Legal humanism and the consequences of textual criticism*

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I.

The aim of the Centre is to study Europe from an interdisciplinary perspective. The word interdisciplinary has been used very often for many years in the Japanese academic world, but it can also imply a superficial discussion without entering into a technical or academic treatment. In this paper, I would like to share some of the experiences in my recent research field, legal humanism i. e. jurisprudence in the Renaissance period.[1] I will try to make my presentation as clearly as possible also for non-specialists, but I am convinced that a specialized discussion of law will be of interest also to non-lawyers, will useful information and bring about fruitful interdisciplinary discussion, if certain premises are introduced from the outset. I hope my report will provide a better understanding of the European History of Ideas in general.

II.

One of the most eminent achievements of the so-called 12th century Renaissance was the birth of universities, i. e. the revival of jurisprudence and medicine. The revival of jurisprudence means the efforts to understand the texts of that treasure of detailed legal discussions, later known as the *Corpus iuris civilis*, to which jurists in Northern Italy, mainly at Bologna, devoted themselves very intensively.[2] Their contribution was to explain this enormous volume of very complicated legal texts, which was not systematically ordered collection of legal norms that could be termed a code or codification, but was rather an accumulation of casuistic extracts from writings of private jurists and imperial constitutions, both responses to particular legal disputes. Consequently, this mass of texts

filled with what at first sight appear to be contradictions should be harmonized through the scholastic method or technique of making distinctions among each item (*leges*) and applying them as positive law. This harmonization might misconstrue the original meaning, but it dose provide us many other legal concepts, to which we Japanese are also very much indebted through the reception of continental European codes and legal science in the last 130 years.[3] Northern Italian jurists performed this technique of "*distinctio*", adding notes (called *glossa*) to the texts. Their work was summarized by Accursius into a *glossa ordinaria*. The *Corpus iuris* has been since that time published not only as a collection of original texts but also always with this *glossa ordinaria*.

After the completion of the *glossa ordinaria*, some new types of legal literature have been developed: *commentaria*, which are the commentaries on the Roman legal texts according to the ordering of the *Corpus iuris* integrating the actual legal issues in Italy at that time; *tractatus* and *paratitla*, which argue the particular legal material/s intensively ignoring the ordering of the roman texts[4]; and *consilia* and later *decisiones*, which record or report solutions to legal disputes showing the reasoning (*motivazioni, ratio decidendi*) behind them.[5] These were formally private works but actually corresponded to law reports today. At this stage, as you have probably noted by now, all the types of literature units which the lawyer works today were firmly established already in late medieval Italy.

These series of texts and manuals became known through the study of foreign students in Italy. Their use later spread throughout Europe also with the foundation of new law faculties in other countries, and the activities of both secular and ecclesiastical courts. The law faculties functioned as an organization for legal education, whose graduates acted as judges, advocates, procurators, notaries, diplomats, high officials and so on. We speak of the Reception (penetration) of Roman law, one of the three important factors for the modernization in the continental Europe, besides the Reformation and the Revolution.

How far the Roman texts with *glossa ordinaria* were really applied to settle actual disputes in courts is a question that is not easy to answer. But one might say that Roman law found a relatively direct and intense application in the areas where rules of non-Roman law were not so well established and even in the areas where rules of non-Roman law were established Roman law exercised considerable influences by furnishing legal forms and technical concepts. Even though rules of non-Roman law were often applied in practice, the fact that the people

engaged in law were educated exclusively in the framework of Roman law was very significant (Only taught law is tough law).

It is true that the *Corpus iuris, glossa ordinaria, commentaria* and *consilia* of Bartolus and Baldus were of very persuasive authority but that did not mean an exclusive and absolute authority which compelled lawyers to accept them as the only authentic interpretation and solution. This was not the case. The legal science or jurisprudence in Civil Law countries is dogmatic in the sense that legal norms as proposition themselves (often represented as an article of a code or statute) are fixed. But their interpretation was and is open to free academic or scientific discussion. Even the *glossa ordinaria* proposed alternative solutions for clearing up contradictions, saying *vel dic.*[6] This dogmatic character of jurisprudence, its method of treating the texts without avoiding a profound hermeneutics and escaping to an easy proposal of statutes (*de lege ferenda*) produced very creative achievements. Such a phenomenon can be observed not only in theology but also in today's Japanese legal academic world, which tends to value the acute *de lege lata* argumentation more highly than simply legislative proposals. One can say that modern jurisprudence in the sense of the re-discovery and reutilization of the classical heritage had been established before the Quattrocento Renaissance. The unique fact that European society in many aspects has a strong legal character since the late Middle Ages cannot be overestimated and should not be ignored. Indeed legal texts were the flowering of classical Latin culture and were technically so highly developed that a specialized and systematic education was indispensable. As a consequence the Renaissance of Antiquity meant in large part the legalization of society. By legalization, I mean the formation of autonomous legal discussion, putting every kind of social conflict into legal terms of rights and obligations, the arrangement of a formally developed judicial system and the remarkable advance of graduates of law faculty into a variety of social field. These are all very important factors that have produced the unique cultural characteristics to Europe.

I would like to give some examples of autonomous legal discussions in contrast to political ones. How long a time must pass to fulfill the requirement of prescription is not an exclusively legal but also very political question. Whether or not a party can claim restitution of a payment when he paid the debt knowingly but unnecessarily because of the effect of a prescription and for what reason if so is a highly legal question. How much interest should be permitted is a very

political question but whether or not a party can claim restitution of a part of his payment of interest that went beyond the statutory permitted rate when he did so willingly, and on what reasoning is a problem of highly legal character. Jurists focus on this type of legal discussion and in so doing seek the essence of various legal institutions, of course not ignoring social justice and the just settlement of conflicts. The idea of the existence of an autonomous legal world and the idea of the necessity and value of legal education was not so well developed in Japan before the transplanting of the European legal system.[7)]

III.

With the Quattrocento Renaissance the *umanista* began to be very active, to re-interpret already known texts and to discover forgotten classical ones. The jurists, in general, did not seem to be very sensitive to this new movement nor did they think it necessary or urgent to response to it at the first stage partly because they had already employed the ancient legacy, the roman texts not only to be interpreted *ex cathedra*, but also to be applied for practical purpose. The term *umanista* was used in contrast to e. g. *giurista*, an already established social group.[8)] That is why the word legal humanism or legal humanist sounds somehow unfamiliar or even strange today. It is true that some early attacks from humanists, or men of letters, against legal science were not always effective, but were sometimes only a kind of denunciation motivated partly out of envy at the high social status and prestige of jurists, symbol of privileged medieval stratum.[9)] But we should not forget that their early attacks indicate the two important directions of later legal humanism, i. e. the critique of the *glossa ordinaria* of Accursius and the censure of the *Corpus iuris* itself, the discovery of compilator's interpolations.[10)] The latter criticism was based on the conviction that the model of antiquity for Renaissance was not the *Corpus iuris* of the 6th century but the golden age of Roman jurisprudence.

With time, however, the humanistic critique became more important because of its examination of different manuscripts of the *Corpus iuris*. This comparison of each codex lead to doubts about the authenticity of the texts of the *Corpus iuris* used since medieval times and called the *Vulgate*. Not the interpretation, but the text itself that the glossa had accepted was to be reexamined.

One of the most valuable manuscripts of the Digest (the most important part

of *Corpus iuris*) which humanists wanted to rely on was a manuscript which the Medici possessed at that time. It is called the *Florentina*.[11] Its incomparable value depends on the fact that it comes from the 6th or 7th century and that it contains some Greek texts that the *Vulgate* does not. If the texts, which one may understand as corresponding to the articles of codes in Civil Law system, had been handed down erroneously, then all the reasoning and discussion that presupposed them would be false or useless. The same thing can of course be said about literature in general but it is all the more serious when it is a question of legal norms which settle social conflicts. You can imagine the seriousness of the matter if you think of a situation when the text which has been believed to say "the buyer can dissolve a sale" under such and such requirements turns out to actually say "the buyer can not dissolve a sale".[12] That articles of the cinque codes are different in the different editions would be chaotic beyond all imagination. That was the situation of legal science in the time of the Renaissance thanks to humanistic philology. One of the most famous pioneers of the humanistic movement among first rank jurists was Andrea Alciato, who published as a young scholar some very important works on philological achievements[13], but who was unfortunately not permitted to use the *Florentina*. It was Lelio Torelli who was able to make an entire use of the *Florentina* and publish it under the permission of the Medici in 1553.[14] Ten years earlier Antonio Agustín, who helped Torelli, published a very interesting work titled *emendationes et opiniones* which described the comparison of manuscripts and disputations concerning them in his time.[15] Along with the establishment of the true *Corpus iuris* of the emperor Justinian, work on the reconstruction of the original classical texts which were collected in the *Corpus* with alteration will also be gradually done.[16]

Which interpretation of the fixed text is better and more adequate to solve the actual dispute is a question to be left to a free academic and practical discussion and based on the core of legal science of today's Civil Law system, and not a particularly humanistic approach. But the challenge from the humanistic jurists, i. e. the revelation of the misunderstanding of the meaning of a Latin term[17] or of the false reading of a text was something to which the jurisprudence had to respond. I would like to give you three typical examples of discussions in this humanistic direction.

IV.

Let me first take up the problem of the meaning of a Latin expression concerning the Roman regulation of usury. Apart from a maritime loan the Roman limit of a ordinary interest was expressed as *usurae centesimae* which was understood by medieval jurists to be a rate of interest of 100 percent, that is a rate that would amount to a doubling of capital in a year. This was false. But this misunderstanding did not lead to a serious practical consequence partly because the Catholic Church forbade any type of taking interest among Christians as a rule,[18] and partly because the regulation of usury was always a concern of the authorities. Therefore the rules of usury were very often regulated not by Roman law but by a particular statutory law of political nature. Thus the misunderstanding of *usurae centesimae* seems not to have had practical consequences. But there is one text which has nothing to do with interest, but rather with *lex Falcidia*, and which uses *usurae* (*centesimae*) as a simple number. *Lex Falcidia* is a roman statute which provides that legacies should not exceed three quarters of the testator's wealth and that a more than a fourth should be reserved to the heir appointed in the testament. The *lex* which was not understandable according to the medieval understanding is as follows.

> (D. 35, 2, 3, 2) *PAULUS libro singulari ad legem Falcidiam.*
> *Item si rei publicae in annos singulos legatum sit, cum de lege Falcidia quaeratur, Marcellus putat tantum videri legatum, quantum sufficiat sorti ad usuras trientes eius summae, quae legata est, colligendas.*

The problem occurred when a testator wrote in his testament that the heir shall give a certain sum of money to the state or to the city every year, because it is completely uncertain how long the heir must continue to pay and thus how much the full amount of his obligation will be, which is indispensable to calculate in order to apply the Falcidian law. While the method of calculation is regulated in great detail in case of natural persons in the *Corpus iuris*, it is not so in the case of moral persons such as the state or a city. The *glossa ordinaria* interprets the expression *usurae trientes* as $100 \times 1/3$ percent, according to the medieval understanding of *usurae* as 100 percent.[19] As a consequence, this *lex* should provide that the annual legacy to the state must be understood to continue only three

years, while that to a private person continues much longer, e. g. 25 years.[20] But this is nonsense. In fact a renowned medieval jurist, de Castro, confessed that he could not understand this text.[21] The absurdity comes from the misunderstanding of the term *usurae centesimae*. Actually *centesima* means 1/100 per month and thus *usurae centesimae* means 12 percent a year. *Usurae trientes* in this text is 4 percent and consequently one can understand the legacy to the state is supposed to continue 25 years. The first jurist to address this difficulty was Bartolomeo Socini of Siena.[22] He reported that a Venezian humanist had already resolved it by reading a non-legal classical text, Lucius Cormella's on Agriculture.[23] This is a typical humanistic solution, that is, solving a medieval jurisprudence puzzle form a philological approach to Renaissance knowledge of general, non-legal texts of Antiquity. But it was later shown that this difficulty can also be solved from reading the Greek *Basilica*, which was not accessible without knowledge of the Greek language.[24] The use of Greek legal sources was also one of the most striking contributions of legal humanism.[25] Translation of these sources was attempted. This issue is discussed by Troje,[26] and I was able to listen to some lectures on this subject when I studied legal history in Europe.

The second example of the humanistic development in jurisprudence is a famous text in Digest concerning an action for damages by the buyer when there is no agreement (*consensus*) on the quality of the object of a sale. The text says:

> (D. 19, 1, 21, 2) *PAULUS libro trigesimo tertio ad edictum.*
> *Quaemvis supra diximus, cum in corpore consentiamus, de qualitate autem dissentiamus, emptionem (non) esse, tamen venditor teneri debet, quanti interest non esse deceptum, etsi venditor quoque nesciet: veluti si mensas quasi citreas emat, quae non sunt.*

Prof. Noda has published a very comprehensive study of this text in relation to the theory of *error in substantia*.[27] I will limit myself here to the problem of the divergence of the text among various manuscripts and editions. While the *Vulgate* says "*Quaemvis supra diximus,. .. emptionem non esse* (in spite of our having said above that there is not a valid sale)", the *Florentina* text reads without a negative: "*Quaemvis supra diximus,... emptionem esse* (in spite of our having said above that there is a valid sale)". Does the action for damages arise in addition to that of restitution when there is not a purchase or does the action

for damages arise although there is a purchase, thus there is the action on it. Jacque Cujas who was a champion of the Vulgate tradition[28] and Greek sources[29] maintains that the *Florentina* does not always prevail over the *Vulgate* nor does it always reflect the original reading.[30] He claims that the non-existence of the negation in this text in the *Florentina* is incorrect and agrees with the traditional reading.[31]

The age of legal humanism corresponds to that of the invention of printing in Europe. In the printing of the *Corpus iuris* one had to confront differences among manuscripts. Which reading should be chosen as the text to be printed ? In regard to our text, the edition with the *glossa ordinaria* of 1488 accepted the *Vulgate* reading i. e. with the Latin negative "non".[32] But the Lyon edition of 1575 e. g. tentatively includes [non] in parentheses. In the Geneva edition of 1580, however, one does not find any negation at all.[33] The last reading, i. e. that of the *Florentina* was received into the Gothofredus' (Godefroy's) edition, which was considered the most authoritative and most reliable in the humanistic study.[34] According to the very careful research of Prof. Noda the last edition containing negation was the one of 1598.[35]

But two illustrious French legal humanists described the situation differently. According to F. Duaren, "in the majority of manuscripts there is a negative.[36]" Antoine Favre "Therefore Haloander emended rightly the reading of the *Florentina.* All the recent writers follows this reading and this can be seen also in the Gothofredus' edition.[37]" Such reconstruction of the authentic texts from comparing manuscripts introduced a new dimension to traditional Roman jurisprudence which had presupposed the authenticity of the *Vulgate* reading. However that the accounts of humanists concerning manuscripts or editions are not always objective or dependable, but sometimes only represent their own opinions (A famous example is Alciato's pretended possession of a very old manuscript[38]). Though proposals for the emendation of texts often depend on the acute perspective of interpretation, arbitrary changes can lead to a chaotic situation in both the theory and practice. It is quite natural for legal dogmatism, which presupposes a fixed text and seeks a logically consequent interpretation, to keep some distance from humanistic philology. Incidentally a great German jurist of the 19th century, von Savigny, discusses this problem on the *Florentina* reading. He accepted the famous proverb "*quicquid glossa non agnoscit nec agnoscit curia*". But this does not mean that he followed the interpretation of the *glossa ordinaria* blindly or

limited himself to the reading of the *Vulgate* without considering the new proposals for corrections by humanists. But he denied the direct legal validity of the texts which were not known or noted by the *glossa ordinaria.*[39]

The third example I would like to cite is that of a problem in Canon Law, i. e. ecclesiastical law. When one hears the word "ecclesiastical law" one might imagine something spiritual and philosophical, something that has little to do with secular legal disputes. Today canon law plays a very modest role, e. g. in the actions for the nullity of marriage in ecclesiastical courts. But it was not so in the Ancien Régime. The canon law was the stage upon which the scandalous and exciting disputes concerning estates and benefices were played out. Ecclesiastical law played a unique role in Western culture.[40] I would like to begin with the opining part of a Justinian's constitution with its *glossa ordinaria.*

(Nov. 5) (Auth. coll. 1. tit. 5. pr.) *de monachis*
Conversationis monachilis (monachalis = vulg.) vita sic est honesta, sic commendare novit deo ad hoc venientem hominem, ut omnem quidem humanam eius maculam detergat (c), purum autem declaret ac rationabili naturae decentem et humanis cogitationibus celsiorem. .. .

glossa (c) Maculam detergat i (dest) purget. s (cilicet) a peccato. ut infra. e. §. si vero infra in fi. non ergo ingratitudinem filii deleret, licet sit macula: ut C. de inof. Test. L. fratres. de iure canonicum (co?) secus. xix. q. vl. c. non liceat. Nec infamiam facti, vel iuris: licet etiam sit illa macula: ut C. de infra. l. antep. Sed contra, si est gratus, non ideo effecitur ingratus: quia monasterium intrat: ut j. de san. epis. §. nulli. & §. Interdicimus. coll. ix. & C. de epi. & cler. l. Deo nobis. §. hoc etiam. AZO.

The text here seems to be a religious matter, but historically it was treated as an important clue in solving a problem of succession. Azo's note, what was received into the *glossa,* affirms that a son who was disinherited because of ingratitude to his father cannot regain his right of succession merely because of his entering the monastery. But a text of *Decreta Gratiana,* a section of the *Corpus iuris canonici* represents a completely contrary opinion. According to canon law a monk can regain his right to succeed his father by entering the monastery even though he once committed an ingratitude to his father and lost his right as a heir.

(C. 19. q. 3. c. 10)

Non liceat parentibus liberos, vel liberis parentes ab hereditate repellere monachos factos: quamvis dum laici fuerant, in causam ingratitudinis inciderint. Item non liceat parentibus liberos suos ad solitariam vitam transeuntes abstrahere de manasteriis.[41]

If issues of succession came under the jurisdiction of the ecclesiastical court, this provision of canon law maintained that a portion of the wealth of the dead father fell to the monastery or the Church. But while Gratianus maintained this text was accepted from that section of Roman law called *Novellae*, the existence of the original text was not found there.[42] In his young work *Parergon* a famous Italian pioneer of humanistic jurisprudence, Alciato, in fact reported that such a doubt about this text existed[43] and in his famous treaty on testaments, the Spanish Bartolus Covvarbias discussed this issue at some length, supported its validity as law but admitted the non existence of the original roman text.[44] If one considers Gratian's compilation of older legal sources as an act of legislation, legal validity had to be attributed to every text independently of whether or not the original text could be confirmed or from which sources it may have derive. These questions are not of a legal but of a historical nature. This type of argument is found in the development of humanistic studies not only among pure traditionalists, practitioners and opponents to the legal humanism (like Alberico Gentili at Oxford[45]) but also among some legal humanists who are aware of the distinction between their two activities i. e. as humanist and as jurist.[46]

I hope you now have a concrete image of legal humanism through these three examples and some idea of how philological study might affect the legal disputes of every day life if it is transplanted into the legal world. It is probably true that the work of humanists was based not on any common religious or philosophical enthusiasm, but rather on a certain common mentality of specialists who sought to reconstruct authentic and pure classical texts. But from a historical perspective humanists contributed to a weakening of confidence in the validity of the legal texts considered authoritative since the Middle Ages, and used to legitimate or justify the activities of legislation of sovereign powers, or new rulers of the newly arising nation-states.[47] Furthermore they were also able to propose a new resolution of social conflicts of ordinary life with their achievement in the philological research.

Jurists had to establish the fixed texts of the *Corpus iuris civilis* and *Corpus*

iuris canonici by using newly acquired knowledge. But this task was far from easy because no single manuscript was definitive, so that reasonable and convincing interpretation was sometimes needed to select one reading. This could lead to heated discussion. As a pure science, such a discussion can be left open but becomes chaotic when it becomes normative and attempts to settle a daily dispute. That is why establishing the fixed text of the *Corpus iuris civilis* and *Corpus iuris canonici* was more indispensable and urgent than that of other classical texts of authority.

As for the *Corpus iuris canonici* the Roman Church was able to determine the authentic edition with authority, through Papal enactment. The *editio Romana* is said to be conservative, in the sense that it dose not contain so many humanistic corrections.[48] To be sure, philological research, and proposals for text corrections were not completely interrupted with this edition of canon law. The definitive edition of *Corpus iuris civilis* was not so easy to achieve because there was no single secular authority over all of Europe. However, a private edition of the French humanist Denis Godefroy, the *editio Gothofrediana*, became widely accepted because of its quality, its moderate corrections with many notes that describe humanistic discussions but without the *glossa ordinaria*. Sources of Roman law written in Greek after the Justinian compilation did not become valid as a norm before a court of law, but continued to be used to interpret the *Corpus iuris civilis* in Western Europe. The fact that the *Corpus iuris civilis*, an authentic legal source that represented the medieval universal idea, was not free from philological critique, contributed to weaken its authority and to strengthen the efficacy and use of other legal sources, legislative acts of rulers of each state and territory, customary law, and various kind of law reports (*decisiones, observationes*). Humanistic legal study itself continued to attract European legal élites but it is natural that ordinary legal education was dominated by the traditional interpretation of fixed legal norms and did not enter into humanistic discussions so deeply. As to the range of the *Corpus* it is limited to what the medieval jurists knew. As to the contents of the *Corpus* the emendation discussion was open but the *editio Gothofrediana* was widely accepted. The results of the further research into the original texts which the Justinian *Corpus* collected and summarized was helpful in understanding the Corpus, but it had no legal validity.

My presentation at the Feb. 23. 1996 meeting also discussed the reactions and response to legal humanism from such traditional jurists as Alberico Gentili at

Oxford, Girolamo Borgia at Naple, but I would like to write on that topic on another occasion.

Notes

*) This is an English version of a paper deliverd at the monthly study meeting of Centre for European Studies held on Feb. 23, 1996.

1) The golden age of legal humanism came about one century later than that of Quattrocento Renaissance. H. E. Troje, Die Literatur des gemeinen Rechts unter dem Einfluß des Humanismus, in: H. Coing (hrsg.), Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte, 2. Bd. Neuere Zeit (1500-1800) 1. (1977) S. 615ff.

2) C. H. Haskins, The Renaissance of the Twelfth Century (1927) chapt. 7.

3) As to the reception of European private law in Japan it is very unique that the reception had two different phases, i. e. that of the French code civil and later that of the German legal science (*Pandektenwissenschaft*). As a consequence it often occurred that an article of the Japanese civil code even of a French origin was interpreted and applied according to conceptions made in Germany. Z. Kitagawa, Rezeption und Fortbildung des europäischen Zivilrechts in Japan. (1970)

4) On the types of medieval legal literature, see P. Weimar, Die legistische Literatur der Glossatorenzeit S. 129ff. and N. Horn, Die legistische Literatur der Kommentatoren und der Ausbreitung des gelehrten Rechts S. 261ff. in: H. Coing (hrsg.), Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte. 1. Bd. Mittelalter (1100-1500) (1973).

5) On the law reports in the continental Europe at the Ancien Régime see e. g. J. P. Dawson, Oracles of Law (1968), M. Ascheri, I "Grandi tribunali" d'Ancien Régime e la motivazione della sentenza and I Giuristi consulenti d'Ancien Régime in: M. Ascheri, Tribunali, giuristi e istituzioni dal medioevo all'età moderna (1989) p. 85ss. (there is also an German version, Rechtsprechungs-und Konsiliensammulungen, A. Abs. Italien, in: H. Coing (hrsg.) Handbuch der Quellen und Literatur. 2. Bd. 2. S. 1113ff.)

6) This was also pointed out by G. W. Leibniz in his famous writing on method, Nova methodus discendae docendaeque jurisprudentiae. (1667) §. 51. in: G. W. Leibniz Philosophische Schriften hrsg. v. der deutschen Akademie der Wissenschaft zu Berlin. 1. Bd. 1663-1672 (1971) S. 329.

7) This type of autonomy does not necessarily mean the blind to social reality. One discourse of an eminent pandectist Windscheid has been unfortunately quoted as a legal conceptualism in negative sense in contrast to sociological jurisprudence. See. F. Wieacker, Gründer und Bewahrer. Rechtslehrer der Neueren Deutschen Privatrechtsgeschichte (1959) S. 192f.

8) See P. O. Kristeller, Renaissance Thought. The Classic, Scholastic and Humanist Strains. (1961)

9) Typical critique was that of F. Rabelais, Pantagruel Chapt. V. p. 189. Oeuvres complètes

Librairie Gaillimard (1955)

10) On the legal humanism on the early stage D. Maffei, Gli inizi dell'umanesimo giuridico (1956) is a classical work.

11) J. A. Bachius, Historia jurisprudentiae romanae quatuor libris comprehensa, Lucae (1762) lib. 4. cap. 3.

12) A very useful list of the humanistic proposals to add or to cancel a negative is S. Jauch, Meditationes criticae de negationibus, Amstelaedamni, (1728).

13) Three works of humanistic direction, Praetermissa, Dispunctiones, Paradoxa were first published in 1518.

14) Troje, Graeca, S. 41ff.

15) His Opera omina can be found very rarely today but this *emendationes et opiniones* was also published in E. Otto, Thesaurus Juris Romani continens rariora meliorum interpretum opsucula Tomus IV. (e. g. 1725, 41) which is relatively easy to find.

16) When the writers began to reconstruct rather the Roman jurisprudence of the classical period than that of the *Corpus iuris* is an important quaestion. See Troje, Graeca, S. 106ff.

17) E. G. Nebrissense, Vocabularium utriusque iuris (e. g. 1581), in fact writtren by Iodoca aus Erfurt, cf. Maffei, Gli inzi, p. 50.

18) E. g. (X. 5, 19, 3)

19) Glo. to *Item si reipublicae. .. .ut puta legata sunt X. perinde ac si XXX. essent relicta*:

20) (D. 35, 2, 55) (D. 35, 2, 68)

21) See commentary to this lex in: Pauli Castrensis in Secundam Infortiati partem Commentaria. His confession was also reported in the marginal note of Godfroy's Corpus iuris edition. *Huius paragraphi rationem fructumve se ignorare progitetur. Castrensis.*

22) I was able to use his commentary in the edition of 1543 with the title Repertorium iuris utriusque. .. at Universitâ degli studi di Siena, Bibliotheca circolo giuridico thanks to very kind Prof. M. Ascheri and colleagues there.

23) Lucius Junius Moderatus Cormella on Agriculture with a recension of the text and an English translation by H. B. Ash. (1941) III. 3. 8-9. p. 258s.

24) Scholia to (B. 41, 1, 3) *Si civitati in annos singulos decem aurei relicti sint, in XXV, annos aestimatur* (Heimbach's Latin translation).

25) H. E. Troje, Graeca leguntur, Die Aneignung des byzantinischen Rechts und die Entstehung eines humanistichen Corpus iuris in der Jurisprudenz des 16. Jahrhunderts (1971)

26) Troje, Zur humanistichen Jurisprudenz, now in Troje, Humanistische Jurisprudenz. Studien zur europäischen Rechtswissenschaft unter dem Einfluß des Humanismus (1993) S. 125ff.

27) R. Noda, Die Lehre vom Eigenschaftsirrtum vor Grotius (1)-(4) in: Fukuoka University Review of Law. Vol. 29-34 (in Japanese). He distinguishes error in materia, in qualitate and in substantia very carefully.

28) D. Osler, Feels like Heaven. A legal-historical drama in five acts in: Rechtshistorisches Journal S. 332. "Nobody can teach me nothin' about Vulgate manuscripts."

29) H. Troje, Graeca, S. 256ff.

30) He manifested this famous thesis in the first page of his *Observationes et Emendationes* 1 -1.

31) J. Cujas, *Observationes et Emendationes* 2-5

32) Accursii Glossa in Digestum vetus (1488, reprint 1969) Cf. E. P. J. Spangenberg, Einleitung in das römisch-Justinianische Rechtsbuch oder Corpus Iuris Civilis (1817) n. 41.

33) Digetum vetus, Lugduni (1575) with a note: Noricus habet emptionem non esse: Aug. lib. 4. c. 17. Noricam quoque lectionem probat Baro. Rus. & ita cum negatione legitur. Cf. Spangenberg, n. 290.

34) I could use Corpus Iuris Civilis in IV. Partes distinctum. Eruditissimis Dionysii Gothofredi I. C. Clarissimi notis illustratum. Lugduni (1662). Cf. Spangenberg, n. 462.

35) R. Noda, Die Lehre vom Eigenschaftsirrtum (3), p. 538 note (50).

36) F. Duarenus, ad l. 22. de verb. oblig. in: Opera omnia, Lugduni (1584) p. 981

37) A. Faber, Rationalia ad (D. 19, 1, 21, 2). I used the edition of Geneve (Aurelianae) (1626)

38) A. Alciatus, Parergon, 9-18, in: Opera ominia. Tom. VI. Lugduni (1560). Cf. Index Aureliensis Catalogus librorum sedecimo saeculo impressorum ALC. P. 293. J. Cujacius, Ad tit. de verb. oblig. Ad L. Si sit stipulatus 133. in: Opera omnia, I. Sp. 1249. Neapoli (1757)

39) F. C. von Savigny, System des heutigen Römischen Rechts, Bd. 1. S. 66ff.

40) M. Weber, Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie (1976) 5. rev. Aufl., Studienausg. Tübingen, S. 480ff.

41) Cf. (C. 1, 3, 54 (56))*Deo nobis... Hoc etiam cognitum nobis correctione nostra dignum esse iudicamus, ut, si quis in parentium potestate constitutus vel constituta vel forsitan huiusmodi iure absolutus vel absoluta elegerit se vel monasterio vel clero sociare et reliquum vitae suae tempus sanctimonialiter degere voluerit, non liceat parentibus vel easdem personas quocumque modo abstrahere vel propter hanc tantummodo causam quasi ingratum a sua hereditate vel successione repellere, sed necesse sit eis omnimodo, cum ultimam voluntatem suam sive per scripturam sive alio legitimo modo conficiant, quartam quidem portionem secundum leges nostras eis reliquere; sin autem amplius voluerit largiri, hoc eius voluntati concedimus.*

42) See notationes correctuorum to this text.

43) A. Alciat, Parergon, 4-23

44) D. Covarruvias y Leyva, de Testamentis, Caput Rainuntius, Opera, Venetiis Tom. 1. p. 75.

45) A. Gentili, Dissertatio de libris iuris civilis, Helmstadii (1674) Cap. VII. de nomine, numero, ordine Novellarum. p. 62.

46) E. g. C. v Bynkershoecius, proemio ad vol. 1 & proemio ad vol. 5 Observationes iuris civilis, Opera omnia (1761)

47) Maffei, Gli inizi, p. 162ss. V. P. Mortari, La formazione storica del diritto moderno francese. Dottrina e giurisprudenza del secolo XVI, in: La formazione storica del diritto moderno in Europa. Atti del terzo Congresso internazionale della Società Italiana di Storia del Diritto, vol. 1, Firenze (1977) p. 195ss. (now in: Mortari, Itinera Juris. (1991) p. 111s.)

48) Troje, Graeca, S. 74ff.

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