



Baston, K. G., and Cairns, J. W. (2015) An elegant legal education: the studies of Charles Binning, a Scottish pupil of Cornelis van Eck. *Tijdschrift voor Rechtsgeschiedenis: Legal History Review*, 83(1-2), pp. 179-201.

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Deposited on: 22 December 2016

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An elegant legal education: The studies of Charles Binning, a Scottish pupil of Cornelis van Eck

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Summary

This article considers the influence of legal education based on the Dutch tradition of legal humanism on a Scottish student of the late seventeenth-century. An annotated textbook retained by Charles Binning contains notes from his studies with the Utrecht professor Cornelis van Eck and provides evidence for Van Eck's teaching practices. Their education abroad equipped Scottish legal students for the professional, intellectual and cultural lives they would lead when they returned home. Exposure to the ideas contained in the books they studied and their relationships with the Continental learned gave Scottish scholars admission into the international Republic of Letters. This had significance for the development of the Scottish Enlightenment.

Keywords

Scottish law students, humanism, Cornelis van Eck, Charles Binning, *Principia juris civilis*, legal textbooks, book collecting, witchcraft, Scottish legal profession

Introduction

On 1 September 1695, G. vande Water, the well-known Utrecht book-seller and publisher, sold a set of volumes of Cornelis van Eck's *Principia juris civilis secundum ordinem Digestorum* to Charles Binning, a twenty-one-year-

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old Scotsman. Binning paid 3 guilders and 12 stuivers for this popular student textbook¹. The volumes into which the book was divided were bound with interleaves for annotation. The next day, Binning attended the first class of Van Eck's *Collegium* on the first part of the *Digest*². As far as we can tell he was a reasonably diligent student. He annotated his textbook and he certainly later felt no hesitation in engaging his former professor in correspondence.

At this time, William, Prince of Orange, as well as being Stadhouder of Utrecht and some of the other United Provinces, sat on the Scottish throne. Young Binning was just one of the many Scotsmen who went to the Netherlands to study at the height of what Jonathan Israel has dubbed the 'Anglo-Dutch Moment', and, as is well known, Scottish students went in large numbers to the universities of the northern Netherlands between, say, 1680 and 1750. This means that Scottish libraries and archives contain important sources for the history of education in the Netherlands in this period. The students wrote home, discussed their studies, and collected books³. Like

¹ Edinburgh University Library (EUL), Centre for Research Collections, SC 9387, back pastedown MS note.

² *Ibid.*, p. 1, MS note on top margin.

³ R. Feenstra, *Scottish-Dutch legal relations in the seventeenth and eighteenth centuries* in: R. Feenstra, *Legal scholarship and doctrines of private law, 13th-18th centuries*, Aldershot, 1996, XVI; J.W. Cairns, 'Importing our Lawyers from Holland': *Netherlands influences on Scots law and lawyers in the eighteenth century*, in: *Scotland and the Low Countries*, ed. G.G. Simpson, East Linton 1996, p. 136-153; E. Mijers, *Scottish students in the Netherlands, 1680-1730*, in: *Scottish*

Binning, they sometimes kept their student notes and textbooks. Though precise statistics are impossible, the research of van Strien and Ahsmann suggests that, among the Scots, the most popular university for legal studies was that of Utrecht⁴. Utrecht was a city well known to Scots, as many of the generation before Binning had spent time there in exile before the Revolution of 1689⁵.

Born in 1674, Charles Binning was the fifth son of Sir William Binning of Wallyford and his wife Elizabeth Scott of the family of Bavelaw. Sir William was a minor landowner and successful merchant who had served as Lord Provost of Edinburgh. Sir William had not been at odds with the Stewart Restoration regime; but he accepted the Revolution. He had travelled to the Netherlands to manage legal affairs and to France on mercantile business. He also had extensive trade links in the Low Countries, with which he must have been familiar⁶. This would have made

communities in the early modern period, ed. A. Grosjean and S. Murdoch, Leiden 2005, p. 301-331; E. Mijers, 'News from the Republick of Letters': *Scottish students, Charles Mackie and the United Provinces, 1650-1750*, Leiden 2012.

⁴ K. van Strien and M. Ahsmann, *Scottish law students in Leiden at the end of the seventeenth century: The correspondence of John Clerk, 1694-1697*, in: *LIAS* 19:2 (1992), p. 271-330 at p. 279-282.

⁵ G. Gardner, *The Scottish exile community in the Netherlands, 1660-1690*, East Linton 2004, *passim*.

⁶ J.A. Inglis, *The Monros of Auchinbowie and cognate families*, Edinburgh 1911, p. 141, 149, 152; J.A. Inglis, *Edinburgh during the provostship of Sir William Binning, 1675-1677*, in: *Scottish Historical Review* 12 (1915), p. 369-387; *The Decisions of the Lords of Council and Session, from June 6th, 1678, to July 30th, 1712. Collected by the Honourable Sir John Lauder of Fountainhall, one of the Senators of the College of Justice*, Edinburgh 1759-1761, vol. 1, p. 478, 646.

it easy to organize Charles's legal studies in the Netherlands⁷.

Cornelis van Eck: Utrecht professor

When Binning undertook his legal studies, the law professors in Utrecht were Lucas van de Poll, Johan van Muyden, and Cornelis van Eck⁸. None of these would now be counted among the greatest or most influential legal scholars of the Dutch Golden Age⁹. But this would be to judge them by inappropriate and anachronistic criteria. Both Van Muyden and Van Eck were popular and successful teachers, and we know Binning opted to study with the latter. But their comparative lack of fame as scholars may explain why, in the competitive environment of the universities of the Netherlands in which professors often changed institutions, they stayed at Utrecht. It should be stressed, however, that many distinguished legal scholars also taught at Utrecht, which by any criterion was one of the leading universities of the era: these included Antonius Matthaeus [II and III], Gerard Noodt, Everhardus Otto, C. H. Trotz, Johannes Voet, Jacobus

⁷ Mijers, 'News from the Republic of Letters' (*supra*, n. 3), p. 49-105; Van Strien and Ahsmann, *Scottish law students* (*supra*, n. 4), p. 273-277.

⁸ R. Welten, *Utrechtse Hoogleraren in de Rechten (1636-1815): Enkele aspecten van de geschiedenis van de rechten faculteit te Utrecht*, *Tijdschrift voor Rechtsgeschiedenis*, 55 (1987), p. 67-101 at p. 87-88.

⁹ 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. 59.

Voorda, and Abraham Wieling. Some of these men stayed for a while; some quickly moved on¹⁰.

Born in 1662, Van Eck studied in Utrecht and Leiden, taking his doctorate in the latter university in 1682. He became professor at Franeker in 1686, where he also served as rector. There, like others, he became embroiled in quarrels with the difficult, if brilliant, Ulric Huber¹¹. In 1693, Van Eck moved to a chair at Utrecht; he remained there until his death in 1732¹². Since he was a teacher of ability who attracted students, the managers of the university at Utrecht wished to keep him. Thus, when they feared in 1713 that he might be called to Leiden in place of Johannes Voet, they made him professor *juris hodierni* with an additional *f* 200 per year¹³.

Van Eck was a noted neo-Latin poet; but he was not a prolific publisher of scholarly works on law. Some of his publications were *pièces d'occasion*, such as his responses to the quarrelsome Huber's criticisms of his

¹⁰ M. van de Vrugt, *Album Scholasticum*, in: *Rechtsgeleerd Utrecht: Levensschetsen van elf hoogleraren uit driehonderdvijftig jaar Faculteit der Rechtsgeleerdheid in Utrecht*, ed. G.C.J.J. van den Bergh, J.E. Spruit, and M. van de Vrugt, Zutphen 1986, p. 216-239 at p. 218.

¹¹ G.C.J.J. van den Bergh, *Cornelis van Eck, 1662-1732: Een dichter-jurist*, in: *Rechtsgeleerd Utrecht: Levensschetsen van elf hoogleraren uit driehonderdvijftig jaar Faculteit der Rechtsgeleerdheid in Utrecht*, ed. G.C.J.J. van den Bergh, J.E. Spruit, and M. van de Vrugt, Zutphen 1986, p. 37-54, at p. 39-42; Van den Bergh, *Life and work of Gerard Noodt (supra, n. 9)*, p. 50-57; Margaret Hewett, *Ulric Huber (1636-1694): De ratione juris docendi & discendi diatribe per modum dialogi nonnullis aucta ΠΑΡΑΛΗΠΟΜΕΝΟΙΣ*, Nijmegen 2010, p. 79-83.

¹² Van den Bergh, *Cornelis van Eck (supra, n. 11)*, p. 42-48.

¹³ *Ibid.*, p. 43-44. They were mistaken. See Van den Bergh, *Life and work of Gerard Noodt (supra, n. 9)*, p. 96-98.

work and to a critic of his Latin verses on William of Orange's invasion of England. Others were *disputationes*, *orationes*, and collections of theses¹⁴. His work had distinctly humanist influences and, for example, his speech as rector in Franeker in 1693 was on joining study of poets with that of Roman law¹⁵.

Van Eck's most important legal work is the textbook Charles Binning bought in 1695, the *Principia juris civilis secundum ordinem Digestorum in usum domesticarum scholarum seu collegiorum, quae vocant, vulgate et in duas partes divisa*. This was first published in Franeker in 1689, intended as a compend for teaching his class. Production of this work may have been prompted by his experience as a student in Leiden of using J. F. Böckelmann's *Compendium institutionum Justiniani sive elementa juris civilis in brevem et facilem ordinem redacta*, first published in Leiden in 1679¹⁶. The second edition was published in Utrecht in 1694 after Van Eck's move to the University. It was again intended for the

¹⁴ M. Ahsmann, *Bibliografie van Hoogleraren in de Rechten aan de Utrechtse Universiteit tot 1811*, Amsterdam 1993, p. 70-77.

¹⁵ *Oratio de studio poëticae conjugendo cum studio juris Romani*, Franeker 1693. See G.C.J.J. van den Bergh, *Die holländische elegante Schule: Ein Beitrag zur Geschichte von Humanismus und Rechtswissenschaft in den Niederlanden 1500-1800*, Frankfurt am Main 2002, p. 178-181.

¹⁶ R. Feenstra, *Johann Friedrich Böckelmann (1632-1681): Een markant Leids hoogleraar in de rechten*, in: *Bestuurders en geleerden: opstellen over onderwerpen uit de Nederlandse geschiedenis van de zestiende, zeventiende en achttiende eeuw*, aangeboden aan Prof. Dr J. J. Wolter bij zijn afscheid als hoogleraar van de Rijksuniversiteit te Leiden, ed. S. Groenveld, M.E.H.N. Mout and I. Schöffner, Amsterdam 1985, p. 137-150.

assistance of his class. The *Principia* subsequently went through a number of editions, the last being published in Leiden in 1784.¹⁷

Van Eck's close friendship with Noodt and his quarrels with Huber raise interesting issues in light of Huber's dialogue *De ratione juris docendi et discendi*, which can be understood as a strong critique of Noodt's approach and an endorsement of the *methodus compendiaria* that Van Eck himself favoured. These have been thoroughly explored by Margaret Hewett in her recent Amsterdam doctoral thesis, so we need not enter into them here, although it points up the complexity of the issues involved¹⁸.

Van Eck was highly regarded and erudite. He maintained an extensive learned correspondence with other notables in the Republic of Letters. His worth would not have been measured by his contemporaries according to the shelf-space taken up by his scholarly works. There is every reason to consider that his pupils would have been impressed by him.

Van Eck's Scottish student

Charles Binning had studied arts at the University of Edinburgh, where he matriculated in 1691 under the

¹⁷ Ahsmann, *Utrechtse Bibliografie* (*supra*, n. 14), p. 73-74.

¹⁸ Hewett, *Ulric Huber* (*supra*, n. 11), p. 77-78.

regent William Law¹⁹. In 1696, he was matriculated in the University of Utrecht by Robert Moray, a fellow Scot²⁰. It is not clear when Binning had arrived in the Dutch city. The class on the Digest he took with Van Eck started on 2 September 1695 but he may already have taken a class on the Institutes, as was common, perhaps also with Van Eck²¹. From correspondence, we know he also studied with J. G. Graevius, the noted historian and philologist, whose classes were very popular, and whom Binning described as the 'princeps literatorum'²². It was common for Scots law students to take the type of courses Graevius offered on Roman sources and history to complement their studies of Roman law²³. We also know Binning shared accommodation in Utrecht with James Vernon, the future courtier, M.P., and Envoy Extraordinary to Denmark²⁴.

This link with Vernon suggests that Binning remained in Utrecht over the winter of 1696-1697. In Vernon's memoirs, the author describes his extended education in

¹⁹ Edinburgh University Archives, IN1/ADS/STA/2 (Da. 34), Register of Edinburgh University Matriculations 1627-1703, p. 135.

²⁰ *Album studiosorum Academiae Rheno-Traiectinae*, 3rd edn, Utrecht 1886, p. 97.

²¹ Van Strien and Ahsmann, *Scottish law students (supra, n. 4)*, p. 297-298.

²² Charles Binning to Cornelis van Eck, 30 Apr. 1698, UB Utrecht HS 1000 7B3; Charles Binning to Cornelis van Eck, 25 Nov. 1699, UB Utrecht HS 1000 7B3.

²³ Van Strien and Ahsmann, *Scottish law students (supra, n. 4)*, p. 301.

²⁴ Charles Binning to Cornelis van Eck, 30 Apr. 1698, UB Utrecht HS 1000 7B3; P. Gauci, *Vernon, James II (1677-1756), of Westminster, Mdx*, in: *The House of Commons, 1690-1715, 5: Members O-Z*, ed. D.W. Hayton, E. Cruikshanks, and S. Handley, Cambridge 2002, p. 745-747.

the Low Countries. In the early 1690s he had studied history and antiquities with Graevius in Utrecht and philosophy with Pierre Bayle in Rotterdam. Illness then brought Vernon home. In the mid-1690s, he returned to the Low Countries, to Brussels, in the service of the King's Envoy Extraordinary; but, unhappy in this position, he moved to Utrecht to 'to finish my Studys under my Old Professor Graevius'²⁵.

Binning must have remained in Utrecht until February 1697. This is clear from a letter from Graevius to Edward Bernard, formerly Savilian Professor of Astronomy at Oxford, and a noted oriental scholar. Bernard had recently been in the Low Countries, on behalf of the collector, Narcissus Marsh, to purchase MSS at the auction of the library of Jakob Golius²⁶. Graevius alludes to that in his letter of 9 February and refers to Bernard's precarious health. He also introduces 'Charles Binne of Scotland' to Bernard²⁷. In fact, Binning never met Bernard, who had died on 12 January. That Graevius

²⁵ James Vernon, 'Memoirs of J. Vernon', British Library, MS Add. 40794, f. 1^v. Vernon's memoir is bound with 'Animadversions Clariss. ac Celeb: Joh: Georg: Graevij Prof: Ordin: in inclyta Academ: Ultrajectina in Collegio suo Chronologico habitae Anno M. D. C. XCVII'. These are his notes from Graevius's history course.

²⁶ H. de Quehen, 'Bernard, Edward (1638-1697)', in: Oxford Dictionary of National Biography, Oxford 2004, <http://www.oxforddnb.com/view/article/2240>, last accessed 10 Dec. 2014.

²⁷ Joannes Georgius Graevius to Edward Bernard, 9 Feb. 1697, University of Oxford, Bodleian Library, MS Tanner 23, f. 103, available at Early Modern Letters Online, <http://emlo.bodleian.ox.ac.uk/profile/work/9e169f8d-095f-45fc-bdd3-7163f0ac9b1d>, last accessed, 10 Dec. 2014.

entrusted the letter to Binning and wished to introduce him to Edward suggests that he found the young Scotsman both reliable and reasonably impressive.

Binning's textbook: Van Eck's *Principia juris civilis*

Only one volume remains from the textbook Charles Binning bought before he began his class with Van Eck in 1695; it is the only trace we have of his legal studies. Now housed in the University of Edinburgh's Centre for Research Collections, the volume consists of the first part of Van Eck's second, corrected, edition of his *Principia juris civilis*: only the pages to 160 of the original 907 survive²⁸. The book was published as a duodecimo in 1694 under the name of François Halma, university printer at Utrecht from 1684 to 1699²⁹. The surviving volume was interleaved with blank pages so that the student could add his own notes while attending the course. It is unknown if the binding with interleaves was carried out by vande Water or Halma, but most probably the former. Binning himself would probably not have had the time to buy the volume and have it interleaved to start the class the next day. It is also most unlikely that he later bound the interleaves into the book,

²⁸ EUL, SC 9387 (*supra*, n. 1).

²⁹ For Halma and his working practices see K. Forrer, 'François Halma (1653-1722), boekverkoper te Utrecht, Amsterdam en laatstelijk te Leeuwarden', PhD Thesis, Amsterdam 2005. Halma was known for his fair dealings with and provision of useful services for his student customers: hence the interleaved copies.

especially since marks on the printed page sometimes act as a key to the comments on the relevant interleaf directly opposite, while comments are also found on the printed pages.

Notes appear throughout the volume, both on the printed pages and on the interleaves. Comparison with Binning's correspondence and other documents in his hand confirms that these notes are his holograph. There is one exception. As well as the Stamp of Edinburgh University Library, the title page bears the inscription: 'Ex liberi [sic] Gulilumus [sic] Bining [sic]'. This is written in a childish hand and is an attempt by Binning's young son William to write an *ex libris* inscription in Latin.

The notes refer to the printed text and usually contain additional references for or clarifications of Van Eck's work. These combine citations to ancient legal and literary sources as well as more modern scholarly legal texts. As one would expect of student lectures, there is nothing of a revolutionary or extraordinary nature in the notes. The majority of the interleaves have no notes; there are even fewer annotations on the printed pages. This may reflect the actual classes given by van Eck working through his textbook. Indeed, the distinct impression from study of the notes is that Binning worked in class on the interleaved volume. If so, it means that the more substantive notes give an insight into Van Eck's

concerns and what he thought important to teach his students. This is confirmed by examination of other sets of student notes that survive from Van Eck's classes. The first, with a Scottish provenance, though now in the U.S.A., also consists of an interleaved copy of the *Principia*. The notes are considerably more extensive than those surviving from Binning's studies. As with Binning's notes, the marginal annotations and extensive interleaved comments are keyed to the text by underlining in the printed page³⁰. The second set, in two volumes, is in Utrecht University Library. This is a fair copy of notes taken by David Ragay, who attended Van Eck's class on the Pandects in 1712-1713. In his notes Ragay quotes words (underlined) from the printed text of the *Principia* and then adds comments on them presumably derived from the dictates of Van Eck. Comparison with Binning's notes

³⁰ This MS is the property of Meyer Boswell Books Inc., San Francisco. It consists of a bound set of extensive notes interleaved with Van Eck's *Principia*, together with a set of notes, in a different hand, dated Utrecht 3 Jan. 1698, entitled 'Quaedam observationes ad titulum sextum libri quarti institutionum de actionibus quae sequitur ordinem compendii Bockelmanni'. A later hand has written on one of the pages of the volume: 'James Craig of Riccarton, Professor of Civil Law, University of Edinburgh 1710-1732'. Neither part of the MS is in Craig's holograph. He may have acquired the volume at some stage. It may be the notes *de actionibus* are also from Van Eck's class on the Institutes, in which he used Böckelmann's compend. None of the notes on Böckelmann's compend surviving from Van Eck's classes in Utrecht University Library covers this title, however, so it is impossible to confirm this. See UB Utrecht HS 8*.A.13-14 and 8*.A.1. Also in Utrecht are two (virtually identical) sets of Lectures *de actionibus* (UB Utrecht HS 8*.A6). These are different from the notes in the San Francisco MS; the catalogue of the university lectures in Utrecht raises the query whether they are notes from Van Eck's class: K. van der Horst, *Catalogus van de Collectie Collegedictaten van de Utrechtse Universiteitsbibliotheek*, Utrecht 1994, p. 29.

shows considerable correspondence, though Ragay's are generally rather fuller³¹. All three manuscripts provide a traditional lemmatic commentary on the texts of the *Principia*.

Of themes that stand out we may note, for example, that Van Eck obviously devoted considerable attention to *emblemata Triboniani* and the scholarship on the text and editions of *Digest*. This involved discussions of the scholarship of Antonio Agustín, Jacques Cujas, Hugo Donellus, the printing of the Florentine Manuscript by the Torelli, Gothofredus, and the work of the Scotsman Alexander Cunningham on interpreting the manuscripts³². He shows a significant interest in the nature and sources of law considering the nature of the *ius naturale* and *ius gentium*, while debating the authority of jurists and whether princes are bound by the law³³. While this discussion of sources is perhaps what one might expect in lectures to students, it may also reflect the development of interest in the *ius publicum* in the Netherlands in the later seventeenth century. He also shows an interest in slavery, a topic with contemporary resonance in the Netherlands as well as elsewhere in Europe and the European colonies³⁴. Here he cites Grotius and Antonius

³¹ 'Dictata in Pandectis', UB Utrecht HS 8*.A.10-11. See Van der Horst, *Catalogus* (*supra*, n. 30), p. 29.

³² EUL, SC 9387 (*supra*, n. 1), facing p. 13-14.

³³ *Ibid.*, facing p. 82-88.

³⁴ *Ibid.*, facing p. 92-94.

Matthaeus³⁵, Livy and Tacitus³⁶, and Gilbert Burnet's *History of the Rights of Princes*³⁷.

The interest in the textual traditions of the Digest is of a humanist type. Indeed one may note that elegant jurists such as Cujas, Le Douaren, Gothofredus, and Noodt are referred to in the notes³⁸. Van Eck's teacher Böckelmann is also cited³⁹. This is hardly surprising given that Van Eck used Böckelmann's *Compend* to teach his class on Justinian's Institutes⁴⁰.

The volume also contains a book list on what is now its front pastedown. This was originally a separate leaf, but it has been pasted in. Study of the list shows that it is a set of recommendations, as it contains a number of entries which offer alternative possibilities such as either Calvin's *Lexicon* or that of Brisson or either that of the quarto or folio editions of some works. The works selected again show a distinct preference for humanistic scholarship as well as some contemporary Dutch authors. An annotated transcription of Binning's *desiderata* is appended.

Binning's *Disputatio juridica*

³⁵ *Ibid.*, facing p. 92.

³⁶ *Ibid.*, facing p. 93.

³⁷ *Ibid.*, on p. 94.

³⁸ *Ibid.*, facing p. 5, 14, 89, 91, 101.

³⁹ *Ibid.*, facing p. 96, 112.

⁴⁰ Van der Horst, *Catalogus* (*supra*, n. 30), p. 28-29.

Binning was admitted to the Faculty of Advocates on his return to Edinburgh. The procedure involved the intransit's examination in Latin, *viva voce*, on some titles of the Roman law, followed by the preparation and printing of theses on a title assigned by the Dean of the Faculty of Advocates. By Binning's time these were allocated in sequence from the Digest. The theses were then publicly defended in Parliament Hall. The Dean next assigned a fragment or *lex* from the title on which the intransit had printed the theses to be the subject of a speech in Latin from the bench, after delivery of which the intransit was admitted as an advocate⁴¹. Binning defended his theses on 29 January 1698, and had gone through the whole procedure by 4 February 1698, when the Lords admitted him as an advocate, administering the usual oaths⁴².

Binning's printed theses were on the subject of usufruct. His *Disputatio juridica, de usufructu & quemadmodum quis utatur fruatur* cites the elegant learning Binning had gained abroad, and some of the references are to books cited by Van Eck to his class, as well as to some of those in the *desiderata* pasted into his copy of *Principia juris civilis*. Legal scholars of

⁴¹ J.W. Cairns, *Advocates' hats: Roman law and admission to the Scots Bar, 1580-1812*, *Journal of Legal History*, 20:2 (1999), p. 24-61.

⁴² *The Minute Book of the Faculty of Advocates. Volume 1. 1661-1712*, ed. J. M. Pinkerton, Edinburgh 1976 (=Stair Society Vol. 29), p. 182; National Records of Scotland (NRS), Books of Sederunt of the Lords of Council and Session, CS1/9/154r.

the humanist tradition dominate. Most citations in the theses are to texts of Roman law, but there are also references to the Gloss, Bartolus, and Baldus⁴³. But the Humanistic and elegant focus of Van Eck's teaching is obvious, and indeed the sole reference to Baldus and the Gloss comes in a quotation from Antoine Mornac's *Observationes in viginti-quatuor libros Digestorum et librum primum codicis in usum fori Gallici*, first printed Paris 1616, a work with a practical orientation that makes full use of humanist learning. The issue is one of potential textual emendation, a typically humanistic concern⁴⁴.

To go through the references in detail would greatly extend the scope of this article. But also cited are: Pierre Faber⁴⁵; Jacques Cujas⁴⁶; Gregor Haloander⁴⁷; Hugo Grotius⁴⁸; Andrea Alciato⁴⁹; Gerard Noodt⁵⁰; Arnold Vinnius⁵¹; Hugues Doneau⁵²; Böckelmann⁵³; Huber (twice)⁵⁴;

⁴³ *Disputatio juridica, de usufructu & quemadmodum quis utatur fruatur.: Quam auspice Deo. T.O.M ex auctoritate, consultissimi viri, D.D. Hugonis Dalrymple de North-Berwick inclytæ Facultatis Juridicæ Decani. Necnon ex ejusdem Facultatis Consensu & Decreto / publicæ disquisitioni subjicit, ad advocati munus aspirans. Carolus Binning. a. & r, Edinburgh 1698, p. 7 n. 1, 12 (Thesis XX).*

⁴⁴ *Ibid.*, pp. 12-13 and p. 13 n. 4.

⁴⁵ *Ibid.*, p. 6 n. 8.

⁴⁶ *Ibid.*, p. 6 n. 8, 8 n. 4 (bis), p. 12 in text (Thesis XVII), p. 13 n. 3 (bis).

⁴⁷ *Ibid.*, p. 7 n. 2.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, p. 8 n. 4.

⁵⁰ *Ibid.*, p. 9 n. 5 and in text.

⁵¹ *Ibid.*, p. 9 n. 6.

⁵² *Ibid.*, p. 9 n. 7.

⁵³ *Ibid.*, p. 10 n. 11 (his *Exercitationes de actionibus*).

⁵⁴ *Ibid.*, p. 11 n. 5 (top), p. 13 n. 6 and in text.

François Le Douaren⁵⁵; Reiner Bachovius ab Echt⁵⁶; Claude Saumaise, the classical scholar and textual critic⁵⁷; François Connan⁵⁸; and finally Van Eck himself⁵⁹. This mere list of the names indicates the approach and concerns found in the theses and the scholarship with which Binning wished to associate his work. As reflection on the modern jurists cited would suggest, issues of emendation and establishing the correct text are to the fore in some of the theses. Thus the citation of Haloander was for a proposed emendation⁶⁰. Noodt is described as 'Juris Consultus de Jurisprudentia Romana bene meritus'; and of a proposed textual emendation found in his *Probabilia*, Binning wrote '[s]ic enim legendum esse, pluribus argumentis ostendit'⁶¹. Finally, in discussing the issue of possible emendation introduced by the quotation from Mornac, Binning notes that Connan corrects the text differently, while Huber explains it without any emendation. Binning, however, concludes: 'But of all the conjectures the best is that of the famous and most distinguished man Cornelius van Eck, my teacher, to whom I owe a debt I can never forget, whose name is famous and who is an ornament of the University of

⁵⁵ *Ibid.*, p. 11 text Thesis XVII.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*, p. 13 n. 5 (top).

⁵⁹ *Ibid.*, p. 13 n. 7

⁶⁰ *Ibid.*, p. 7 n. 2.

⁶¹ *Ibid.*, p. 9.

Utrecht, which has the happiness to have him as a teacher of law'⁶².

It may be worth pointing out that Van Eck's pupil Ragay also specifically relied on the scholarship of his teacher in his own *Disputatio juridica* for graduation as a doctor of laws. Van Eck was also one of the dedicatees for the work⁶³. Ragay's dissertation contains an elegant, historical, and philological discussion, with a focus on etymology and literary sources. Ragay's more modern references include: Jacques Cujas⁶⁴; the historian Pieter Burman⁶⁵; Hugo Grotius⁶⁶; Gerard Noodt⁶⁷; Barnabé Brisson⁶⁸; Johannes Jacobus Wissenbach⁶⁹; Johannes Faber⁷⁰; Jean Papon⁷¹; Frans van den Zype⁷²; and the humanist historian Jan Gruter⁷³. He also cited the Florentine (or Pisan) manuscript and epigraphic evidence⁷⁴. This confirms what we find in Binning's *Disputatio*: Van Eck's emphasis on

⁶² *Ibid.*, p. 13. He emended 'nequidem' to 'equidem'.

⁶³ *Disputatio juridica inauguralis, continens explicationem legis XX. ff. de annuis legatis quam, Magnifici D. Rectoris ex auctoritate Melchioris Leydeckeri, S.S. Th. Doct. & Professoris Ordinarii; nec non amplissimi Senatus Academici consensu, & nobilissimae Facultatis Juridicae decreto, pro gradu doctoratus summisque in utroque jure honoribus et privilegiis rite ac legitime consequendis, eruditorum examine submittit David Ragay ... Utrecht 1715*, p. 10 ('quam Interpretationem debeo Viro Clarissimo Cornelio van Eck, praeceptoris meo unico').

⁶⁴ *Ibid.*, p. 4, 5, 10.

⁶⁵ *Ibid.*, p. 7.

⁶⁶ *Ibid.*, p. 10, 15, 18.

⁶⁷ *Ibid.*, p. 7.

⁶⁸ *Ibid.*, p. 8.

⁶⁹ *Ibid.*, p. 3, 10.

⁷⁰ *Ibid.*, p. 17.

⁷¹ *Ibid.*, p. 18.

⁷² *Ibid.*

⁷³ *Ibid.*, p. 11.

⁷⁴ *Ibid.*, p. 7, 8.

humanist learning in law and his introduction of his students to it.

Binning's correspondence with Van Eck: *De maleficis et mathematicis*

Binning's admiration for his former professor was sincere and he initiated a correspondence with him in 1698, using as a pretext the gift of a copy of his *Disputatio juridica*⁷⁵. As well as communicating personal news, Binning's letters discuss points of law⁷⁶. The most interesting of these, and the one discussed at most length, concerns the title, 'De maleficis et mathematicis et ceteris similibus' (C. 9, 18; Cod. Theod. 9, 16), and some related topics on which he wrote on at least three occasions⁷⁷. These titles prohibited fortune telling, raising of demons, and witchcraft more generally.

Binning's desire to discuss these titles with his professor arose out of contemporary events in Scotland, in particular a prosecution for witchcraft then unfolding before the Court of Justiciary in Edinburgh, and he commented that the issue was 'in foro nostro criminali

⁷⁵ Charles Binning to Cornelis van Eck, 30 Apr. 1698, UB Utrecht HS 1000 7B3.

⁷⁶ See for example, Charles Binning to Cornelis van Eck, 26 Dec. 1700, UB Utrecht HS 1000 7B3.

⁷⁷ Charles Binning to Cornelis van Eck, 10 Apr. 1699, 07 Aug. 1699, 25 Nov. 1699, UB Utrecht HS 1000 7B3.

hodie multum vexata'⁷⁸. The background to this prosecution was the trial and execution of seven witches in the west of Scotland in 1697. They were part of a group of twenty-five accused by a young girl of bewitching her throughout the previous year⁷⁹. Cases of perceived demonic possession were rare in Scotland⁸⁰, so when, not long after, in spring 1699, another two girls from the same region complained of supernaturally inflicted torment, suspicions were raised about the reliability of their claims. A further twenty-four men and women from the west of Scotland were accused of witchcraft. This time, however, the legal establishment reacted by having a different court consider the matter. The Court of Justiciary, circuit courts, local courts commissioned by the Privy Council, or Parliament could all try accused witches⁸¹. The 1697 trials had been held on a commission from the Privy Council; the Court of Justiciary at Edinburgh handled the later accusations⁸².

⁷⁸ Charles Binning to Cornelis van Eck, 10 Apr. 1699, UB Utrecht HS 100 7B3.

⁷⁹ M. Wasser, *The western witch-hunt of 1697-1700: The last major witch-hunt in Scotland*, in: *The Scottish Witch-Hunt in Context*, ed. J. Goodare, Manchester 2002, p. 146-165. See also a contemporary account by the case's prosecutor: Francis Grant, *Sadducimus Debellatus: Or, A true narrative of the sorceries and witchcrafts exercis'd by the devil and his instruments upon Mrs. Christian Shaw in the county of Renfrew in the West of Scotland, from Aug. 1696 to Apr. 1697*, London 1698.

⁸⁰ B.P. Levack, *Demonic possession in early modern Scotland*, in: *Witchcraft and belief in early modern Scotland*, ed. J. Goodare, L. Martin and J. Miller, Basingstoke 2008, p. 166-184.

⁸¹ B.P. Levack, *The witch-hunt in early modern Europe*, 3rd ed., Harlow 2006, p. 98-99.

⁸² Wasser, *Western witch-hunt* (*supra*, n. 79), p. 147.

Binning's letters to his former professor describe the debates among the legal profession in Scotland about both the laws relating to witchcraft and which type of court should conduct the trials. The dates of his letters suggest that he was responding to events as they happened. On 27 March 1699, the lord advocate was advised by the Court of Justiciary to prepare indictments against the recently accused witches⁸³; on 10 April, Binning wrote his first letter to Van Eck that included questions about the law on witchcraft⁸⁴. The young advocate was clearly intrigued by the unfolding events as witnesses were examined and evidence was collected. He wrote to Van Eck again in August and November seeking clarification of the law⁸⁵. It is not known if Binning played any part in the legal investigation relating to the accused witches: his name does not appear in any of the surviving records. The case was repeatedly delayed until the accused were finally dismissed without trial on 6 March 1700⁸⁶. Binning thanked Van Eck for his replies in a letter of 20 Aug. 1700⁸⁷, and after this date Binning's letters no longer mention the title 'De maleficis et mathematicis'.

⁸³ *Ibid.*, p. 154.

⁸⁴ Charles Binning to Cornelis van Eck, 10 Apr. 1699, UB Utrecht HS 100 7B3.

⁸⁵ Charles Binning to Cornelis van Eck, 07 Aug. 1699, 25 Nov. 1699, UB Utrecht HS 100 7B3.

⁸⁶ NRS, Books of Adjournal (13 Nov. 1699 - 1 July 1706), JC3/1, ff. 87-89; Wasser, *Western witch-hunt* (*supra*, n. 79), p. 155.

⁸⁷ Charles Binning to Cornelis van Eck, 20 Aug. 1699, UB Utrecht HS 100 7B3.

What Van Eck made of this quest for advice and information about 'De maleficis et mathematicis' is unknown; he did answer on the issue put, but his letters have not been found. Two of the three relevant letters he received have underlining that may be his, but it is difficult to make much of that. It is important in this respect to note that the rates of the prosecution and conviction of witches were relatively low in the Netherlands, and the 'craze' for hunting them did not manifest there⁸⁸. By the late seventeenth century, the legal aspects of witchcraft seemingly caused little concern among Dutch jurists⁸⁹.

Binning's career as an advocate

It is impossible to assess in any satisfactory way Binning's career as an advocate⁹⁰. No personal records such as account books have been located that might allow insight into his practice. Initial success as a member of the Faculty of Advocates was often predicated on a network of family and friends. Through his own family, he

⁸⁸ I. Bostridge, *Witchcraft and its transformations, c. 1650-c. 1750*, Oxford 1997, p. 97-98.

⁸⁹ For a survey of medieval and early modern Dutch jurists' opinions about witchcraft, including those of Van Eck's contemporary Huber, see H. Beliën, *Judicial views on the crime of witchcraft*, in: *Witchcraft in the Netherlands from the fourteenth to the twentieth century*, ed. M. Gijswijt-Hofstra and W. Frijhoff, Rotterdam 1991, p. 53-65.

⁹⁰ J. Finlay, *The community of the College of Justice: Edinburgh and the Court of Session, 1687-1808*, Edinburgh 2012, p. 121-156 discusses the careers of advocates at this period.

was very well connected in Edinburgh mercantile circles⁹¹. In 1706, Binning married Margaret Montgomerie, the daughter of a minor landowner, Hew Montgomerie of Broomlands in Ayrshire⁹². The Montgomeries of Broomlands were descended from the Earls of Eglinton⁹³. The marriage brought him some very important connections, as is demonstrated by those who served as witnesses at the baptism of his daughter Barbara in 1712⁹⁴. First named was William Boyle, brother of the Earl of Glasgow. The newly ennobled Earl of Glasgow was head of the Boyles of Kelburn, a prominent Ayrshire family. As a Court supporter, the Earl played a prominent role in securing the Union, acting as Scottish Treasurer Depute, while helping hold the Kirk steady⁹⁵. The next listed was Margaret Montgomerie's uncle, John Montgomerie of Wrae, a Writer to the Signet and the Commissioner for Linlithgowshire in the final Scottish Parliament. In 1706 Wrae was wealthy enough to become a Director of the Bank of Scotland. After the Union, Montgomerie of Wrae had

⁹¹ J.A. Inglis, *The Binnings of Wallyford*, London 1915, p. 2-7.

⁹² NRS, Old Parish Registers (OPR), Marriages, Edinburgh [OPR Marriages 685/01 0460 0018 Edinburgh]. Banns were called on 28 July and the marriage took place on 13 Aug.

⁹³ *Burke's Landed Gentry*, ed. P. Townend, 18th ed., London 1965, vol. 1, p. 508. On the family of Broomlands, see further Inglis, *Monros of Auchinbowie* (*supra*, n. 6), p. 158-163.

⁹⁴ NRS, OPR, Baptisms, Edinburgh, 16 June 1712 [OPR Births 685/01 0150 0242 Edinburgh].

⁹⁵ C.A. Whatley with D.J. Patrick, *The Scots and the Union*, Edinburgh 2006, p. 49-50, 246, 264, 300, 313; J. Stephen, *Scottish Presbyterians and the Act of Union*, Edinburgh 2007, p. 59-60, 123; C.A. Whatley, *Bought and sold for English Gold? Explaining the Union of 1707*, East Linton 1994, p. 10, 36, 39.

briefly been M.P. in 1710 for Buteshire, through the influence of the Earl of Bute, then a Court Whig. He was also a Commissioner of Excise in Scotland. From 1709 to 1711 he was joint Under Secretary for Scotland, while also serving as private secretary to the Duke of Queensberry⁹⁶. The next listed witness was James Boyle of Montgomerieston, another Commissioner of Excise. The Boyles of Montgomerieston were an Ayrshire family, closely linked with the burgh of Irvine, and a cadet branch of the Boyles of Kelburn. James Boyle's father had been Provost of the town and its Commissioner to Parliament, and at one stage James the younger had sought also to be chosen its commissioner to Parliament⁹⁷. The final witness to Barbara's baptism was William Baird, a former Bailie of Edinburgh. A son of Sir Robert Baird of Saughtonhall, he was married to Binning's sister, Catherine⁹⁸. These mercantile, political, legal, and landed links with both the east and west of Scotland suggest that Binning was sufficiently well connected that work would come his way were he to show himself able.

⁹⁶ D.W. Hayton, *Montgomerie, John I (D. 1725), of Wrae, Linlithgow*, in: *The House of Commons, 1690-1715, 4: Members G-N*, ed. D.W. Hayton, E. Cruikshanks, and S. Handley, Cambridge 2002, p. 903-904; *Register of the Society of Writers to Her Majesty's Signet*, Edinburgh 1983, p. 231.

⁹⁷ *The Scots Peerage*, ed. J. Balfour Paul, Edinburgh 1904-1914, vol. 4, p. 197; *Muniments of the Royal Burgh of Irvine*, ed. J. Shedden-Dobie, Edinburgh 1890-1891, vol. 2, p. 115-121; G. Robertson, *Topographical description of Ayrshire, more particularly of Cunninghame: Together with an account of the principal families in that Bailiwick*, Irvine 1820, p. 105-106.

⁹⁸ Inglis, *Monros of Auchinbowie* (*supra*, n. 6), p. 150; *Complete Baronetage*, ed. G. E. C[okayne], Exeter 1900-1909, vol. 4, p. 369.

Practice as an advocate could also lead to public preferment of various types; for this, patronage was necessary. It is notable that Binning's political associations had initially been with Scottish Court Whigs such as Wrae, Glasgow, and Bute, all of whom, except for the last, were to become supporters of the party of Whigs known as the Squadrone Volante. The Squadrone was based on an association of inter-related families, with notable members being the Dukes of Montrose and Roxburghe, the Marquesses of Tweeddale, and the Dundases of Arniston. The Dundas family was particularly influential in the Faculty of Advocates⁹⁹. By the 1720s, it is clear that Binning was personally linked to the Squadrone, who then held power in Scotland in alliance with the English Whig, Sir Robert Walpole. Thus Binning, along with John Sinclair, was appointed as Solicitor General for Scotland in 1721¹⁰⁰. As a Scottish law officer, this post ranked next to that of Lord Advocate. As well as acting for the Crown, occupation of such an office helped advocates develop their private practice through publicity, hope of favours, and good political connections.

In 1725, however, Walpole changed his Scottish alliance to one with the Campbell brothers, John, Duke of

⁹⁹ R. Emerson, *An enlightened duke: The life of Archibald Campbell (1682-1761), Earl of Ilay, 3rd Duke of Argyll*, Kilkerran 2013, p. 66-74, 87-93.

¹⁰⁰ *The Faculty of Advocates in Scotland, 1532-1943, with genealogical notes*, ed. F.J. Grant, Edinburgh 1944, p. 15.

Argyll, and Archibald, Earl of Islay. Binning lost office. The Campbell brothers' subsequent near-monopoly of patronage in Scotland probably kept Binning from holding any further post¹⁰¹. It is also notable that Binning was linked with the Bank of Scotland; Islay promoted the new Royal Bank in opposition to the Old Bank's interests¹⁰².

Binning was active in the business of the Faculty of Advocates, deciding on the dispensing of charity, often acting as *preses* in the absence of the Dean, serving as a stentmaster and several times as either private or public examiner¹⁰³. Perhaps the power of the family of Dundas of Arniston in the Faculty helped his continuing involvement in its life. Indeed, when Robert Dundas of Arniston was Dean, Binning, at the age of 81, was appointed as Vice Dean of the Faculty of Advocates, serving from 1755 until his death in 1758¹⁰⁴. It is worth noting that the election was unanimous, suggesting his brother advocates' confidence in their aged colleague.

Binning's practice led him to have the resources to acquire lands in Lauderdale, which were erected into the

¹⁰¹ A. Murdoch, *'The People Above': Politics and administration in mid-eighteenth-century Scotland*, Edinburgh 1980. p. 7-8; R. L. Emerson, *Academic patronage in the Scottish Enlightenment: Glasgow, Edinburgh and St Andrews Universities*, Edinburgh 2008, p. 7-8.

¹⁰² Emerson, *Enlightened duke* (*supra*, n. 99), p. 238.

¹⁰³ *Advocates Minutes Volume 1* (*supra*, n. 42), p. 208, 246, 254; *The Minute Book of the Faculty of Advocates. Volume 2. 1713-1750*, ed. J. M. Pinkerton, Edinburgh 1980 (=Stair Society Vol. 32), p. 149, 163, 169, 177, 180, 186, 209, 216, 231, 2343, 239, 250.

¹⁰⁴ *The Minute Book of the Faculty of Advocates. Volume 3. 1751-1783*, ed. Angus Stewart, Edinburgh 1999 (=Stair Society Vol. 46), p. 46.

Barony of Pilmuir in 1722¹⁰⁵; he thereafter used this territorial designation. Binning and his wife had one son, William, who became an advocate in 1739 – some years after writing his name on the title page of his father’s notes from Utrecht – and six daughters¹⁰⁶. Both William and his son, another Charles Binning, predeceased Van Eck’s pupil, whose detailed efforts to secure his grandson and namesake’s inheritance in trust came to nothing. His three surviving daughters, Elizabeth, Katherine, and Isabella, sold the Pilmuir estate in 1761¹⁰⁷. Suggestive of Binning’s success is, as well as his Baronial standing, his ownership of a flat in the fashionable Lawnmarket of Edinburgh, and the marriage of his daughter Elizabeth, to Andrew Buchanan of Drumpellier, Lord Provost of Glasgow, as his second wife, and of his daughter Katherine to David Inglis of Edinburgh, Treasurer to the Bank of Scotland¹⁰⁸. These were important and wealthy men¹⁰⁹. Binning’s practice had enabled him successfully to maintain and secure his children’s social standing and prosperity.

¹⁰⁵ Inglis, *Monros of Auchinbowie* (*supra*, n. 6). p. 152-157.

¹⁰⁶ Grant, *Faculty of Advocates* (*supra*, n. 100), p. 15.

¹⁰⁷ National Library of Scotland, MS 1236, ff. 64-103.

¹⁰⁸ *Ibid.* Isabella was unmarried when the family’s property transactions regarding Pilmuir took place.

¹⁰⁹ I.F. Russell, *Buchanan, Andrew (1690-1759)*, in: Oxford Dictionary of National Biography, Oxford 2004, last accessed 9 Dec. 2014]; J.A. Inglis, *The family of Inglis of Auchindinny and Redhall*, Edinburgh 1914, p. 46-52.

Conclusion

It is difficult to relate Binning's success in life directly to his education in Utrecht under Van Eck and Graevius. But of the significance for him of that elegant education in law and history there can be no doubt. In the Dutch Republic he had been taught a humanistic approach to law and life, one fitting him to be a gentleman who would practice law as one of the *artes liberales*, not as the province of a narrow pettyfogger.

It is also important that this was an education as a learned lawyer obtained in a Calvinist Republic, not in an absolute monarchy as in France. This was the era when *ius publicum* was developing as a discipline in the northern Netherlands, particularly under Van Eck's old sparring partner, Huber. Van Eck seems to have touched on aspects of it in his lectures. The *ius publicum universale* was certainly of interest in Scotland, and Huber's work in this respect was well known and admired. Given the replacement of James VII and II by William and Mary, the troubled history of the seventeenth century in the British Isles, and the issues about the future succession to the throne, such a topic was of great interest to representatives of the educated Scottish professional and political classes, such as Binning. It also fed into the debates on the Union in 1707, in which

Binning's network of connections was so involved¹¹⁰.

Binning himself was inevitably politically engaged because of his position as a lawyer and landowner.

The education Binning received under Van Eck also demonstrates the continuing vitality of a humanistic approach to legal study and scholarship. Gerard Noodt and Antonius Schulting would be more readily recognized as teaching a humanistic curriculum; but, even if using a compend, Van Eck's teaching was imbued with the spirit of Jacques Cujas.

If it is impossible to know how many Scots actually studied law with Van Eck, there will have been a reasonable number. Given the political and cultural role of lawyers in Scotland in the eighteenth century, interesting questions arise about the impact of this type of education on the early Scottish Enlightenment, with its interest in the classics, ancient history, Stoicism, virtue, natural law, and the like. In Binning's era, Scots were working within a Dutch intellectual world, whether classicists, lawyers, theologians, physicians, and natural scientists more generally. Dutch scholarship provided their introduction to the Republic of Letters. As the Scottish universities started to develop in new

¹¹⁰ For a brief discussion, see J.W. Cairns, *The origins of the Edinburgh Law School: The Union of 1707 and the Regius Chair*, *Edinburgh Law Review*, 11 (2007), p. 300-348 at p. 313-326.

directions and into new fields, Dutch exemplars were to be powerful.

By the time Binning died in 1758, direct Dutch influence was waning. It is perhaps symbolic of that change that it was to Binning as Vice Dean of the Faculty of Advocates that David Hume directed his written resignation of his troubled Keepership of the Advocates Library in 1757¹¹¹. Hume's appointment as Keeper in 1752 had been opposed by the Squadrone supporters in the Faculty¹¹². But on the basis of older intellectual foundations, some of which were Dutch, intellectual life in Scotland was moving in a new direction.

Appendix

List of books found in Charles Binning's copy of Cornelis van Eck, *Principia Juris Civilis*, Utrecht 1694, Edinburgh University Library, Centre for Research Collections, SC 9387¹¹³

In Folio

Calvini vel Brissoni Lexicon Juris Civilis¹¹⁴
Corpus Juris Civilis paris 1628. edit. opt. 2 Vol.¹¹⁵

¹¹¹ *Advocates Minutes Volume 3* (*supra*, n. 104), p. 70-71. See B. Hillyard, *The Keepership of David Hume*, in: *For the encouragement of learning: Scotland's national library, 1689-1989*, ed. P. Cadell and A. Matheson, Edinburgh 1989, p. 103-109.

¹¹² *Advocates Minutes Volume 3* (*supra*, n. 104), p. xiii.

¹¹³ Abbreviations: NLS (National Library of Scotland), OCLC (www.worldcat.org), STCN (Short Title Catalogue of the Netherlands), VD17 (Bibliography of Books Printed in the German Speaking Countries from 1601 to 1700).

¹¹⁴ These two law dictionaries were frequently issued in folio editions. Johann Kahl (also known as Calvinus) first published his *Lexicon juridicum* in Frankfurt in 1600. B. Brisson's *De verborum quae ad jus civile pertinent significatione* first appeared in 1559. For these and other early modern Roman law dictionaries, see the University of Texas, Tarlton Law Library online exhibition at <http://tarlton.law.utexas.edu/exhibits/dictionaries/> (accessed 22 Nov. 2014).

¹¹⁵ This edition included notes by Denis Godefroy. *Corpus iuris civilis quo ius universum Iustinianaeum comprehenditur*, Lutetiae

J. C. glossatum Lugduni Gallia 1677 edit in 6 vol. opera priora quae edi voluit Francof. 1595¹¹⁶

[Duarenus] opera omnia Aurelia Allobrogum 1608¹¹⁷

Alciati opera omnia 4 Tomi Francof. 1617.¹¹⁸

Hugonis Donelli Commentariorum J. C. libris 28 Hanoviae 1612¹¹⁹

- Commentary ad Libris Cod. 2.3.4.6.8. & ad Tit. ff. De praescriptus verbis & tit. de V. O. Francof. 1622¹²⁰

- Commentary ad tit. ff. de rebus creditis de jurejurando de condictione ex Lege de conductione Triticiaria, & de eo qd certo loco dare oportet Antw. 1582.¹²¹

In Quarto

Zoesius ad pandectas in quarto vel m Folio¹²²

Perezij praelectiones in quarto vel m Folio¹²³

[damaged] Commentarius ad Instit. Amstel.¹²⁴

Parisorum 1628. Scottish student John Clerk wrote to his father from Leiden in 1695 that '...we always have the Corpus Juris with Gothofredus' notes recommended to us, which at Leiden or Amsterdam is sold for no less than 36 guilders'. Since this was too dear for the student's budget, Clerk asked his father to send his copy since 'I fancy the Corpus which you have with Gothofredus' notes will do well enough'. John Clerk, *Letter 7*, in Van Strien and Ahsmann, *Scottish law students (supra, n. 4)*, p. 329.

¹¹⁶ Editions of these years not traced but see e.g. Justinian, *Digestum novum, seu Pandectarum iuris civilis tomus tertius*, Lyon 1627, for an example see NLS, Alva Collection, 84.

¹¹⁷ François Duaren, *Omnia quae hactenus edita fuerunt opera*, Geneva 1608 (OCLC 494753185).

¹¹⁸ Andrea Alciati, *Opera Omnia: In Quatuor Tomos legitime digesta, nativo suo decori restituta*, Frankfurt 1616-1617 (VD17, 1:007562U).

¹¹⁹ Hughes Doneau, *Hugonis Donelli iuris consulti eminentissimi commentariorum iuris ciuilibis libri vigintiocto*, Hanau 1612 (NLS, Nha.I50; VD17 1:012555S).

¹²⁰ Hughes Doneau, *Commentarii absolutissimi: Ad II. III. IV. VI. Et VIII. Libros Codicis Iustiniani, Titul. V. Lib. XIX. Digest. De Praescript. Verbis, & Titul. I. Lib. XLV. Digest. De Verborum Obligationibus*, Frankfurt 1622 (VD17, 1:011740D).

¹²¹ Hughes Doneau, *Hugonis Donelli iurisconsulti commentarii ad titulos digestorum: qui infra scripti sunt. De rebis creditis. Si certum petetur, & de condictione. De iureiurando. De in litem iurando. De condictione ex lege. De condictione Triticiaria. De eo, quod certo loco dari oportet*, Antwerp 1582(OCLC, 79160357).

¹²² Many editions of Henricus Zoesius' *Commentarius ad Pandectas* were produced throughout the seventeenth century. Clerk's uncle, David Forbes, recommended it to his nephew as a textbook. Van Strien and Ahsmann, *Scottish law students (supra, n. 4)*, p. 313 n. 15.

¹²³ Also recommended to Clerk by Forbes, Antonio Pérez's *Praelectiones in Codicem Justinianum* was regularly reprinted and reissued throughout the seventeenth century. Van Strien and Ahsmann, *Scottish law students (supra, n. 4)*, p. 313 n. 16.

Pauli Voet Commentarius ad Instit.¹²⁵
 Ulr. Huberi prelect Instit.¹²⁶
 Arn. Vinnij Tractatus quinqz¹²⁷
 J. Fred. Boeckelmanni Commentary ad pandectas¹²⁸
 Wessembeci paratitla ff. & 4 priorum librorum cod. notis
 Bachovij & Vinnij¹²⁹
 Wissenbachij disputat. Ad ff. edit Franequerae 106 [sic -
 part of entry lost in binding]¹³⁰
 - Disputat ad instit edit Lugd. Batav. 1676¹³¹
 - Praelectiones ad 7 priores libros Cod¹³²

Treutleri disputationes ad ff Francof. 1641¹³³
 Bachovi disputationes ad Treutlerum 3 vol Heidelberg &
 Argent.¹³⁴
 [damaged] Syntagma ff 4 voll.¹³⁵

¹²⁴ Unidentified. Possibly an edition of Arnold Vinnius, *In quatuor libros Institutionum imperialium commentarius academicus & forensis* which was published in multiple editions by various publishers in Amsterdam in the second half of the seventeenth century.

¹²⁵ Paul Voet's *In quatuor libros Institutionum imperialium commentarius* was frequently re-issued in new and enlarged editions.

¹²⁶ Ulric Huber, *Praelectionum juris civilis pars prima, quæ est ad integras Institutiones Justinianæas*, Franeker 1678 (STCN 160348684). This publication had its origins as a disputation. M. Ahsmann, *Teaching the ius hodiernum: Legal education of advocates in the Northern Netherlands (1575-1800)*, Tijdschrift voor Rechtsgeschiedenis, 65 (1997), p. 436.

¹²⁷ A widely available textbook. See e.g. the 4th edition: Arnold Vinnius, *Tractatus quinque de pactis, iurisdictione, collationibus, transactionibus & quæstionibus iuris selectis*, Rotterdam 1664. (STCN 057427895).

¹²⁸ Johan Frederik Böckelmann, *Commentariorum in Digesta Justiniani imp. libri XXVII*, Utrecht 1694 (STCN 160668786).

¹²⁹ Multiple editions. See e.g. Matthæus Wesenbeck, *Commentarii in Pandectas Juris Civilis et Codicem Justinianeum olim dicti Paratitla*, Leiden 1648 (SCTN 11776728X).

¹³⁰ Possibly Johannes Jacobus Wissenbach, *Disputatones jvris civilis: Ad calcem adjunctæ sunt contradictiones juris canonici*, Franeker 1648.

¹³¹ Johannes Jacobus Wissenbach, *Disputationes ad instituta imperialia*, Leiden 1676 (OCLC, 67128385).

¹³² Johannes Jacobus Wissenbach, *Liber septimus: Codicis dn. Justiniani repetitæ praelectionis commentationes cathedrariae*, Frankerae 1665 (SCTN 297974637).

¹³³ 1641 edition not traced but see VD17, 12:165957L, Hieronymus Treutler, *Selectarum Disputationum Ad Ius Civile Iustinianæum, Quinquaginta Libris Pandectarum Comprehensum, Resolutionum absolutissimarum Voluminis ... Residuae Disputationes XV*, Frankfurt 1640.

¹³⁴ Reinhardus Bachovius Echtius, *Notae et Animadversiones ad Disputationes Hieronymi Treutler*, Heidelberg 1617-1619 (see e.g. NLS, Alva.367-368).

¹³⁵ Possibly Georg Adam Struve, *Syntagma Iurisprudentiae, Secundùm ordinem Pandectarum concinnatum*, published in four volumes at Jena from 1655 to 1658 (OCLC, 615405821). Struve was professor of law at Jena from 1646-1667 and again from 1674 to 1692. A. R. von Eisenhart, *Struve, Georg Adam*, in: *Allgemeine Deutsche Biographie* (1893),

Comments on Binning's book list

The dates of the books that appear in Binning's list are a mix of older textbooks and more recent publications. This may indicate that Binning had advice from an older scholar when compiling his list. This is certainly the case for Binning's contemporary John Clerk of Penicuik who studied law at Leiden from 1694 to 1697. Clerk's uncle David Forbes recommended that his nephew should buy his textbooks upon arrival at Leiden and specifically listed 'elementary books' including the Institutes with Vinnius' notes, Vinnius' commentary on the Institutes, an octavo edition of the Corpus Juris Civilis with Gothofredus' notes and the same in folio, and Julius Pacius' analysis of the Institutes with notes by Schotanus and Wassenaer¹³⁶. Once Clerk had mastered these he could move onto Zoesius on the Digest, Perezius on the Codex, and Gudelinus on the Novels¹³⁷. Forbes had been admitted advocate in 1677. His knowledge of legal publishing seems to have been recognised by his peers since he became one of the first curators of the Advocates Library, taking on the role for a year's term in 1683. Forbes prepared an inventory for the Library in

available at <http://www.deutsche-biographie.de/pnd118756087.html> (accessed 11 Dec. 2014).

¹³⁶ David Forbes, *Mr David Forbes His Advice*, in Van Strien and Ahsmann, *Scottish law students* (*supra*, n. 4), p. 312.

¹³⁷ *Ibid.*, p. 313-314.

1687¹³⁸. However, his well-meant advice on buying textbooks and studying in Leiden proved to be of little use for his nephew who wrote to another uncle that he

was very much obliged to my uncle Mr David for the pains he took in writing a sheet of paper full of advices as to the method of my studying the law here. But I have found that it was of very little to the purpose, seeing I am obliged to follow my professor's method which is quite contrary from my uncle's¹³⁹.

Even so, Clerk copied out his uncle's instructions and seems to have referred to them during his time in the Netherlands. Binning's list may have started as a similar offering from an advocate who had made the journey to the Low Countries the generation before.

Binning's list concentrates on books for study. Van Eck's teaching, as demonstrated by the notes Binning added to his copy of his teacher's *Principia*, drew heavily upon humanist scholarship. This list, with its mentions of e.g. Alciato, Duaren, and Doneau, provides more evidence for a humanist influence in law teaching in late seventeenth-century Utrecht.

¹³⁸ *Advocates Minutes. Volume 1* (*supra*, n. 42), pp. 36, 61, 80.

¹³⁹ John Clerk, *Letter to William Aikman of Cairnie*, in Van Strien and Ahsmann, *Scottish law students* (*supra*, n. 4), p. 322.

The list also includes a selection of printed disputations. Printed disputations originated from oral disputing. Students in the Netherlands attended weekly sessions at which their professors led discussions about a set of theses. Students would write responses which came to be known as *disputationes*¹⁴⁰. *Disputationes*, since they offered practice in skills of oral disputation and in the written composition of arguments, provided an important part of advocates' legal training. Professors might publish themed sets of them under their own names¹⁴¹. These collections, in turn, could be used as textbooks¹⁴².

Printed *disputationes* could also serve as models for aspirant Scottish advocates who were required to submit printed theses as part of their admission procedure. Advocates theses have a similar structure to both the theses submitted by Scottish regents on behalf of their scholars as they took their undergraduate degrees and to the doctoral theses defended by continental higher degree candidates. Scottish legal scholars rarely took degrees abroad¹⁴³. Instead, they passed exams, both written and oral, when they returned to Scotland. Scottish legal

¹⁴⁰ P. Nève, *Disputations of Scots students attending universities in the Northern Netherlands*, in: *Legal History in the Making: Proceedings of the Ninth British Legal History Conference*, ed. W.M. Gordon and T.D. Fergus, Glasgow 1991, p. 100.

¹⁴¹ Van den Bergh, *Life and work of Gerard Noodt* (*supra*, n. 9), p. 269.

¹⁴² Nève, *Disputations* (*supra*, n. 140), p. 100.

¹⁴³ *Ibid.*, p. 102.

scholars were aware of the admission procedures for the Faculty of Advocates, including the defence of theses. Clerk, for example, was 'resolved on this, that I shall never see Scotland till I can laugh at the examinations of the Advocates'¹⁴⁴.

¹⁴⁴ John Clerk, *Letter 6*, in Van Strien and Ahsmann, *Scottish law students* (*supra*, n. 4), p. 325.