. Hier erreichte ihn noch in demselben Jahr ein Ruf auf den Codex-Lehrstuhl nach Heidelberg, nachdem der zunächst berufene Matthaeus Wesenbeck abgelehnt hatte. Die Intoleranz des lutherischen Nachfolgers des calvinistischen Kurfürsten Friedrich III. bewog ihn, 1579 einen Ruf auf den ersten Zivilrechtslehrstuhl in Leiden anzunehmen.

Since Doneau was a Calvinist, he was forced to flee to Geneva in 1572 to escape the persecution of Huguenots set off by the Saint Bartholomew's Day massacre. Here, in the same year, he received an offer of a teaching position in Heidelberg. Elector Palatine Frederick III, the ruler of that region, was also a Calvinist. However, the intolerance of Frederick's Lutheran successor Louis VI impelled Doneau to leave Heidelberg and to accept the offer of a chair in civil law in Leiden in 1579.

But after a while things soured in Leiden as well, and he was forced back to Germany:

An dieser erst fünf Jahre zuvor gegründeten holländischen Universität, die im 17. Jh. zur ersten in ganz Europa aufsteigen sollte, erreichte er den Höhepunkt seiner Karriere. In die Kontroversen zwischen der radikalen, theokratischen Richtung der Calvinisten, der er angehörte, und dem weltlichen Regiment von Provinz und Republik verstrickt, wurde er subversiver Propaganda verdächtigt und mußte den Lehrstuhl 1587 seinem Nachfolger Bronchorst überlassen. So blieb ihm nichts anderes übrig, als 1588 einen Ruf an die lutherische Universität Altdorf anzunehmen.

In this Dutch university, Doneau reached the pinnacle of his career. However, he found himself caught up in the controversies between the radical, theocratic orientation of his fellow Calvinists and the secular government of the province and the republic. He was suspected of subversive propaganda and had to relinquish his chair in 1587 to his successor, Everard Bronchorst. At that point, he had no choice but to accept, in 1588, an offer from the Lutheran University of Altdorf.

### And in the final analysis?

Die historische Leistung D.s besteht darin, den Systemgedanken für die Rechtsdogmatik fruchtbar gemacht zu haben. Dabei wird, im Unterschied zu allen anderen Systematikern vor Savigny, am Primat der exegetischen Sinnermittlung festgehalten. Der systematische Entwurf soll nur dazu dienen, durch Auffindung der inneren Ordnung der Materie die im Quellenganzen verstreuten Einzelnormen richtig zu verstehen. Diese eigentümliche Synthese von exegetischem Verständnis und systematischem Denken hat eine Fülle weiterführender dogmatischer Erkenntnisse gebracht.

Doneau's historical achievement consists in his success in applying systematic thought to legal dogmatics. In so doing, he insisted upon the importance of determining the exegetical meaning of the material, in contrast to all other systematic scholars prior to Savigny. The sole purpose of the systematic outline is to understand rightly the individual laws scattered throughout the sources. His characteristic synthesis of exegetical understanding and systematic thought resulted in a wealth of continual dogmatic discoveries ...

Manifestly, the German text that was submitted to the editors of the Oxford Encyclopedia was, over substantial sections, identical to that which had already been published fourteen years previously in the Stolleis Lexikon. This happy coincidence allows us to correct some of the mistranslations and misunderstandings in the Oxford entry. Thus we read: »An afterword by Jeremias Reusner to a lecture on codices has also been handed down«. Sorry, guys: a *Nachschrift* is not an »afterword« and a *Codexvorlesung* is not »a lecture on codices«. But at least we can identify what the translator has mangled: »Ferner ist eine von Jeremias Reusner angefertigte Nachschrift einer Codexvorlesung überliefert«. <sup>31</sup>

»His interest was strictly limited to the dogmatic conclusions of Roman law, as it was understood and enforced in its own time«, writes the Oxford translator. This follows reasonably closely what can be revealed to be the German original: »Sein Interesse galt allein der dogmatischen Erschließung des römischen Rechts, so wie es rezipiert war und zu seiner Zeit galt.« <sup>32</sup> Just one small point: Donellus' interest was in Roman law as it was understood in *his* time, as it had been received, i.e. precisely not in *its* time, in the world of ancient Rome. This indeed is the very characteristic which distinguishes Donellus from other legal humanists. Donellus thus had precisely the opposite orientation to that which has now been attributed to him through mistranslation in the Oxford Encyclopedia.

<sup>31</sup> STOLLEIS, p. 183.

<sup>32</sup> STOLLEIS, p. 183.

Finally, one last blunder. In Stolleis' Lexikon Holthöfer had written:<sup>33</sup>

So blieb ihm nichts anderes übrig, als 1588 einen Ruf an die lutherische Universität Altdorf anzunehmen. Ihre Fakultät konnte sich zwar mit der Leidener nicht messen, war aber immerhin eine der angeseheneren innerhalb des Reichs.

This is misconstrued as follows:

At that point, he had no choice but to accept, in 1588, an offer from the Lutheran University of Altdorf. Its faculty was nowhere near the caliber of their new colleague from Leiden.

No, it was not the calibre of the new colleague that was being compared to that of the Faculty in Altdorf, but the calibre of the Faculty in Leiden. And while it would be an exaggeration to say that »nowhere near« is nowhere near the German »konnte nicht messen«, it is the excision of the last line of the original which definitively obscures the fact that in this period the Law Faculty of Altdorf was one of the most eminent in Europe, boasting within the space of a few years a constellation of such juristic stars as Ioannes Thomas Freigius, Obertus Giphanius, Hugo Donellus, Scipio Gentilis, Conradus Rittershusius and Petrus Wesenbecius. All, alas, lost in translation – and the author's proof-corrections lost in the post.<sup>34</sup>

## V. Bum(f)

It's clear, then, that the Oxford International Encyclopedia of Legal History isn't going to play terribly well with historians of medieval law, nor with those whose interest lies in the works of the legal humanists.<sup>35</sup> But there is one section of the community where it will surely go down a bomb, or at least a deeply satisfying whack, and that is with devotees of sado-masochism. One of the signal features of the Encyclopedia is determined by the presence among the editors of Professor Emeritus Geoffrey MacCormack. For his sins, which we must assume were grave, Geoffrey MacCormack had once been appointed to teach the principles of Roman law to students at the University of Aberdeen, Scotland. Faced with such a grim prospect, it is hardly a matter for wonderment that over the years his initial enthusiasm for the subject

33 STOLLEIS, pp. 182–83.

34 I dare say there will be a certain lack of *Einigkeit* on whether responsibility for the present disaster lies with the German authors for not submitting and verifying proof corrections, or with the Oxford editors for persistently printing such gibberish. About the magnitude of the resulting *Kockuperei*, however, there can be no room for disagreement.

35 I fear, too, that our French colleagues may also be alienated *en masse* from the entire enterprise when they read that Antoine Favre »was an unusually well-educated French judge and professor of law«: OIELH vol. 3, p. 27, col. 1.

began to wane. For consolation he turned to the history of Chinese law, and that was the beginning of a long and dedicated personal odyssey which has led ultimately to the six-volume Oxford International Encyclopedia of Legal History being stuffed incongruously full of bizarre articles on Chinese law.<sup>36</sup> But none, surely, more bizarre than the article entitled »Beating and Whipping in Chinese Law«, where we encounter the following nugget of legal-historical wisdom:<sup>37</sup>

Regulations distinguished blows inflicted on the back ... from those inflicted on the buttocks or thighs. As early as 146 B.C.E., a Han ordinance prescribed that blows should be inflicted on the buttocks, not the back. Under the Qin (265–420) whipping and beating were normally applied to the thighs or buttocks, a rule probably followed by the subsequent Southern dynasties (420–589). In the north, the position [sic] was not quite so lenient. Northern Qi ordinances prescribed that whipping should be applied to the back and beating to the buttocks, so marking [sic] the greater severity of the former punishment. Tang law, while modifying the harshness of the previous rules, still reflects this perspective. Blows with the light stick were to be administered evenly between the buttocks and thighs, whereas those with the heavy stick were to be divided between the back, buttocks, and thighs (Article 482). Later dynasties restricted beatings to the buttocks, though the Ming, followed by the Qing, distinguished the use of the stick for infliction of the punishment of beating and its use for infliction of torture during the process of questioning. In the former case only the buttocks were to be beaten, while in the latter the thighs might be struck (Ming Article 43; Qing Article 413) ... Substatutes enacted in the eighteenth century provided that during the hot months of the summer persons who committed (minor) offenses punishable with beating with the light stick were to be reprieved, while those who committed more serious offenses punishable with a beating with the heavy stick were to have the number of blows reduced.

Now, this may be an extensive treatment of the subject, yet it still leaves some vital questions unanswered. Did the Ming, for example, use the light or the heavy stick on the buttocks during those steamy, hot summer months, and were they followed in this by the Qing? In particular, we would like to know whether the expression »administered evenly between the buttocks and thighs« means an equal number of strokes on each location, or rather strokes that were aimed at that quivering resonant and exquisitely sensitive zone where thigh meets buttock. However that may be, the severer – or perhaps we should say stricter – breed of legal historian might think that we have perhaps had enough details, if not more than enough, about the legal-historical role (or roll) of

<sup>36</sup> See the prodigious list of entries from *Alcohol and Drugs in Chinese Law* to *Zang* appearing under the name Geoffrey D. MacCormack in the Directory of Contributors, OIELH vol. 6, pp. 188–89.

<sup>37</sup> OIELH vol. 1, pp. 283–85.

the buttocks for one Oxford encyclopedia. Particularly one which finds no space for entries on the jurists Althusius, Argentraeus, Augustinus, Azpilcueta, Bachovius, Balduinus, Barbosa, Baro, Besoldus, Boeckelmannus, Boehmer, Brenckmannus, Brissonius, Bronchorst, Brunemannus, Bynkershoek, Christinaeus, Cinus de Pistoia, Clarus, Cocceius, Connanus, Conring, Contius, Coquille, Corasius, Covarruvias, Curtius, Damhouder, Decius, Delrio, Diplovatatus, Duarenus, Duranti, Dynus, Everardus, Fachineus, Farinacius, Fontanella, Freher, Gaill, Gentilis, Giphanius, Gomezius, Gothofredus, Goveanus, Gudelinus, Guido de Baysio, Heineccius, Hopper, Hostiensis, Hotomanus, Huber, Innocentius IV, Jason del Mayno, Johannes Andreae, Lessius, Matthaeus, Meermannus, Menochius, Merillius, Molina, Montesquieu, Mudaeus, Mynsinger, Otto,<sup>38</sup> Pacius, Panormitanus, Paulus de Castro, Peciarius, Perezus, Raevardus, Raymundus de Peñaforte, Rebuffus, Rittershusius, Salgado de Somoza, Sandeus, Schneidewein, Schultingius, Soto, Stockmans, Struvius, Strykius, Suarez, Tartagni, Tuldenus, Van Espen, Van Leeuwen, Vasquius, Vigelius, Viglius, Vinnius, Vitriarius, Voet, Vulteius, Wesenbecius, Wissenbach, Zabarella, Ziegler, Zoanettus, Zoesius or Zypaeus. And since it does claim to be an *Oxford Encyclopedia*, a little space might perhaps have been found to squeeze in, somewhere between *Sarakhsi, Muhammad ibn Ahmad ibn Abi Sabl* and *Sexual Intercourse, Illicit in Chinese Law*,<sup>39</sup> just the briefest of notes on Selden, John.

But then again, c'mon you up-tight Euro-squares: who cares about all those Dead White European Males anyway? Let's leave the whole lot of them to those stuffy old Oxford regius professors in their brown brogues and Harris tweed jackets with leather patches on the elbows, who never get further than the Bodleian. Get with the vibrant, diverse, multi-cultural beat, or at least with the beating. This is the division of the Oxford University Press located in New York, the city that never sleeps, and now we know why. Just the place, too, to temper rampant, Anglo-Saxon academic individualism with the continental social-democratic, collaborative model – though whether the reality of the Big Man, Big Project, Big State-Grant, Big Chain-Gang and Big Chinese Stick approach to academic research will, on present results, recommend itself for further transplantation outside its native habitat remains to be seen. At any rate, the marriage of the two cultures in the

38 That would be Everardus Otto, the Utrecht professor (1685–1756).

39 Here we learn that, under the Tang Dynasty (618–907), »The punishments were reduced to ninety blows with the heavy bamboo rod for commoners who had illicit sex with a government or private female slave. Illicit sex with the wife of another man's personal retainer or a government or general bondsman was punished with one

hundred blows of the heavy bamboo rod ... The Yuan code (1279–1368) changed this to seventy-seven strokes of the heavy bamboo rod if the woman was unmarried, eighty-seven if she was married, and ninety-seven if she had been lured away from home. Both the Ming (1368–1644) and Qing (1644–1911) codes punished adultery with eighty strokes of the heavy bamboo rod if the woman

was unmarried, ninety if married, and one hundred if lured away from home ...« (OIELH vol. 5, p. 231). Despite the similarity of treatment, this entry is not the work of Geoffrey MacCormack; it thus remains open whether the heavy bamboo rod is to be identified with the heavy stick. Moreover, even if by now we had come to consider it fundamental, the whole area of thighs and buttocks is left untouched.

Oxford International Encyclopedia has undeniably gifted to the discipline (as we must now always call it) of legal history some arresting examples of European hanky-panky, administered with a firm helping hand of British hanky-spanky.

**Douglas J. Osler**