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GAIUS MEETS CICERO

Law and Rhetoric in the School Controversies

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2009

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Law and Rhetoric in the School Controversies

PROEFSCHRIFT

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prof. dr. Ph. Eijlander,
in het openbaar te verdedigen ten overstaan
van een door het college voor promoties
aangewezen commissie in de aula
van de Universiteit
op vrijdag 26 juni 2009 om 14.15 uur

door

Tessa Ghislaine Leesen

geboren op 25 mei 1981 te Tongeren

promotiecommissie

promotores: Prof. dr. R. Lesaffér
Dr. O. Tellegen-Couperus

overige leden: Prof. dr. J. Vranken
Prof. dr. W. Witteveen
Prof. dr. E. Metzger
Prof. dr. J.F. Gerkens
Dr. J.W. Tellegen

PREFACE

The gains of writing of a PhD thesis and participating in the academic life are considerable. During the last five years, I have experienced an intellectual and personal growth, met true intellectuals, and had the possibility to visit inspiring places, such as Oxford, Utrecht, Rome, and Catania. However, every medal has its reverse. The writing of a PhD thesis is a slow process that requires perseverance and patience, and I have often been insecure about my working methods, results, and capacities. When looking back, the benefits most certainly compensated for the difficulties and I am very proud of the result at hand and of the path I have travelled to achieve it.

In the fall of 2004, I arrived at Tilburg University, having just finished my studies in Ancient History at the Catholic University of Leuven. Before making a start with the research for the PhD thesis, I needed to be immersed in both Roman law and rhetoric. I could not have thought of a better person to supervise me in this process than my dear colleague and mentor, dr. Olga Tellegen-Couperus. Her enthusiasm for the field of Roman law and eagerness to address complex legal ‘puzzles’ was infectious. She thoroughly read every chapter of this thesis and never spared me from any criticism. Olga has the unique ability to formulate the most shrewd and sharp-witted remarks in a constructive and kind manner. During the last five years, she has contributed greatly to my intellectual development in general and to this thesis in particular and, for this, I would like to sincerely thank her.

Her husband, dr. Jan Willem Tellegen, was closely associated with the realisation of this thesis as well. I truly appreciate his scientific creativity, his intellectual honesty, and the courage needed to combine these two characteristics. I would like to thank Jan Willem for his commitment, genuine enthusiasm, and pertinent remarks.

My promoter, prof. dr. Randall Lesaffer, has recognised, valued, and underlined my capacities and, by doing so, he was able to raise my self-confidence both as a researcher and as a lecturer. At the same time, he detected my shortcomings and imparted me on how to deal with them. As a result, I have been able to grow both as an academic and as a person.

I would also like to thank the other members of my commission, namely, prof. dr. Jan Vranken, prof. dr. Willem Witteveen, prof. dr. Ernest Metzger, and prof. dr. Jean-François Gerkens, for reading and commenting upon my thesis, and Ineke Sijtsma, who accurately corrected the English of this thesis. In particular, I would like to thank prof. Willem Witteveen for giving me the permission to use one of his paintings for the cover of this book. Furthermore, I want to thank my dear colleagues of the Department 'Jurisprudence and Legal History' and, in particular, my roommates Annika van der Veer, Esme Solak, Jan Hendrik Valgaeren, Erik-Jan Broers, and Karlijn van Blom for having contributed to an agreeable and stimulating work climate; and my close friends for their cordial presence.

At the end of 2007, I stayed for three months at the 'Koninklijk Nederlands Instituut' in Rome, where I passed the happiest period in my life thus far and found a perfect balance between work and recreation. I gratefully made use of the extensive book collection in the library of the university of La Sapienza and that of the KNIR. Together with Pauline Voogt, Willemijn van Dijk, Sven van Houdt, Anna Kunst, Christa Verhoek, and Marleen Termeer, I visited nearly every museum and archaeological remnant in Rome. For this marvellous period of time, I would like to thank the fellow researchers and the staff of the KNIR.

I would also like to express my deep gratitude towards my family: my father, my mother, my sister, and my niece. They have always been proud of me, not so much of what I do, but of who I am. My parents allow me to make my own choices in life and, at the same time, they offer a safety net if these choices turn out wrong. For this and for so many other reasons, I am greatly indebted to them.

The final person to be mentioned is Joris, who I only met during the final six months of writing my thesis. His understanding, support, and presence during these months have been tremendously important for me. Not a day goes by that I am not grateful for having met a wonderful person like him.

Tessa Leesen
Riemst 24 maart 2009

**ABBREVIATIONS USED FOR WORKS OF REFERENCE MENTIONED
FREQUENTLY**

ANRW	Aufstieg und Niedergang der römischen Welt: Geschichte und Kultur Roms im Spiegel der neueren Forschung (Berlin).
APAL	Annali del Seminario giuridico dell'Università di Palermo.
BERGER	A. BERGER, <i>Encyclopedic Dictionary of Roman Law</i> . Transactions of the American Philosophical Society 43, Philadelphia 1953 (repr. 1968).
BIDR	Bulletino dell'Istituto di diritto romano (Roma, since 1940 Milano; Vol. 42 (1934) = Vol. 1 of the Nuova series "Vittorio Scialoja"; Vol. 62 (1959) = Vol. 1 of the IIIa series).
C.	Codex Justiniani. Corpus iuris civilis, Vol. II, ed. P. KRÜGER, 11 th edn., Berlin 1954 (repr. Dublin-Zürich 1970).
CLJ	The Cambridge Law Journal (London).
D.	Digesta. Corpus iuris civilis, vol. I, eds. Th. MOMMSEN - P. KRÜGER, 16 th edn., Berlin 1954 (repr. Dublin-Zürich 1973).
FIRA I, II, III	Fontes iuris Romani anteiustiniani I: Leges, ed. S. RICCOBONO, Firenze 1941 (repr. Firenze 1968); II: Auctores, eds. I. BAVIERA - I. FURLANI, Firenze 1940 (repr. Firenze 1964); III: Negotia, ed. V. ARANGIO-RUIZ, Firenze 1943 (repr. with appendix Firenze 1968).
Gai.,	Gai Institutionum commentarii IV.
Gai., <i>Ep.</i> ,	Gai Institutionum epitome (FIRA II, pp. 229-257).
Inst.	Institutiones. Corpus iuris civilis, Vol. I, ed. P. KRÜGER, 16 th edn., Berlin 1954 (repr. Dublin-Zürich 1973).
IURA	IURA: Rivista internazionale di diritto romano e antico (Napoli).
KASER, <i>RPR</i> , I, II	M. Kaser, <i>Das römische Privatrecht</i> , I, 2 nd edn., München 1971; II, 2 nd edn., München 1975.
LABEO	Labeo-Rassegna di diritto romano (Napoli)
NNDI	Novissimo Digesto Italiano (Torino, since 1957).
PS	Pauli sententiae receptae (FIRA II, pp. 317-417).
RE	Pauly's Realencyclopädie der classischen Altertumswissenschaft, neue Bearbeitung von G. WISSOWA, W. KROLL, K. MITTELHAUS, K. ZIEGLER (Stuttgart 1893-1972).

RHDFE	Revue historique de droit français et étranger (Paris).
RIDA	Revue internationale des droits de l'antiquité (Bruxelles. 1 st Series since 1948; 2 nd series since 1952 joined with Archives d'Histoire du Droit Oriental; 3 rd series since 1954).
SDHI	Studia et Documenta Historiae et Iuris, Roma.
SZ	Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, romanistische Abteilung (Weimar).
TR	Tijdschrift voor rechtsgeschiedenis – Revue d'histoire de droit – The Legal History Review (Haarlem; since 1950 Groningen; since 1977 Leiden-Deventer-Antwerpen).
Ulp., <i>Ep.</i> ,	Tituli ex corpore Ulpiani (FIRA II, pp. 259-301, on the basis of F. SCHULZ, <i>Die epitome Ulpiani</i> , Bonn 1962).
VOCI, <i>DER</i> , I, II	P. VOCI, <i>Diritto ereditario romano</i> , I, 2 nd edn., Milano 1967; II, 2 nd edn., Milano 1963.
ZPE	Zeitschrift für Papyrologie und Epigraphik (Bonn; since 1967).

*Few new truths have ever won their way
against the resistance of established ideas
save by being overstated
(Isaiah Berlin, Vico and Herder) 1976*