

LEX PRINCEPS LEGIBUS SOLUTUS ABROGATA

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1. An abrogated law giving birth to a Republic

When someone retires or is given emeritus status, it may be comforting to recall that even the Roman *leges* collected in Justinian's *Corpus iuris civilis* reached their time of retirement. It may be even more comforting to recall that many of these *leges* still live on in one way or another in modern legal systems. In my opinion this can also be said of Ulpian's famous adage that the "prince" is not bound by the laws, *princeps legibus solutus est* (D. 1,3,31), albeit in a form in which the "prince" is disarmed by ministerial responsibility. This adage was my entry into legal history, as it played a key role in my doctoral thesis, supervised in such a fatherly way by Laurens Winkel. I here return to this adage, dedicating this short contribution to my "Doktorvater".¹

It is well known that Ulpian's abovementioned saying, in the context given to it in Justinian's Digest (D. 1,3: *De legibus, senatusconsultis, et longa consuetudine*) has had an enormous influence on Western constitutional thinking.² I shall show here that at least one Dutch jurist of the seventeenth century thought that this *lex* also played a decisive (ideological) role in the birth of what came to be known as the Dutch Republic, precisely because it was not part of the law of Holland or any other Dutch province.

The said jurist was Simon van Groenewegen van der Made (1613-1652), who studied law in Leiden, was an advocate in The Hague and, after 1645, secretary of the town of Delft.³ His main work is the *Tractatus de legibus abrogatis et inusitatis in Hollandia*

1 Anne Leiss helped me draft this text in honour of Laurens Winkel.

2 The literature on Western constitutional thought is of course abundant. Dealing most directly with the adage *princeps legibus solutus* is of course, first of all, the study by Dieter Wyuckel, *Princeps Legibus Solutus. Eine Untersuchung zur frühmodernen Rechts- und Staatslehre*, Berlin 1979. Second in line seems to be Kenneth Pennington, *The Prince and the Law 1200-1600. Sovereignty and Rights in the Western Legal Tradition*, Berkely/Los Angeles/Oxford 1993.

3 R. Feenstra, "Groenewegen (van der Made), Simon van (1613-1652)", in: Michael Stolleis (ed.), *Juristen. Ein biographisches Lexikon. Von der Antike bis zum 20. Jahrhundert*, München 1995, p. 255.

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vicinisque regionibus (first edition 1649)⁴ which indicated the fragments from the *Corpus iuris* that were no longer in use in legal practice in Holland and its neighboring provinces.⁵ Let us turn to this treatise and the status of *lex* D. 1,3,31 in the seventeenth-century law of Holland and see how it contributed to the birth of the Dutch Republic.

2. Groenewegen on the *lex princeps*

In his chapter on D. 1,3, Groenewegen needs only three sections to exclude D. 1,3,31 from the law of Holland and to say something more about it. In the first section he points out that the counts of Holland always bound themselves by oath to the States to keep the laws and customs of the fatherland; in the second section he concludes that they thus were not *legibus soluti*, and in the third section he points out that disregard for this constitutional fact brought to an end the reign of King Philip II in Holland. As regards the content of the *lex*, Groenewegen directs his readers to Hugo Grotius' work on the law of war and peace and to Paulus Christinaeus' law reports. I start with the latter.

Paulus Christinaeus (Paul van Christynen, 1553-1631) was an advocate at the Great Council of Mechelen (Malines), and legal counsel (*pensionarius*) of that town. His *Practicarum quaestionum rerumque in supremis Belgarum curiis actarum et observatarum decisiones* (the short title being *Decisiones, editio princeps* Antwerpen 1626), written after his retirement in 1622, is a collection of articles based on rather varied sources, some being court reports, others general references. This book is reckoned "one of the most important works of the old Belgian jurists".⁶

Groenewegen refers to *Decisio IX* in the first volume (dealing for the most part with judicial precedent, the organisation of the Court, its jurisdiction and procedural law) of

4 Laurens Winkel himself once wrote "Some Remarks on Groenewegen's *De legibus abrogatis* and the Reception of the Roman Law of Sale" in: Rena van den Bergh (ed.), *Summa Eloquentia. Essays in Honour of Margaret Hewett. Fundamina Editio Specialis*, (2002) 8, pp. 271-275 in which he points out (at p. 271) that Groenewegen's treatise was modelled on some French examples by Bernardus Autumnus and Philibertus Bugnonius; I have consulted Bugnonius and have not found D. 1,3,31 among the abrogated *leges* in (the index of) his *Legum abrogatarum et inusitatarum in omnibus curiis, terris, jurisdictionibus, & dominis regni Franciae tractatus* (1605).

5 Even today the treatise is of importance to Roman-Dutch law; see, also, the English translation of the book, namely B.Z. Beinart and M.L. Hewett, *A Treatise on the Laws Abrogated and no Longer in Use in Holland and Neighbouring Regions by Simon à Groenewegen van der Made*, I-IV, Johannesburg 1974-1987. In my English paraphrases of Groenewegen's texts I have made use of this edition.

6 Alain Wijffels, "Legal Record and Reports in the Great Council of Malines (15th to 18th Centuries)", in: J.H. Baker (ed.), *Judicial Reports, Law Reports, and the Growth of Case Law*, [Comparative Studies in Continental and Anglo-American Legal History/Vergleichende Untersuchungen zur kontinentaleuropäischen und anglo-amerikanischen Rechtsgeschichte, bd. 5], Berlin 1989, pp. 181-206 at p. 193. For a description of the reports as not homogeneous, see idem, "Orbis exiguus. Foreign Legal Authorities in Paulus Christinaeus's Law Reports", in: S. Dauchy, W. H. Bryson and M.C. Mirow (eds.), *Ratio Decidendi. Guiding Principles of Judicial Decisions*, [Comparative Studies in Continental and Anglo-American History/Vergleichende Untersuchungen zur kontinentaleuropäischen und anglo-amerikanischen Rechtsgeschichte, bd. 25/2], vol. 2: *Foreign'Law*, Berlin 2010, pp. 37-62 at p. 43 n. 15; I thank the author for sending me a copy of the text.

the *Decisiones*, in which Christinaeus discusses whether the “senatores”⁷ have to judge according to the laws and constitutions (*secundum leges & constitutiones*), and whether the *princeps* is subject to the laws and constitutions, and if so, in what way.

Christinaeus answers the first question in the affirmative, relying on the view of the law as expounded by Cicero, that is, the law as the distinguishing factor between things just and unjust, made in agreement with that primal and most ancient of all things, nature, after which the human laws are framed (*De legibus* II(v).13: *ergo est lex iustorum iniustorum distinctio ad illam antiquissimam et rerum omnium principem expressa naturam, ad quam leges hominum diriguntur*).⁸ Christinaeus adds to the words of Cicero: *uti sunt, alterum non laedere, suum cuique tribuere*, thus linking Cicero’s text to the first fragments of the Digest on justice and law, bringing to mind Ulpian’s statements in D. 1,1,1 that the law distinguishes between what is fair and unfair, and what is lawful and unlawful (... *aequum ab iniquo separantes, licitum ab illico discernentes*) and of course D. 1,1,10 on the basic principles of law: to live honorably, not to harm another person, to render to each his own (*iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere*).

Christinaeus also includes a reference to Plato (*Gorgias*, 484b, quoted in Latin: *legem esse Reginam omnium mortalium & immortalium*), a reference that surprises at first sight, as Plato attributes this saying (originally by Pindar) to Callicles, a student of the sophist Gorgias, who in a discussion with Socrates explicitly differentiates (human) law from nature and tries to show among other things that natural superiority is often wrongly labeled an injustice by human laws. The reference therefore seems out of place in this context, but Christinaeus possibly meant to direct his readers to the discussion on this saying in 488b *et seq.* That discussion led to no clear outcome, however, since, as Socrates tells Callicles, the latter keeps on changing the subject. Still, one aspect of the discussion that Christinaeus possibly had in mind when he directed his readers to it is that Socrates rejects the discrepancy between the law and nature (489a and b); another is that it is for the better, the stronger and the braver to rule and be his own subject at the same time, and thus to show temperance, self-restraint and control over his pleasure and desires (491d and e).

Christinaeus based this view of the law on Cicero (and Plato), as an alternative to the idea expressed in D. 1,4,1 (another fragment by Ulpian) that whatever has pleased the prince has the force of law (*quod principi placuit legis habet vigorem*). This last approach, says Christinaeus, does not discriminate between just and unjust laws and must therefore be rejected. Christinaeus, like Cicero, believed that for a command to be law it had to be right or just.

Thus Christinaeus’ next question, “is the *princeps* bound to the laws?” is halfway to providing its own answer. Before answering it, he briefly examines the various answers that had already been given (probably the main reason why Groenewegen referred to this short exposition).

7 For a definition of *senatus* see *Decisio I*, s. 1: *Cum Senatus sit ... multorum iudicium collegium, pro supremo Magistratu ad omnes causas tam civiles quam criminales coniunctim decidendas ...*.

8 I have made use of the Loeb edition, Cicero XVI, *De re publica/De legibus*, tr. by C.W. Keyes, (Loeb Classical Library), Cambridge, Mass./London 1988.

Most doctors of law teach that the *princeps* is bound to natural law, but not to his own laws (except for those relating to contract), a view firmly rooted in the *Corpus iuris civilis* and the legal comments on the texts. However, Christinaeus also shows that a contrary opinion may be found in the *Corpus iuris civilis*, or at least may be deduced from the text, in particular from the *lex digna vox* (C. 1,14,4) of the emperors Theodosius and Valentinian. According to this text, the emperor's authority is dependent on the law (*de auctoritate iuris nostra pendet auctoritas*), a statement that Christinaeus connects with the assumption that the lesser (*minor*, the emperor or *princeps*) is dependent on the greater (*maior*, the law), not vice versa. It may thus be concluded that the prince is bound to the law, at least *ad culpam* even if not *ad poenam*, as is often said.

Another argument against the absolute view on authority, is provided by the maxim that he who has laid down the law for someone else, should apply the same law to himself, with reference to D. 32,23, in which it is said that it is proper for a majesty so great (clearly, the emperor is meant here) to comply with the laws from which he himself seems to be exempt (*decet enim tantae maiestati eas servare leges, quibus ipse solutus esse videtur*). References are further made to "sacer Canon" X 1,2,6 (*quod quisque iuris in alterum statuit ipse debeat uti eo, et sapientis dicat auctoritas: 'Patere legem, quam tu ipse tuleris'*); Cicero, "lib.3. Offic. cap. de Temperantia" (which should be read as *De officiis* I.124, in which Cicero, after discussing the specific duties of the young and the old, turns to those of magistrates, private individuals (citizens) and foreigners; the reference serves to guide us to the duties of magistrates, and inter alia, their duty to uphold the laws, *servare leges*); Cicero, *De legibus* III.2 (the famous saying that the magistrate is a speaking law, the law a silent magistrate: *Magistratus esse legem loquentem, legem autem esse mutum magistratum*); and Plato in book 4 (715d) of his *Laws* (foreseeing the end of the state in which the law does not dominate the magistrates, but the magistrates dominate the law, quoted by Christinaeus in Latin: *interitum video paratum illi civitati, in qua non lex magistratibus, sed magistratus legi dominatur*). Christinaeus also falls back on one of the fruits of legal humanist palingenesis, the view that Ulpian's saying on the *princeps* being *legibus solutus* should be read in its original context, that is, the context of the *lex Julia et Papia* (in full the *lex Julia et Papia Poppaea de maritandis ordinibus*), a law (in fact two laws) intended to encourage and strengthen marriage, introduced in 18 BC by Augustus and complemented and supplemented in AD 9 by the consuls M. Papius Mutilus and Q. Poppaeus Secundus).⁹ This opinion was formulated by Jacobus Cujacius (Jacques Cujas, 1522-1590),¹⁰ who is, however, not mentioned here. The opinion is here surprisingly linked to Plutarch *in Vita C. Marij* ("On the life of Caius Marius"), the passage in which Marius was said to have been elected consul for the second time while he was still in Africa fighting the war against Jugurtha, in spite of the law prohibiting a man from being re-elected consul in his absence and before the lapse of a specified time.¹¹

9 On this *lex*, see J.E. Spruit, *De lex Julia et Papia Poppea. Beschouwingen over de bevolkingspolitiek van Augustus*, Deventer 1969. On the original law and the later supplement as a separate law, see pp. 8-9.

10 See his *Observationes et emendationes*, lib. 15, c. 30 (*ad D. 1,3,31*).

11 I consulted the translation by John Dryden, published in *The Internet Classic Archive*, available at http://classics.mit.edu/Plutarch/c_marius.html (accessed 30 Aug. 2013).

Optima solutio in the end seems to be the saying of Thomas Aquinas: the prince is under the directive force of the law (*quatenus dirigunt*, the law's *vis directiva*), but not under its coercive force (*quatenus puniunt*, the law's *vis coactiva*).¹² Christinaeus lists some theologians and (other) late scholastics (Caietanus, Sotus, Navarrus, and Covarruvias; Cujacius is also mentioned here) who are of this opinion. He nevertheless warns that this opinion was far from being generally accepted by the canonists, who often held that the prince, being bound to his laws *ex sola aequitate & honestate rationis*, is neither bound *ad poenam* nor *ad culpam*. This last view, so concludes Christinaeus in the overview, is also the opinion often found in the decisions of the "Senatus".

Groenewegen's other reference concerning the content of the *lex princeps legibus solutus* is less obvious, since the *lex* itself is not mentioned in the text. The reference is to chapter 4 of the first book of Hugo Grotius's *De jure belli ac pacis* (I.4),¹³ in which he considers whether it is permissible for either private persons or officials to wage war against those under whose authority they are, whether this authority be sovereign or subordinate, *an aut privatis aut publicis personis bellum gerere liceat in eos, quorum imperio sive summo sive minori subsunt* (I.4.1.2). In dealing with this question, Grotius discusses natural and divine law (I.4.1-2), the *lex Hebraea* (I.4.3) and the *lex Evangelica* (I.4.4), all of which point to the conclusion expressed in I.4.7, that resistance cannot rightly be made to those who hold the sovereign power. The reason for this conclusion is that notwithstanding our natural right to resist a wrong, civil society, formed for the sake of public tranquility, has acquired a greater right over us and our possessions (*statim civitati ius quoddam maius in nos & nostra nascitur*); this greater right is necessary to accomplish society's ends (I.4.2.1). In the public sphere obedience and submission to rule (*ordo ... imperandi parendique*) are most important; these are irreconcilable with the right of individuals to offer resistance (I.4.4.5). Possibly the most absolutist interpretation of the adage *princeps legibus solutus* are the words of Sallustius quoted by Grotius at the end of I.4.2.2: *impune quidvis facere, id est regem esse*. However, we shall soon see that for Grotius (as for Groenewegen) this is not the end of the story.

In the 1669 edition of the *De legibus abrogatis*, "revised and augmented in many respects by the author before his death" (and found by Andreas van Hoogenhuysen amongst the possessions of the author's heirs)¹⁴ there are three additional references on the subject of the fragment. The first one is to the absolutist Henning Arnisaeus (ca. 1570-1636) and his *De jure majestatis libri tres* (1610); the next is to the *Tractatus de regimine seculari et ecclasiastico* (1619) in which Theodorus Reinkingk (1590-1664) defended the position of the emperor of the Holy Roman Empire; the third is to the source of much absolutist theory, *De republica libri sex* (*Les six livres de la republique*,

12 *Summa Theologiae* IaIIae, q. 96, art. 5; Wyduckel, *Princeps legibus solutus*, cit., p. 131 (n. 164). According to Aquinas, the prince is bound *propria voluntate*.

13 For the English translations I made use of the Kelsey translation, originally published in 1925 in the series "Classics of International Law", available at <http://heinonline.org> (accessed 30 Aug. 2013).

14 This is the edition used by Beinart and Hewett in their translation mentioned above. See also the translators' preface in vol. I.

1576) by Jean Bodin (1530-1596), who in turn built his theory of sovereignty on an age-long tradition of (juridical) speculation about absolute power.¹⁵

It is as if Groenewegen wants to say: travel east or south if you seek the meaning of *princeps legibus solutus*, but do not look for it in Holland or the Dutch Republic. However, another point that all three references highlight is that the adage should not be understood as granting complete license to tyrannical rulers: even absolute princes are bound by the laws of nature and God.

3. Groenewegen on the *lex princeps* in the law of Holland

So much for the interpretation of the adage *lex princeps legibus solutus est* in Groenewegen's time – let us now take a closer look at the three sections in which Groenewegen discusses the role of the adage in the law of Holland. In the first section, the one in which he lays the foundation for the conclusion in the second section, he points out that the counts of Holland acquired the position of a *princeps* only after they had sworn a solemn oath to the States to keep the laws and customs of the fatherland. The States then in turn promised them governing authority (*imperium*), allegiance and obedience on the understanding that they would rule according to the precepts of the laws. Groenewegen in this and the following section refers to, and follows closely (but not exactly) the words of Grotius in section V.13 of his *Liber de antiquitate reipublicae Batavicae* (1610). *De antiquitate* is a far from impartial booklet on the history of the “Batavian Republic”. In it Grotius pleaded on historical grounds for aristocratic republicanism in the Republic, strategically selecting his sources and using all his rhetorical skills.¹⁶ At the very beginning of this book Grotius carefully defined *principatum* as the eminent authority of one person limited by the power of others and by the laws (I.1). This was in glaring contrast to Jean Bodin's definition of Sovereignty in his *Six livres de la république* as “la puissance absoluë et perpetuelle d'une République” (I.8), of which the first mark is “la puissance de donner loy à tous en general, et à chacun en particulier ... sans le consentement de plus grand, ni de pareil, ni de moindre que soy” (I.10). This Bodinian absolute rule Grotius calls *regnum*, as against *principatum*, *regnum* being a form of government not traditionally found among the Batavians.

Groenewegen's other reference in section 1 is to the famous historian and jurist Paulus Merula (1558-1607), who in 1587 was admitted as an advocate at the Court of Holland

15 Wyduckel, *Princeps legibus solutus*, cit., pp. 151 ff. See Dagmar Freist, *Absolutismus*, (Kontroversen um die Geschichte), Darmstadt 2008, pp. 13 ff. on the reception of Bodin in the Holy Roman Empire and the “Reichpublizistik”. On Arnisaeus' polemics with Bodin, see Horst Dreitzel, *Protestantischer Aristotelismus und Absoluter Staat. Die “Politica” des Henning Arnisaeus (ca. 1575-1636)*, (Veröffentlichungen des Instituts für europäische Geschichte Mainz, Bd. 55, Abt. Universalgeschichte), Wiesbaden 1970, pp. 143-144 and pp. 218 ff. on the reception of Bodin in Germany.

16 So Henk Nellen, *Hugo de Groot. Een leven in strijd om de vrede 1583-1645*, Amsterdam 2007, at pp. 97 f. On the argument, see also the introduction to the edition and translation (in Dutch) that I used: Hugo de Groot, *Liber de antiquitate reipublicae Batavicae* (tr. and introduction by the Collegium Classicum c.n. E.D.E.P.O.L.), Arnhem 1995. Grotius's historiography was clearly politically inspired, as even he himself admitted in 1643; Nellen, *Hugo de Groot*, cit., pp. 98-99.

and who in 1598 was appointed historiographer of the States General.¹⁷ The reference is to his *Synopsis Praxeos Civilis*, a work on civil procedure in Holland, Zeeland and West-Friesland.¹⁸ In chapter I.4.5 Merula turns to the question of the binding force of law before and after promulgation. After answering this question in relation to the populace, in section 5 *et seq.* he turns to the question whether the prince is also bound by the laws. He, too, like Christinaeus, weighs up all the arguments, and makes a most principled statement in section 28: laws are in fact not properly the laws of the prince, but of the people, the prince being above all other individuals, but not above all together. In section 26, similar to what Christinaeus had said on C. 1,14,4: *efficiens potior effecto*.

Groenewegen's reference, however, is not to these sections, but to section 22, in which the prince's obligation is stated to be to uphold and sustain the laws that he has promulgated, for the simple reason that if the laws are good (just, "goet") there is no reason why the prince should not consider himself bound by them, whereas if they are bad (unjust, "quaet") no one should be forced to comply with them. To sustain his main argument, Merula mentions the *constitutio universorum ordinum* of 26 July 1581 (seemingly erroneously dated "Anni 1581. Iulij 96"), the Act of Abjuration (on which more below) in terms of which the States General repudiated King Philip II.

As indicated, in the second section Groenewegen answers the question posed in the first one: *ideoque iis nunquam feurunt soluti*. Since the counts of Holland never possessed more authority than was permitted by the conditions laid down in the first section, it is clear that they were neither *legibus solutus*, nor ever had the authority to exempt themselves from those laws. Once again, the reference is to Grotius. We have seen that he debated whether the people have a right to wage war against their superiors, and came to the conclusion in *De jure belli ac pacis* I.4.7 that they do not. However, Grotius then cites several exceptions to this general rule. The first he mentions (I.4.8), is the one to which Groenewegen refers: if rulers who are responsible to the people (in Grotius' words: *sub populo*) transgress against the laws and the state, they may not only be resisted by force, but if necessary may even be punished with death. The counts of Holland, Groenewegen wants to tell us (unlike in his *De antiquitate* Grotius does not mention Holland in these sections of *De jure belli ac pacis*), were not *legibus solutus*, because they were and had always been *sub populo*. This view of the counts of Holland as being *sub populo*, based on the false idea that they had always been independent of the Holy Roman Empire and appointed by the States of Holland, was an essential element of the Batavian myth. Such "Batavian" counts would indeed be far from sovereign in a Bodinian way. In reality the States of Holland originated in the count's court and the count's power in the emperor.¹⁹

Groenewegen's third and final section on this abrogated *lex* D. 1,3,31 (it must be clear by now that this *lex* was in fact not even abrogated, as it had never had the force of law in Holland) can be read as a twofold justification, firstly of his stand that this *lex* is not part of the law in Holland, and at the same time of the repudiation of the Spanish King Philip

17 For more details see the *Nieuw nederlands biografisch woordenboek (NNBW)*.

18 Better known under the Dutch title *Maniere van procederen in dese provintien, Hollandt, Zeelandt ende West-Vrieslandt*, 1 ed. 1592. I have made use of the 's-Gravenhage 1646 edition.

19 J.Ph. de Monté VerLoren and J.E. Spruit, *Hoofdlijnen uit de ontwikkeling der rechterlijke organisatie in de Noordelijke Nederlanden tot de Bataafse omwenteling*, Deventer 1982, pp. 98 and 149.

II by the Dutch. For, says Groenewegen, *Philippus II. Hispaniarum, et noster princeps* transgressed against the laws limiting his power, after which the States General of the Dutch provinces declared that he had *ipso jure*²⁰ forfeited his *imperium* and drove him out of these territories by force²¹ – witness, again, Grotius, *De antiquitate*, chapter 6.

This short sixth chapter of Grotius is a masterpiece of political propaganda, for which the stage is set by Aristotle (*Politica* V.10),²² who describes some of the “early tyrannies” as kingships that had deviated from ancestral traditions and had aimed at a more masterful rule. The stage thus being set, Grotius provides a fine example of circular historiography. The *prisci principes*, the rulers of Holland in early times, realised that their dignity depended on the strength and power (*opibus*) of the States. They therefore demonstrated their respect for the laws and their love of equity, and they respected the States (*legum reverentes, amantes aequi, observantes ordinum*). Then came the Burgundian rulers, the first to seek domination, who still left liberty largely intact. The next to enter the stage was Charles V, “elsewhere King and Emperor”. These words alone should make the readers of Grotius’ booklet shiver: *Carolus mox, rex alibi et imperator*. Charles, however, was born and raised in these regions; moreover, he knew his subjects well, so that things were not too bad yet. Still, religious repression started during his reign. The situation deteriorated when his son Philip II entered the stage. He was the type of ruler Aristotle must have had in mind, content only with the most unlimited power (*ingenium nulla nisi liberrima potestate contentum*). Worse still than the king himself were the Spaniards who surrounded him; worst of all was Don Fernando Alvarez de Toledo, duke of Alva. On this point, Grotius’ views are corroborated by one of the most outstanding scholars on the Dutch Republic, Jonathan Israel, who describes Alva as “unswerving, even fanatical, in his detestation of Protestant heresy”²³

For a long time, says Grotius, the loyalty of the people in Holland (and other Dutch provinces) had competed with their desire for liberty, *certavit quiddem diu populorum fides cum libertate*. Then the time came for the States of Holland, guardians of both private and public law, to declare war on Alva, thus following the example of their Batavian ancestors, who had taken up arms against the Romans when the latter also sought total domination. The States gathered at Dordrecht on 19 July 1572 and chose William of Orange as their leader. Grotius says nothing about the questionable status of this gathering of the States of Holland, which were in reality “rival” or “rebel” States,

20 Thus also in the Act (“Plakkaat Verlatinge”) itself: “Doen te wetene, dat wy ... den Coninc van Spaegnien verclaert hebben ende verclaren mits desen, ipso jure, vervallen van zyne heerschappy, gerechticheyt ende erffenisze van de voorsz. landen ...”, quoted after the text of the Act in H. Battjes and B.P. Vermeulen (eds.), *Constitutionele klassiekers*, Nijmegen 2007, p. 58.

21 Jonathan Israel, *The Dutch Republic. Its Rise, Greatness, and Fall. 1477-1806*, Oxford 1995, pp. 209 f. points out that the Act of Abjuration also meant the removal of portraits of and references to the king, as on coins minted in the provinces and on official seals, in courts of law and town halls, and so forth. Officials were no longer bound by their oaths of allegiance to the king.

22 The 1995 translation of *De antiquitate* (p. 133) surprisingly posits bk. 4 for “*Politicorum V. cap.X*” (tr. as “*Politica* boek 4, hoofdstuk 10”), instead of bk. 5. *Politica* IV.10 is a short chapter on three forms of tyranny. *Politica* V.10 (1310 b 16), however, is a chapter seamlessly serving Grotius’s purpose, since it discusses the downfall of monarchies that had originally ruled according to the law.

23 Israel, *The Dutch Republic*, cit., (ch. 8: “Repression under Alva, 1597-1572”), p. 155.

since at the same time the Stadholder of Holland appointed by Philip II, Count Bossu, had summoned the town patriciates for a gathering of the States at The Hague.²⁴ Jonathan Israel holds that subsequently “the speciousness of the fiction²⁵ that the king’s authority, rights, and wishes were being respected was transparent”.²⁶ Grotius argued that finally the sovereignty of the States had emerged into the light again: ... *summa ordinum potestas ... luci redditam palam effulsit* (thus in *De antiquitate* VII.1, not referred to by Groenewegen). William of Orange promised not to govern Holland without the consent of the (majority of the) States, or without consulting the States when they so desired,²⁷ thus returning to the principles of the *prisci principes* as described by Grotius. This all culminated some years later in the aforementioned Act of Abjuration, 26 July 1581, in which the States General declared that the king had *ipso jure* lost his power for having violated the fundamental laws: *Ordines pronuntiarunt Philippum ob violatas imperii leges ipso iure principatu excidisse* (*De antiquitate* VII.1).

4. Conclusion

According to contemporary writers, the *lex princeps legibus solutus* had no force in the law of Holland in the sixteenth and seventeenth centuries. The Spaniards, among them King Philip II, were seemingly not fully aware of this fact, and strove for absolute power; but in doing so, the king would soon find out that *error iuris nocet*. A Republic was born.

Abstract

Closely following the text of Hugo Grotius’ *De antiquitate*, Simon van Groenewegen argues in his *Tractatus de legibus abrogatis* that D. 1,3,31 (*lex princeps legibus solutus*) had been abrogated in Holland in the seventeenth century. More than that, D. 1,3,31 had never been in force and the counts of Holland had never been exempted from its laws. When King Philip II ignored those laws, the States General declared that he had *ipso jure* forfeited his right to govern and expelled him.

²⁴ Idem p. 175: “the first gathering of the States of Holland under the aegis of the Revolt against Philip II”. Of the larger towns, Amsterdam, Rotterdam, Delft and The Hague were still loyal to the king, a majority of the towns being Orangist. Rotterdam sent delegates to Dordrecht a few days after the other towns.

²⁵ On legal fiction, see L.C. Winkel, *Error iuris nocet. Rechtsdwaling als rechtsorde-probleem. I Rechtsdwaling in de Griekse filosofie en in het Romeinse recht* (diss. University of Amsterdam), Amsterdam 1982, pp. 1 ff. For the use of fiction more generally, see Hans Vaihinger’s *Die Philosophie des Als Ob. System der theoretischen, praktischen und religiösen Fiktionen der Menschheit auf Grund eines idealistischen Positivismus* (1 ed. Berlin 1911).

²⁶ Israel, *The Dutch Republic*, cit., p. 175.

²⁷ Idem p. 176.