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Dossier on the Inleidinge tot de Hollandsche rechts-geleerdheid

Observations on the *Legal Observations*

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Abstract

In the years 1777–1778 four volumes were published under the title *Legal Observations on Several Dark and Until Now Unverified Sections of the Introduction*. The volumes were composed by a society of young legal practitioners from The Hague (Netherlands), the most famous among them being Joannes van der Linden. By then Grotius's *Introduction to the Jurisprudence of Holland* was still the cornerstone of the law of Holland and around the year 1800 it would become the fundament for attempts to codify this law. Today the *Legal Observations* can function as entrance to the historical sources of the law of Holland as described by Grotius and developed further after publication of his *Introduction*.

Keywords

Legal Observations – Introduction to the Jurisprudence of Holland – Joannes van der Linden – law of Holland – sources

1 Legal Observations on Grotius's Introduction to the Jurisprudence of Holland

At the dawn of the year 1776 a leaflet was published in Dutch under the title, *Thirty Legal Questions Concerning the Introduction to the Jurisprudence of Holland by Late Hugo Grotius, Submitted to the Public to Reply*.¹ The call came from a society ("Genootschap") of legal scholars, calling themselves *Ab omnibus libenter discite, quos nescitis* ("learn freely from everyone what you don't know", a phrase used by the theologian Hugh of Saint Victor (c. 1096 – 1141), in his *Didascalicon de studio legendi* 111.13). As the title of the leaflet and the self-chosen name clearly indicate, the society asked the public for help to solve some difficulties that stand in the way of a proper reading of Grotius's *Introduction to the Jurisprudence of Holland* (first edition 1631), difficulties that had till then not been solved, not even by the notes of Simon van Groenewegen and Willem Schorer.² The questions often concern evidence or examples of what Grotius claims to be the law of Holland. The range of topics is as broad as the *Introduction* itself; so, whereas the first question concerns public law (asking for proof of what Grotius said in *Introduction* 1.2.20), the second question is on family law (*Introduction* 1.5.5).

We are familiar with the questions, the answers, and the respondents as they were published in 1777.³ In the Preface to the text we learn that the *Thirty Legal Questions* were in fact preparatory to a study the society was working on, to be published (also in Dutch) under the title, *Legal Observations on Several Dark and Until Now Unverified Sections of the Introduction*, that was to cover a hundred remarks ("Observations") on the text of the *Introduction*. The *Legal*

1 *Dertig Rechtsgeleerde Vragen, uyt de Inleidinge tot de Hollandse Rechtsgeleerheid van wylen Mr. Hugo de Groot, aan het Publicq ter beantwoording voorgesteld*. I have not found a copy of the call itself. The questions and answers were published in 1777 (The Hague: Johannes Mensert) under the same title supplemented with the names of the most important respondents. For the date of the call, see the Preface on pp. v–vi.

2 See Jacob ter Meulen and P.J.J. Diermanse, *Bibliographie des écrits imprimés de Hugo Grotius* (The Hague: Martinus Nijhoff, 1950), no. 778 et seq. for editions of the *Introduction* with the notes of Groenewegen and Schorer. The Latin notes of Schorer are translated and printed separately as *Aanteekeningen van Mr. Willem Schorer, over de Inleidinge tot de Hollandsche rechts-geleerdheid, van Hugo de Groot*, transl. J.E. Austen (Middelburg/Amsterdam: Pieter Gillissen/J. Intema, 1797).

3 See footnote 1. One of the respondents, Willem Schorer, was not pleased to find his name on the front-page of the booklet, as his answers had not been meant for publication; neither was he pleased with the notes of the editors added to his answers. He openly expressed his displeasure in a letter published as *Brief aan het Rechtsgeleerde Genootschap binnen 's Hage ...* (Middelburg: Pieter Gillissen, 1777), to which the society answered in a letter published as *Noodige verdediging tegen zekere brief van Mr. Willem Schorer ...* (The Hague: Johannes Mensert, 1777).

Observations was indeed published, in the same year as the *Thirty Questions*, in 1777.⁴ And this was not the end of it, far from that. In the Preface to the *Legal Observations* we learn that the society was by then already working on a second part with another hundred observations, followed by a third part of the same size, and finally a fourth part with fifty observations, some supplements to the earlier parts and a general register.⁵

In the Preface to the second part the society, on the request of many, revealed who had been hiding behind its name. The society was in fact a group of four legal practitioners working in The Hague, Holland.⁶ By far the most famous member was Joannes van der Linden (1756–1835), by then still a young lawyer. Today he is best known for his commission in 1806/7 by king Louis (Lodewijk) Napoleon Bonaparte, king of Holland 1806–1810, to compose a civil code. Besides Van der Linden is celebrated as the last prominent author in the tradition of the Roman-Dutch law;⁷ moreover, he was notoriously familiar with Grotius's *Introduction*, which he translated into Latin in 1835.⁸ The other members were the brothers Pieter and Reinier van Spaan and Didericus Lulius. Pieter and Reinier van Spaan both studied law in Leiden and published some tracts on legal subjects; Didericus Lulius would in the last decade of the century work with Joannes van der Linden on the eighth volume of the *Groot Placaet-Boeck*, the collection of acts of the Dutch States General.⁹

2 Why Thirty Questions and Three Hundred Fifty Observations on Grotius's *Introduction*?

Grotius's *Introduction* was written in 1618/9 and published in 1631. Ever since then it had been important, if not fundamental, for anyone who wanted to

4 *Rechtsgeleerde observatien, dienende tot opheldering van verscheide duistere, en tot nog toe voor het grootste gedeelte onbewezene passagien uyt de Inleidinge tot de Hollandsche rechtsgel. van wylen Mr. Hugo de Groot, door een Genootschap van rechtsgeleerden, onder de spreuk, ab omnibus libenter disce, quod nescis* (The Hague: Johannes Mensert, 1777).

5 All parts have been printed by Johannes Mensert in the years 1777–1778. The front-page of the second part has 1776 as the year of publication, which is presumably a mistake.

6 For more detailed information see www.dbnl.org/auteurs.

7 F.F.X. Cerutti, "Het ontwerp Burgerlijk Wetboek van Joannes van der Linden (1807)", in: *Opstellen over recht en rechtsgeschiedenis aangeboden aan prof. mr. B.H.D. Hermersdorf* (Deventer: Kluwer 1965), pp. 39–72, on p. 40.

8 Van der Linde's translation had not been published until the text edited by H.F.W.D. Fisher, *Hugonis Grotii Institutiones Juris Hollandici. E Belgico in Latinam sermonem translatae a Joanne van der Linde* (Haarlem: Tjeenk Willink, 1962).

9 *Groot placaet-boeck, vervattende de placaten, ordonnantien ende edicten van de (...) Staten Generael der Vereenighde Nederlanden, (...)*, vol. VIII, by Didericus Lulius and Joannes van der Linden (Amsterdam: Joannes Allart, 1795).

become familiar with the law of Holland. Why would one in the last quarter of the eighteenth century still be interested in evidence and examples of Grotius's assertions, if not for reasons of historical interest? Remarkably, this issue was indeed raised by one of the respondents to the thirty questions posed by the society, Willem Schorer, who had attached a "missive" to his answers which was included in the edition of the *Thirty Questions*. Schorer remarked that in his opinion not all thirty questions had the same weight, as some of them dealt mainly with the law of the past and were therefore curious rather than useful ("meer curious als util"). In a footnote ("nota") to the missive the society replied to Schorer's remark. It was far from the society's purpose to occupy themselves and their public with dawdling antiquities. However, they continued, their delving into the old law of the land was far from useless. Often contemporary customs that cannot be based on written legislation originate in the old law, knowledge of which can therefore help to illuminate the scope and meaning of contemporary law. They substantiated this claim with references to Gellius's *Noctes Atticae* (XIII.12), and to Grotius himself in his letter to his brother dated December 17, 1644 on the origin of the word *scavin* ("schepen").

If we for a moment lay aside the *Legal Observations* and look forward to the first decades of the nineteenth century, another noteworthy fact comes to the fore. Grotius's *Introduction* was to become the starting point of the first attempts to codify the Dutch law by the State commission set up for this purpose in 1798 after the Batavian Revolution.¹⁰ Although the State commission never finished the job, after being commissioned in his turn by king Louis Napoleon to compose a civil code, Van der Linden would gratefully make use of the draft the commission had produced.¹¹ Subsequently Van der Linde's draft was used by the commission to adapt the French *Code civil* for the Dutch legal practice.¹² None of these drafts actually ever was proclaimed as law, ultimately due to intervention by the emperor Napoleon Bonaparte who wanted his Code Napoleon to be the law in 'Holland'. But this short overview of the Dutch codification history can well explain the interest in the *Inleidinge* among legal scholars and legal practitioners at the end of the eighteenth century: obviously it was still considered the cornerstone of the law of Holland, and in 1777 the society somehow felt the need to prepare Grotius's *Inleidinge* for the future. In 1806 Van der Linde indeed supported the view that the study of contemporary

10 J.H.A. Lokin and W.J. Zwalve, *Hoofdstukken uit de Europese Codificatiegeschiedenis*, fourth edition (The Hague: Boom Juridische Uitgevers, 2014), p. 365.

11 Cerutti, "Het ontwerp Burgerlijk Wetboek van Joannes van der Linden (1807)", p. 51 ff.

12 Lokin/Zwalve, *Hoofdstukken uit de Europese Codificatiegeschiedenis*, p. 368.

Dutch law could still find no better basis than Grotius's *Introduction*.¹³ It would take the authority of the emperor himself to dethrone the *Introduction*; he put the French *Code civil* in its place as the source of law in these provinces.

3 Some Observations

As in the *Thirty Questions*, the topics dealt with in the *Legal Observations* are as diverse as the topics in the *Introduction*. One can find the references to the *Legal Observations* in the margins to the (Dutch) edition of the *Inleidinge* by S.J. Fockema Andreae,¹⁴ which in itself is a strong reason not to do away with this edition, since the references cannot be found in the today often used edition by F. Dovring, H.F.W.D. Fischer and E.M. Meijers.¹⁵

Here I can only give a few examples that show the character of the whole project and the substantive wealth of the observations, maybe no longer of much interest for legal practitioners, but the more so for legal historians.

In light of the future attempts to codify the law and Van der Linde's role in it (see above), the sixth observation in the third part (III O. 6) at *Introduction* 1.2.22 is fascinating. The section had already been discussed in II O. 1, where we find many proofs (the oldest proof comes from the year 1270) of what Grotius said concerning the duty of judges to decide according to their own knowledge and modesty ("wetenheid ende bescheidenheid") if there is no statute of whatever kind to base their decision on. In III O. 6 the observation is on another element of the text: the shortage of statutes ("het gebrek van onze beschreven Land-rechten") as such, and the lack of legal unity that results from it. The observation refers to a Resolution of the States of Holland dated July 25, 1688, in which both Courts ("beyde de Hoven" – the Court of Holland and the Supreme Court) were ordered to make a list of such yet unregulated and undecided issues and to advise the States on how to regulate them. The order was repeated in a Resolution of the States dated April 26, 1725, with, however, the same result: none. Then followed a third Resolution, dated March 22, 1727 wherein the States again ordered both Courts to make the list of legal problems and to advise on the solutions, to which now was added the request to come up with a *System of*

13 Thus in the Preface to his *Rechtsgeleerd, practicaal en koopmanshandboek*, quoted in the (English) preface to the 1962 edition of his Latin translation in the *Inleidinge* (see above footnote 8).

14 Fourth, revised and augmented edition by L.J. van Apeldoorn (Arnhem: Gouda Quint, 1939).

15 This edition (Leiden: Universitaire Pers, 1952) is based on Grotius's own manuscript in Lund (Sweden).

the Law of the Province (“*Systema van de Rechten dezer Provincie*”). In their reaction (October 2, 1727) the Courts proposed instead to compose a small commission of jurists to work on this project. Nothing has been heard of it since.

Observation II O. 12 (ad *Introduction* 1.8.4) is worth our observation, for the reference to Groenewegen. Evidence of what Grotius wrote is not only looked for in legislation, legal scholarship is also taken into account. In the supplements (fourth part) further evidence is added on what Grotius had written, evidence that had come up after publication of the second part of the *Legal Observations*. Observation II O. 40 contains a correction of what Grotius had written in *Introduction* 11.21.7 and 8; apparently the society was not following Grotius uncritically. Observation II O. 42 (ad *Introduction* 11.28.2) illuminates the complex and scattered legal reality in Holland, pointing out the diversity of sources from which existing laws in Holland's towns are taken: in Rotterdam, The Hague and Delft regulations taken from the laws of Zealand and of Frisia can be found. Observation II O. 75 establishes a connection between Grotius's scholarly work and his work as a (legal) practitioner where it points to an Advice of Grotius himself in which he seems to defend a position that according to the authors of the *Legal Observations* is stronger than the one in *Introduction* III.14.33.

4 Two Final Remarks

First: the *Legal Observations* clearly show the imminent position of Grotius's *Introduction* in the tradition of Roman-Dutch law. It still was the cornerstone of the said tradition at the end of the eighteenth century and the starting point for codification in the beginning of the nineteenth. The final remark in the Preface to the fourth part shows that the intention of the *Legal Observations* was to enlighten the elements in this tradition from the Dutch law. For the Roman-law elements, as on last wills and contracts, the authors refer the reader to the works of the famous Roman-Dutch law jurists Simon van Leeuwen, Johannes Voet and Cornelis van Bijnkershoeck.

Second: for anyone who understands Dutch, the *Legal Observations* are an extraordinary entrance to the history of the law of Holland and its sources for many of the topics that Grotius had included in his *Introduction*. One can make use of the Fockema Andreae/Apeldoorn edition of the *Inleidinge* to find the key.