
AUCTORITAS POETARUM IN COURT

A footnote to the history of *Institutes* 3.23.2 and *Digest* 1.8.6.5 and 7

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From the Middle Ages jurists have discussed the value of poetry, and they were not the only scholars to do so.¹ It is not our subject, wrote Azo, to count feet and syllables, and moreover one should not believe everything poets say. In this he paraphrased a popular guide on morals from the third century which expressed an opinion that was much older and fairly common in antiquity: *Nam miranda canunt, sed non credenda poetae*.² Apart from being untrue poetry was often regarded as licentious. In the Middle Ages the Church condemned much in ancient poetry for moral reasons. The Church Father Hieronymus wrote that verses of poets were food for demons, and this idea is still echoed by Bacon.³

But this did not bother jurists in the first place. Their proper subject was the authority of the word of a poet in law. Many a later scholar ignored the difference between legal and moral authority of poetry, and especially humanists have engaged in rather pointless debates in this respect. But however that may be, all this was something for scholars. Being able to debate it presupposed a good knowledge of Greek and Latin as well as ancient literature. Until the beginning of the nineteenth century only ancient poets were discussed. The average advocate or judge, though prone to throw in a Latin adage here and there, certainly did not have the erudition to take part in such discussions.

Therefore, it seemed very unlikely that any trace of the learned discussion on *auctoritas poetarum* would ever be found in documents of legal practice. But

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- 1 G.C.J.J. van den Bergh, "Auctoritas poetarum; the fortunes of a legal argument", in: A. Watson (Ed.), *Daube Noster; Essays in Legal History for David Daube* (1974), pp. 27-37. Some corrections must be made. At p. 27, last line, read: *Inst.* 3.23.2; p. 32, line 22, read: attack; p. 34 speaks about the thesis of Ulbo Arent Evertsz in Franeker. But in 1819 Franeker was no longer a university and therefore did not have the *jus promovendi*. So in stead of thesis one should read *disputatio*.
 - 2 *Dicta Catonis* III, 18 ("Poets sing about amazing things which, however, one should not believe."), paraphrased by Azo, cf. E. Genzmer, "Die Justinianische Kodifikation und die Glossatoren", in: E.J.H. Schrage (Ed.), *Das römische Recht im Mittelalter* (1987), pp. 6f., note 7. The same was said by Pliny, *Epistulae* 6.21,6: *Nisi quod tamen poetis mentiri licet*, and Ausonius *Ephemeris* 10.1: *Si qua fides falsis umquam est adhibenda poetis*. In fact already Aristotle (*Metaphysica* 1.2.10) said that poets lie very much. The emperor Philippus Arabs (244-249) ruled that poets had no prerogative of immunity (C. 10.53.3).
 - 3 Francis Bacon, *Major Works*, (Ed.) B. Vickers (1996), p. 261: "Did not one of the fathers in great indignation call Poesy 'vinum daemonum'." This is a contamination of sayings of Saint Augustine and Hieronymus, see the note on pp. 658f.

what one does not expect may still prove to be the case. History never ceases to surprise us.

By chance I learned, some quarter of a century ago, about a debate on *auctoritas poetarum* in a court file of the seventeenth century. This file was actually studied for totally different purposes. For the congress of debating-societies on legal history in Amsterdam in 1973, two Nijmegen students discussed the lawsuit brought by captain of the horse Alexander Macdonnell on 25 November 1664 against Hendrick Michiels and Jan Lamberts. The case concerned the sale of sixty horses and was heard by the *landgerecht* (lower court) of Nedercruchten in the jurisdiction of Roermond.⁴

The *landgerecht*, apparently regarding the matter as too complicated for its modest legal expertise, referred it to the *Hoofdgerecht*, the central court of Opper-Gelre in Roermond. Here both parties produced several extensive pleadings. Towards the end of his *Consideranda*, the defendant's advocate, Moren, remarked that as authority for some thesis the advocate of the plaintiff had only cited poets. However, poets have no authority in court:

Daermede hij genoehsaem heeft te kennen gegeven dat hij het antwoord niet en dochte nae te comen, sijnde het bijhangsel alleen Dichters, dewelcke niet en moeten geloofft worden.⁵

For advocate Van Bree of the plaintiff this was an opportunity to lash out at his learned friend. He would prefer poetry to an advocate who came from the plough. An advocate who does not appreciate poetry is a boor:

Ende dat beter is van eene poesie (dewelcke ten allen tijde in hooghe reputatie is geweest bij de regtsgeleerden ende gemeynschappe met deselve heeft gehouden, ut poeta qui scribit de nuptiis et fideiussione) tot eene rechtsgeleerde, als van eene ploech te comen, ende dat den advocaat van partije, dewelcken seer spits in schrijven is sulx soude moghen wenschen, et quia poesim non aestimat, quae apud omnes aestimanda idcirco eenen botterijck.⁶

4 *Gerecht in 't geding; 20 eeuwen procesperikelen* (1973). Contribution of G.M.R. de Lange and G. Venner. The file is in R.A. Limburg, Maastricht, Archief van het Hoofdgerecht van Roermond (portefeuille 49, no. 2). The cause list of the lower court in Nedercruchten is still in the local presbytery.

5 "With which he has stated sufficiently that he did not intend to follow him, because the appendix only contains poets, which should not be believed." Now G.A. Roermond, Archief Hoofdgerecht Roermond, inv. nr. 498, procesnr. 3311, Consideranda in saecken Lambert Hendricks mitsgaders consorten, adv. Moren en Comes.

6 Consideratien insaecke Ritmeester Macdonnell, Adv. J. van Bree.

This dispute, about which no more information could be found in the archives, may as such not seem very important. But if his counterpart is correct, it certainly is not common practice for an advocate to produce a writ in which mainly poets are cited. The question is, then, which poets? But that we will never know. The appendix in which the poets were cited has disappeared. Neither can I establish who was meant by "the poet who wrote about marriage and surety". Naturally, Jacob Cats (1577-1660) immediately comes to mind. He studied law in Leiden and Orléans, was advocate in The Hague, finally became Grand Pensionary of Holland, and was without doubt the most popular poet of the Dutch Republic. In his rhymed moral precepts he had a lot to say about marriage, and no doubt also about surety, which a clever citizen should avoid to provide if possible. As the proverb said: If you want trouble, provide surety. But should we not rather assume that a classical poet was meant here, as was usual in the age-old debate about *auctoritas poetarum*?

Unfortunately, we also do not know anything about the legal training of these advocates. In its *commissieboeken* the court of Roermond kept an account of the advocates that were admitted and noted at which university they had graduated. But in the big fire of 1665, among other things, all the *commissieboeken* were lost. The process in which advocates Moren and Van Bree acted, took place in 1664. So they must have been admitted before 1665.

It will, however, surprise scholars familiar with the subject that already in the seventeenth century a plain advocate from Roermond spoke about the relationship between law and poetry. That was one and a half centuries before Jacob Grimm.⁷ But in fact this notion was already voiced by the humanist jurist and poet Scipio Gentilis (1563-1616). In his *Parerga* (1588) he comprehensively treats all kinds of relations between law and poetry.⁸ The *Parerga* of Scipio Gentilis, a student of Donellus, were certainly not unknown among learned jurists in Holland. In 1733 Everard Otto reprinted them in the third volume of his *Thesaurus juris romani*.

With all this we still have very little information about this debate. But the scarcity of our information incites us to broach the question how this story should be interpreted and dated in the history of legal scholarship. For this we must first of all look to the history of *auctoritas poetarum* as part of legal method.

7 See J. Grimm, "Von der Poesie im Recht", *Zeitschrift für geschichtliche Rechtswissenschaft* Vol. 2, Part 1 (1815), pp. 25-99; *Kleinere Schriften* VI, pp. 243-272.

8 See Van den Bergh, "Auctoritas", (as note 1), p. 33 with note 36; *id.*, *Themis en de Muzen* (1964), pp. 22f.

From the days of the glossators' *auctoritas*, or rather the *locus ab auctoritate*, the argument based on authority, was a central issue of legal method.⁹ Philosophers may have condemned the argument from authority already centuries ago, and some jurists still echo them, but most jurists know better.¹⁰ Without the argument from authority little can be argued in a field where authority still plays a decisive role. The legal scholar himself, however learned and sagacious he may be, has no authority in the legal sense. As Bartolus said: *Auctoritas doctoris, licet sit probabilis, non est necessaria*.

In learned law the art of law is to construe arguments with the help of texts which have legal authority, or allegations. Whoever relies on a rule must prove it either directly by means of a text which contains the rule, or indirectly by means of a text from which the rule can be deduced by reasoning in an approved manner. The authority of the text that is alleged decides the probative value of the argument.

Therefore, the validity of the *argumentum ab auctoritate* was not absolute. Nicolaas Everaerts distinguished various possibilities: *Interdum probabile et necessarium est, interdum probabile tantum*.¹¹

The argument from authority was important not only for jurists but also for theologians. In the work of Thomas Aquinas one finds this thesis: *Nam locus ab auctoritate est infirmissimus, secundum Boetium*.¹² Villey,¹³ whose admiration for Thomas Aquinas was based, among other things, on this citation, did not mention, however, that Thomas naturally refuted the thesis: *Argumentari ex auctoritate est maxime proprium huius doctrinae, eo quod principia huius doctrinae per revelationem habentur*. After all, without the authority of the Bible there would not remain much theology. Villey is one of those scholars unable to read Thomas. With every problem the *doctor angelicus* begins by discussing, as objectively as possible, the arguments in favour of and against the thesis in question. Only after this, in the *responsum*, does he give his own opinion. The

9 V. Piano Mortari, "l'*Argumentum ab auctoritate* nel pensiero dei giuristi medievali", in: *id. Dogmatica in interpretazione; I giuristi medievali* (1976), pp. 77f.; N. Horn, "*Argumentum ab auctoritate* in der legistische Argumentationstheorie", in: O. Behrends *et al.* (Eds.) *Festschrift Wieacker* (1987), pp. 261-172; J. Schröder, *Recht als Wissenschaft* (2001), pp. 45f. and 126f.

10 See e.g. A. Soeteman, "Over de moraal van juridische interpretatie", in E.T. Ferteris *et al. Met recht en reden; bijdragen aan het Derde Symposium Juridische Argumentatie* 18 juni 1999 te Rotterdam (2000) p. 15.

11 Cited after O.M.D.F. Vervaart, *Studies over Nicolaas Everaerts (1462-1532) en zijn Topica*, (1994), p. 102.

12 *Summa theologiae* 1a, qu. 1, art 8.

13 *La formation de la pensée juridique moderne* (1968), p. 118.

argument in favour of or against some thesis one finds in Thomas, therefore does not necessarily reflect his own opinion.

A well known text from the lectures of Bartolus on *Digest* 12.1.1, which treats the *locus ab auctoritate* extensively, gives a complete outline of the value that enunciations of various authorities have for jurists, from the absolute authority of enunciations from the emperor and the pope to the limited authority of learned jurists.¹⁴ In this scheme enunciations of non-legal authorities are discussed as well.

As far as facts are concerned, narrative sources such as histories and chronicles have authority, at least as far as they traditionally have been regarded as trustworthy. In matters of science authority is due, in the first place, to those who are regarded as authorities in the universities, such as Aristotle or Hippocrates. The opinions of an ordinary jurist – even if his name is famous – only have reasonable, not authoritative force. As we know, only if all, or at least the most important jurists, concur in some matter, their vote counts (*communis opinio doctorum*).¹⁵

Bartolus does not discuss the authority of poets, but it presents no problem to fit them into his scheme. As we have seen, the authority of poets was, in fact, already discussed by the glossators. For them it carried little weight, not because they despised poets or followed the Church Fathers, but because classical jurists regularly took from Homer, for instance, arguments in favour of as well as against some theses, with the result that on the whole, the authority of the poet in question counted for nothing. This is the tenor of the gloss *Poeta Homero* at *Institutes* 3.23.2,¹⁶ which was later criticised heavily by the humanists, and by Budé in particular.

The words of that other great classical poet, Virgil, *Vater des Abendlandes*, had even less value. He was contradicted directly by a rescript of the *divi fratres*. While some people argued on the basis of a verse of Virgil that a cenotaph, that is, a funeral monument without mortal remains like the one standing in Whitehall, is a *locus religiosus*, the emperors Marcus Aurelius and Lucius Verus decided that this was not the case (*D.* 1.8.6.5/7). For that matter, poets

14 For the text and a translation in Dutch see Van den Bergh, *Geleerd recht*, 4th imp. (2000), pp. 175-177.

15 On this concept see J. Schröder, (as note 9), pp. 46f.

16 Van den Bergh, "*Auctoritas*", (as note 1), p. 28. Strangely enough Theo Mayer-Maly, "Homer in römischen Rechtstexten", *Tijdschrift voor Rechtsgeschiedenis* 72 (2004) pp. 231f. starts with an article of Stella Maranca from 1927 and seems to be completely unaware of the discussions on *auctoritas poetarum* from the time of the glossators to the eighteenth century.

shared this limited legal authority with philosophers, who were not held in high esteem by the glossators either.¹⁷

The low opinion of poets was partly caused by professional pride. Already Azo said that jurists should cite non-legal sources only when no legal argument was available, that is, concerning historical, medical or scientific facts about which the jurist had no expertise of his own.¹⁸ According to Azo this was the same as the classical jurist Modestinus had said about the credibility of slaves (*D.* 22.5.7): One should believe slaves only when all other means to establish the truth have failed. The comparison of poets and slaves could hardly be regarded as a compliment.

In the same vein Odofredus said that poets might indeed be cited, because classical jurists did the same. However, he added, this is mainly done by ignorant people. And yet such people often earn twice as much as an expert jurist.¹⁹ In the eyes of medieval jurists this would seem to make a citation from a poet not a demonstration of erudition, but rather an *asylum ignorantiae*. No wonder that humanists felt obliged to reassert the authority of Homer and Virgil.

Italian jurists from the fourteenth and fifteenth centuries were the first to challenge the disregard for Homer. While the Church, as we have seen, traditionally distrusted the reading of profane poets, and forbade its servants in particular to read bucolic poetry, comedies and love poems (unless this was useful for apologetic purposes), the humanists passionately defended and extolled profane literature. The Florentine chancellor Coluccio Salutati wrote that one should read profane literature, if only to improve one's style. This caused a sharp reply from the monk Giovanni Dominici, who in his *Lucula Noctis* (1405) once more summed up all the traditional objections against poetry. In order to defend poetry the Renaissance *ars poetica* collected all arguments in favour of the authority of poets from the remains of ancient literature: Myths about laws in verse and poets as primeval law-givers,²⁰ citations from poets in legal sources, *etcetera*.

In this context Albertino Mussato already stated in 1315 that Homer was cited in the *ius civile*. A little later Boccaccio in his *Geneologia deorum* published

17 See e.g. Philips van Leyden, *De cura reipublicae et sorte principantis*, Cas. XLIII, (Ed.) Fruin-Molhuysen [Werken OVR II,1] (1900), p. 178; (Ed.) Feenstra (*Fontes iuris Batavi rariores* no. 4) (1971), fol. XXX; W.J.A.J. Duynstee, *Geschiedenis van het natuurrecht en de wijsbegeerte van het recht in Nederland* [Gesch. Ned. Rechtswet. DI. II, Afl. I] (1940), pp. 1f.

18 See Genzmer, (as note 2).

19 Cited in Van den Bergh, "Auctoritas", (as note 1), p. 29.

some citations of Homer from the *Pandecta Pisana*. This is the famous manuscript of the *Digest* from the sixth century that is called *Florentina* since in 1406 the Florentines brought it from Pisa as war booty.²¹

It is, of course, no coincidence that the Pisan, later Florentine, manuscript is mentioned in this context. It was the only manuscript which contained all Greek fragments. Medieval jurists could not read it and therefore often replaced it by rather poor Latin translations. The arrival of the manuscript in Florence, then centre of the humanist movement, meant that the study of the Greek fragments in the *Digest* could profit from the general revival of Greek studies. Humanists wanted to distinguish themselves from medieval scholars by the fact that they read Greek in the first place: *Graeca leguntur*.²²

Boccaccio's Greek teacher Leonzio Pilato was one of the first who collected and translated anew the *graeca in Pandectis*. This was the beginning of a research effort that spanned centuries and to which many prominent scholars have contributed in the eighteenth century, among others Henrik Brenkman.

Considering the poor opinion concerning poets among the medieval jurists, the citations of the princes of classical poetry in the *Digest* seemed of considerable importance in the debate between *culti* and *iurisperiti*. If classical jurists, those models of humanity, often cited Homer, medieval jurists could hardly maintain that poets had no authority. Giovanni Battista Pio compared ancient and modern lawyers, with the purpose, of course, to hold up the former as an example to the latter. The writings of classical jurists, he wrote with some exaggeration, are full of arguments taken from rhetors and poets, whereas modern jurists attack poets and try to drive them from their territory, just like Plato, who wanted to ban all poets from his republic.²³

Here already the misunderstanding between jurists and humanists manifested itself. To find citations from Homer in the Florentine manuscript was easy enough, but as far as the legal value of these citations was concerned a humanist not trained in law could easily go astray. When glossators, as we have seen before, did not have a high opinion of Homer, it was not out of lack

20 See Van den Bergh, *Themis*, (as note 8), pp. 20f.

21 On this see F. di Benedetto, "Leonzio, Omero e le 'Pandette'", in *Italia medioevale e umanistica*, 12 (1969) pp. 87ff.

22 Cf. in particular H.E. Troje, *Graeca leguntur, die Aneignung des byzantinischen Rechts und die Entstehung eines humanistischen Corpus juris civilis in der Jurisprudenz des 16. Jahrhunderts* (1971).

23 *Annotationes doctorum virorum in grammaticos, oratores, poetas, philosophos, theologos et leges*, Paris, apud I. Badium Ascensium, 1511: *Illi* (that is, classical jurists) *scatebant oratorum poetarumque doctis adminiculis; hi poetas incessant et ex alto suo tanquam e Platonica republica explodunt*. Cited after D. Osler, *Humanist philology and Justinian's Digest*, Ph.D. Thesis Cambridge (1983), p. 51.

of respect but because the texts had little value from a legal point of view. Postglossators like Albericus de Rosate, Lucas de Penna, and in particular Cynus of Pistoia, a friend of Dante and a famous poet himself, were schooled in classical letters and certainly knew their Homer and Virgil. With regard to these great poets they were second to no one. But what use had the word of a poet which in the same case supports positive as well as negative arguments, or is contradicted directly by the emperor himself?

At the beginning of the sixteenth century Guillaume Budé took up the defence of poetry again (without duly giving credit to his Italian predecessors) and launched a fierce attack on Accursius, in which the gloss *Poeta Homero at Institutes* 3.23.2 was the central issue.²⁴ He gave a survey of Homer's works and argued in favour of his great authority. Next he sang the praise of poetry and tried to refute everything that was put forward against it. For many pages he cursed the fools, morons and asses that did not read anything but legal books and would like to expel all poets over the Alps. From this time well into the eighteenth century the relationship between poetry and law remained a theme of humanist legal philology.

In the works of Grotius, the father of modern natural law, we find many traces of this tradition. He is an example of a humanist who on every page of *De Jure Belli ac Pacis* illustrates his great erudition by citing texts from ancient historians, poets and philosophers. Under certain conditions their statements are valid as proof for a rule of natural law, as is explained in the *Prolegomena* (par. 40), where he extensively discusses his method. Here we also find a trace of the order of authorities as set out by Bartolus. He will not have learned this from reading Bartolus himself, but from his compatriot Nicolaas Everaerts.²⁵ Aristotle still takes the first place among philosophers. And like Bartolus, Grotius – under certain conditions – accepts as valid testimony from histories and chronicles. Poets and rhetors have less authority. Grotius regards them as valid when their statements match. A difference between Bartolus and Grotius, originating in Grotius' humanist belief, is that historians from "better times", that is, Greek and Roman historians, are preferred to other ones.

When Cartesian rationalism became dominant the authority of poets seemed to come to a definite end. Law and poetry belong to different fields. Law is concerned with knowledge and explanation of the law, and if the law is unclear or too harsh equity and reason can correct it. Poetry belongs to the field of

24 Annotations in *xxiii Pandectarum libros* (1508), Lyon 1541, pp. 544-563.
25 See Vervaert, *Everaerts*, (as note 11), pp. 109f.

imagination and expression of feelings. In *The Advancement of Learning* (1629) Bacon wrote: "Poesy ... doth truly refer to the imagination." Imagination is not "tied to the laws of matter" and can therefore imagine at pleasure impossible things.²⁶ Yet Bacon admits that there are shadows of the wisdom of antiquity in poets.²⁷ Grotius' method was contested by an intemperate and authoritative scholar as Cornelis van Bijkershoek (1673-1743), "the President". Neither Grotius nor Pufendorf, the founders of modern natural law and international law, have any authority, let alone other jurists who commented on their works:

*Non Grotius, non Pufendorfius, non Interpretes, qui in utrumque commentati sunt, me convincerint, si non convicerit ratio, quae in Jure Gentium definiendo fere utramque paginam facit.*²⁸

For him the statements of poets and rhetors have no value at all. Although he accepts that reason may be supported by authority, even he cannot do away altogether with the argument from authority. After all, he had studied theology in his youth – he does not share the respect of humanists for every word from antiquity. Like modern jurists he regards citations from poets as a display of erudition, not an appeal to their authority. And he certainly will not follow the habit of some scholars to cite poets and rhetors frequently:

*Malim arcessere ... a testimonio veteris alicujus poetae vel rhetoric, qua graeci, qua Latini: nae enim illi sunt pessimi Juris Publici Magistri.*²⁹

The question now is how the dispute between the advocates Moren and Van Bree is to be interpreted against the background of the history of the relationship between law and poetry as sketched above. After all, the meaning of any expression from the past can only be established when that expression is placed in proper context. How often haven't we experienced that an expression which at first glance seems unequivocal has quite a different meaning when we study it more closely. Ulpian's famous words *princeps legibus solutus* (*D.* 1.3.13) is a case in point. Humanists would look at the life and times of the author, his training and career, his other works and his

26 Bacon, (as note 3), p. 186. See also J.H.Schlegel, *De poetarum sigillatimque Homeri auctoritate apud jureconsultos*, (1717).

27 Bacon, (as note 3), p. 286.

28 *Quaestiones juris publici* (1737), *Ad lectorem*.

29 *Loc. cit.*

philosophy in the first place. But as we have seen, in this case we know hardly anything about all of this.

At first sight the opinion of Moren, who straight out rejects the authority of poets, may seem very conservative. He states what was said authoritatively four centuries earlier in the gloss of Accursius: Poets may be cited, but their authority in law is insignificant.³⁰ Is Moren thus the older advocate, an old-fashioned Bartolist who despises poets and wants to ban them from legal discourse?

And, in contrast, is not Van Bree, clearly the younger advocate, whose training in humanist jurisprudence is demonstrated by his citation of Scipio Gentilis, albeit without quotation of source, which for that matter was not unusual in his day? Van Bree moreover was abusing his opponent (a "botterick"), which after Budé was very much in the humanist tradition. Against this may be said that Moren at least writes decent Dutch, whereas Van Bree uses a barbaric mixture of Dutch and Latin which true humanists despised.

But we may also approach the matter from a different angle. The rise of rationalism in the second half of the seventeenth century implied that poetry in general and the legal authority of poets in particular came under attack from another side. Against reason poetry came to be regarded as the domain of emotions and fables. These ideas have nothing to do with the age-old debate about *auctoritas poetarum*, bound to a limited number of *loci* in the *Corpus juris*. This is a new discourse, which, of course, is not totally new: As we have seen, the question whether poets speak the truth had been discussed already in antiquity.³¹

Is it possible, then, that Moren was not the old-fashioned Bartolist, but rather the younger advocate, a rationalist who thought about law and poetry like Cornelis van Bijkershoek still did some half century later? As a matter of fact we find no trace of the old legal debate about *auctoritas poetarum* in his words. He only uses the old cliché from the *Dicta Catonis* that one must not believe poets. Van Bree, on the other hand, seems to say what had been commonplace in humanist jurisprudence already for a century and a half. So could Van Bree be the older advocate who clinged to humanism, while Moren represented rising rationalism?

30 *Gloss Poeta Homero ad Inst* 3.23.2 and gloss *Vergilius ad D.* 1.8.6.5/7.
31 See Van den Bergh, *Themis*, (as note 8), pp. 27f.

But there still is a third interpretation possible. In 1664 Grotius' *De jure belli ac pacis* was nearly twenty years old and growing in authority. And in this work words of poets were used regularly to prove rules of natural law. The rule that waters of a river are *res communis* is supported by a verse of Ovid, where Latona, mistress of Zeus and, pursued by jealous Juno, forced to roam about, gives a mob of Lykian farmers who forbid her to drink water from the river a lesson in natural law:

*Quid prohibetis aquis? Usus communis aquarum est.*³²

By 1664 natural law was certainly on the way to becoming an important subject of legal scholarship. In 1679 Noodt pleaded for the introduction of natural law in the law curriculum and he actually taught it himself in Franeker, as well as in Utrecht and Leiden. Therefore, an argument based on poets in the manner of Grotius would not seem inappropriate in the Dutch Republic where Grotius was held in great esteem. Was Van Bree, then, one of those young advocates despised by Van Bijkershoek, who knew little of positive law but argued profusely relying on rules of natural equity, based on texts of classical poets?

I will not decide the matter. A true historian should sometimes also be able to practise the *ars nesciendi*. Nevertheless this little story seems sufficiently interesting a demonstration of the problems with which a history of ideas sometimes has to cope.

32 Ovid, *Metamorphoses* VI, 349. Grotius, *De jure belli ac pacis* 2.2.12.