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van Deinsen, Lieke, Vanacker, Beatrijs

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Chapter 12

Women Jurists?
Representations of Female Intellectual Authority in Eighteenth-Century Jurisprudence

Laura Beck Varela

The Querelle des Femmes & Early Modern Jurisprudence: A Research Outline

In one of the foundational texts of the so-called *querelle des femmes*, written in 1509, Heinrich Cornelius Agrippa von Nettesheim announces his intention to present a thesis ‘[…] based on reason, authority, and examples drawn from Holy Scripture and both civil and canon law’, avoiding ‘pretentious rhetorical ornaments’.²

Medieval and early modern savants, when writing about the socially pertinent issues of their time, could hardly have ignored the authoritative exempla of learned law or learned jurisprudence (*iurisprudentia, jurisprudence savante, Rechtsgelehrsamkeit*): with theology and medicine, it was one of the three higher disciplines. Agrippa von Nettesheim, although rebellious and somewhat outside of the mainstream, was no exception.³

Recent studies have emphasised the social and political relevance of the debate known as the *querelle des femmes*, a wide-ranging dispute on the relationship of men and women and their role in society, on women’s access to education, and on the nature of marriage. Beyond the original focus on its rhetorical and literary dimensions, scholars increasingly see the *querelle* as a cultural paradigm, a point of intersection of cultural and political problems in the early modern period, or even as a specific political tradition, a set of arguments meant to influence public opinion and to serve as a form of political mediation.⁴ In addition to its cultural transcendence, the *querelle’s* intertextual,
transdisciplinary, ‘transnational’, and ‘transgeneric’ nature has been pointed out. As Julie Campbell has stressed, the *querelle*, with its recurrent set of tropes, arguments, and commonplaces, has provided topoi for many fields of early modern writing, including traditional disciplines such as medicine and theology.

Even though historians never mention academic jurisprudence as one of the possible contexts of the *querelle* (despite its obvious juridical implications) and usually overlook the copious ‘examples drawn from both civil and canon law’ in the *querelle* texts, there is plenty of evidence that jurists have engaged with the debates on the social role and the education of women.

In this essay, my aim is to explore certain points of contact between academic jurisprudence, an apparently hermetic discipline, and the set of challenges posed by the *querelle des femmes*. I argue that, as one of the main textual traditions of medieval and early modern European societies, jurisprudence is certainly one of the relevant contexts to examine the impact, the ubiquity, and the persistence of the *querelle* during the eighteenth century.

Jurisprudence is generally associated with misogynist discourses, since the two basic corpora of authoritative texts, the bodies of civil and canon law (known as *corpus iuris civilis* and *corpus iuris canonici*), which constituted the core of medieval and early modern legal education and practice, contained famous passages excluding women from all public and civil offices. According to one of the most notorious extracts of Justinian’s Digest, commented on in thousands of legal treatises and glosses between the eleventh and the eighteenth centuries, women were blocked from becoming magistrates and judges, bringing suits to court, signing surety contracts, or acting as attorneys (D. 50.17.2). Their capacity of being witnesses in court and in testaments was also restrained.

In spite of this apparently restrictive framework, early modern jurists vividly discussed the instances of women jurists, lawyers, and lawgivers, their level of legal expertise, and the convenience of instructing women in the knowledge of law, among other polemic topics related to the *querelle*. In the late seventeenth and in the eighteenth centuries, several legal treatises, university dissertations, and orations deliberated about the political and intellectual authority of both legendary and historical women who had allegedly excelled in the field of law. They were echoing well-known references in catalogues of illustrious women popular at the time, which followed Boccaccio’s *De claris mulieribus* (‘Concerning Famous Women’), among others, as sources of social images, models for feminine behaviour, and also for the ‘exclusion of women from virtue, public life and history’. These collections of memorable women, different ‘attempts to express or critique cultural attitudes towards women’, were especially abundant in the German territories, together with the new genre of dictionaries of women (*Frauenzimmerlexica*). Besides celebrated authors such as Peter Paul Finauer (1732–1788), with his *Allgemeines*
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historisches Verzeichnis gelehrter Frauenzimmer (1761), and the prolific theologian and physician Christian Franz Paullini (1643–1712), whose chapter ‘Das gelahrte Frauen-Zimmer in Deutschland’, printed in 1695, was enhanced in three subsequent editions until 1712, other works circulated anonymously and under pseudonyms, such as the Lobwürdige Gesellschaft der gelehrten Weiber (by Israel Clauder, under the pseudonym Johannes Frawenlob, 1631), the Nutzbare, galantes und curioeses Frauenzimmer-Lexicon (by Amaranthes, a pseudonym of the jurist and poet Gottlieb Siegmund Corvinus) (1715, 1739, 1773), and the anonymous Gallerie merkwürdiger Frauenzimmer (1794–1798).14

In this study, I will examine why eighteenth-century jurists were interested in discussing representations of women’s intellectual authority in the field of law. For my case study, I will focus on a work entitled Litteratura iuris, a sort of overview on jurisprudence, its history as a higher discipline, and its main sources, written in 1761 by Carl Ferdinand Hommel (1722–1781), law professor at the University of Leipzig and one of the most prominent jurists of his time. In an eccentric chapter, dedicated to women allegedly ‘imbued’ with notions of law (entitled ‘De foeminis iuris notitia imbutis’), Hommel offers a comprehensive itinerary to assess the reception of misogynist diatribes and pro-woman arguments in the world of academic law. What role did written portraits of women jurists play in works of this kind, which were mostly written in Latin and addressed to a male professional audience? What women were represented in these works? These questions will also allow me to tackle more general questions about strategies of representation: how were women jurists categorised in the history of jurisprudence? How did early modern jurists describe the various levels of ‘legal expertise’ commanded by the most notable women in the history of law? How did they adapt their vocabulary to exclude or include female participation in the legal tradition?

Hommel’s chapter is only one example among several texts written by jurists that reflect a constant interaction with different topics of the querelle. Other prestigious jurists, who enjoyed solid reputations in the professional and academic circles, engaged at different levels with arguments related to the women’s question in numerous orations, dissertations, chapters, and passages of their works. This was the case, among others, of Henrik Brenkmann (1681–1736), Christian Hoffmann (1692–1735), Augustin Leyser (1683–1752), Johann Peter Ludewig (1668–1743), Johann Carl Conrad Oelrichs (1722–1798), Daniel Nettelbladt (1719–1791), and Theodor Gottlieb von Hippel (1741–1796),15 in the German- and Dutch-speaking areas; Jacques Cujas (1522–1590), André Tiraqueau (1488–1558), and Gilles de Ménage (1613–1692), in Francophone areas; Gianvincenzo Gravina (1664–1718), Giuseppe Aurelio di Gennaio (1701–1769), and Paolo Mattia Doria (1667–1746) (best known as a mathematician, but who was also a jurist), in the Italian areas. Some to whom I will allude in the following pages are less known or completely forgotten today, such as Jenichen, Iugler, Kellerhaus, Kratzenstein, Reich, and ZurMüllen.
Fragmentary and dispersed, this set of manifold references to the topics of the *querelle* found in various legal texts might appear anecdotic or even insignificant if considered isolated from each other. Together, nonetheless, they illustrate a constant flow of intertextual exchanges between academic jurisprudence and the *querelle des femmes*, a controversy that crossed many centuries and different historical contexts.

**Rulers, Litigants, Jurists: Representations of Female Intellectual Authority in Eighteenth-Century Legal Literature**

Carl Ferdinand Hommel (1722–1781) is one of those voices who are practically forgotten today, despite the high recognition he enjoyed during his life as a professor of law, and later a chancellor, of the University of Leipzig, and as a member of the Upper Court of the Kingdom of Saxony (*Oberhofgericht Leipzig*).\(^1\) His limited reception is largely due to his exclusion from the disciplinary canon of legal history built by the German Historical School in the nineteenth century. Although best known today for having introduced the Marquis of Beccaria’s ideas\(^2\) to the German readership and as one of the followers of Christian Thomasius, his vast production touched upon all main legal branches of the time. Some of Hommel’s treatises also dealt more directly with forensic praxis, such as his *Teutscher Flavius* (1763), a practical guide for lawyers,\(^3\) his edition of Johann Georg Bertoch’s legal promptuary (1777),\(^4\) as well as his alphabetic repertoires for professional and lay audiences, such as the *Pertinenz- und Erbsonderungsregister* (1767) (on goods and chattels owned or acquired through inheritance),\(^5\) and the *Catalogus testium*, a catalogue of the various sorts of witnesses (1780).\(^6\) He also devoted writings to the critical study of the legal sources, such as his annotated edition of the body of civil law (*Corpus iuris civilis cum notis variorum*, 1768; reprinted under the title *Hommel redivivus* as late as 1858\(^7\)), his editions of Georg Beyer’s work,\(^8\) and his edition of the celebrated indexes of Abraham Wieling and Jacques Labitte.\(^9\) He was also an active book reviewer in the various protojournals of the time.\(^10\) His double role as critical reviewer and editor of legal texts inspired his *Litteratura iuris*, of which the unconventional chapter on women guides the present essay on the representations of female intellectual authority in eighteenth-century jurisprudence.\(^11\)

The *Litteratura iuris* was printed in Leipzig in 1761 and was reprinted in 1779.\(^12\) It is divided into two parts (*libri*, in Latin): the first one, the ‘bibliographical’ part (‘Liber primus, qui est bibliographicus’), contains chapters related to the branches of law (from books related to civil and canon law to feudal, public, or criminal law: ‘Libri classici iuris civilis, iuris canonici, iuris naturalis et gentium, Germanici, feudalis, criminalis, publici’ [...] ); the second one, the ‘biographical’ part, contains chapters on notable jurisconsults (‘Liber
secundus biographicus, qui non de libris, sed iurisconsultis agit’). In the second edition of his work, Hommel made significant amendments to the chapter dedicated to ‘women jurists’ (‘De foeminis iuris notitia imbutis’), including its relocation from the Liber primus (bibliographicus) to the Liber secundus (biographicus).

Hommel’s Litteratura iuris reproduced the structure employed in the historia litteraria genre. This type of work was usually divided into two parts: notitia librorum (information related to books) and notitia auctorum (information related to the lives of the authors, their various expertise, schools of thought, etc.). Following Francis Bacon’s Advancement of Learning (1605), historia litteraria as a specific scholarly genre, with a strong pedagogical appeal, flourished from the middle of the seventeenth century until the 1740s. This period is known as the era of the Polyhistorismus, particularly at German and Dutch universities. Hommel’s work belongs to the subset of historia literaria iuris, one of the concrete, later developments of historia litteraria in the field of law. It shows all the programmatic goals associated with historia litteraria in general, which are, according to Grunert and Syndikus, to provide a selection of sources and foster a double power of judgement (doppelte Urteilskraft) and to promote information storage and the progress of knowledge (Wissensspeicherung und gelehrter Fortschritt). Historiae litterariae also served to reinforce moral standards in the selection of books and were characterised by an entertaining aesthetic.

In this context, historia litteraria ‘emerges not as a discipline, but as a universally applicable method’, a sort of ‘critical history of human knowledge’, as François Waquet has stated. Like Daniel Georg Morhof’s work, which was the most successful of the Polyhistors and one of Hommel’s prime references, the Litteratura iuris was not conceived as a mere accumulation of data. Instead, it was meant as a productive tool for ordering, classifying, and hierarchising it in order to create a new map of the world of legal knowledge. Moreover, historia literaria iuris, as a specific genre, also responded to challenges related to the role of jurists and to the status of jurisprudence as a discipline in the broader landscape of the respublica litteraria. In this environment, the members of the natio iurisconsultorum, or respublica iurisconsultorum, were concerned about their own identity as scholars (as were other members of the learned community). Jurists were apprehensive about the decline of jurisprudence’s prestige and its loss of social recognition among the higher faculties on the eve of the Streit der Fakultäten. This anxiety is evident in the various historiae litterariae iuris, which endeavoured to present jurisprudence’s scholarly dignity to the wider public of the respublica litteraria. Their authors, such as Hommel, filled their pages with strategies of self-fashioning and representations of jurists as idealised, prestigious scholars. These concerns are essential for contextualising the chapter dedicated to women jurists, which was exceptional in this genre of works.
The place of the chapter on women jurists within the structure of the *Litteratura iuris* reveals its subordinate position in the hierarchy of legal knowledge. As mentioned above, it was initially located in the bibliographical first part of the book rather than in the second part, which was devoted to the lives of the ‘real’ jurisconsults (*vitae iurisconsultorum*). In both editions of the *Litteratura iuris*, however, it was relegated to a section dedicated to an ensemble of *variétés*, containing various notions related to books and authors and other miscellanea (*Sectio secunda, varia ad librorum auctorumque notitiam pertinentia, et promiscua continens*). The chapter on women jurists came right before one entitled ‘Societates iurisconsultorum litteraria’ (in which Hommel offers an account of literary societies and a list of Leipzig professors and notorious former students), and right after another one dedicated to the so-called *micrologia litteraria*. The extensive title of the ‘micrological’ chapter, typical of the *historia litteraria*’s approach, gives a detailed description of the manifold subjects it contained. It mentioned jurists who had also been theologians, popes, cardinals, imperial electors, physicians, philosophers, and mathematicians; jurists included in saints’ catalogues; jurists ‘deserving’ of many honours; jurists who were the illegitimate sons of concubines and those who had remained single; jurists bearing identical names (*homonymi*); jurists who had been the object of ridiculous panegyrics; and jurists with diverse afflictions, such as blindness, excessive sweating, and scaly infections of the skin. Other chapters in the section on varieties addressed jurists who had written profusely or not at all (‘Iurisconsulti polygraphi et agraphi’) and the representation of jurists in various social estates, such as royalty, nobility, and the plebs (‘Iurisconsultorum in principes, nobiles et plebeios distinctio’).

The title chosen by Hommel is also telling: *De foeminis iuris notitia imbutis*. To be ‘imbued’, or initiated, with some ‘notions of law’ (*iuris notitia*) was clearly of less value than to be a genuine, true ‘jurist’. The ‘real jurists’ occupied an independent section of the book, where the most prominent names of every historical period were chronologically listed from the second century to contemporary times. This broad, not very technical term – *imbuere* – allowed the Leipzig professor to cover various aspects of women’s engagement with law: women as lawgivers, rulers, or advisers of sovereigns (I); women as lawyers or litigants in the courts (II); and, finally, women’s legal education and their membership of the scholarly community (III). Given this categorisation, it then becomes interesting to examine the forms and functions of these labels, as well as the specific examples that served to illustrate them.

For his discussion of women’s roles as lawgivers, rulers, or advisers, he started with ancient mythological characters, such as the deities Themis, Ceres, and the nymph Egeria, wife and counsellor of Numae Pompilius, the second Roman king. These three frequently featured in the popular galleries of illustrious women and offered Hommel the opportunity to examine women’s participation in rulership. He evoked Ovid’s words on Egeria (‘Numa coniux
consiliumque fuit’) but attempted to correct the common assumption that she had played an active role as ‘legislator’ by explaining that Pompilius had only *simulated* having received the laws from her (‘a qua se leges accipere simulauit Pompilius’). The tale (*fabula*) of Ceres as legislator had appeared in basic reference works for jurists and had even inspired recent academic dissertations. Hommel himself had presided over the defence of dissertations that argued for the ‘jurisdictional’ nature (instead of a prophetic one) of the Delphic oracle. He maintained that the goddess Themis, ‘who had advised upon legal matters in Delphi’ (‘quae in Delphis de iure respondit’) had the superior faculty of *ius publice respondendi*. The *ius publice respondendi* (*ex auctoritate principis*) (literally, ‘the distinction attributed to some jurists of giving advice under the public authority of the emperor, that is, with binding force’), which is commonly associated with the Augustan era, was a key concept for the social and professional activity of jurists. Other ancient legendary female rulers were Cambra Formosa, associated with the *Leges Sicambrorum* (allegedly deceased ca. 3590 BCE), and Marta Proba, queen of Britain (ca. 400 BCE). Hommel’s main source for the characterisation of Marta Proba was a famous treatise on marriage written by the French jurist André Tiraqueau (ca. 1480–1558). Even though he quoted every single word of Tiraqueau’s passage, Hommel significantly diminished Proba’s intellectual and political role in his subsequent commentary. He claimed that she had merely *written down* (*conscripsit*) the laws of the land through her natural talent (‘quae leges proprio ingenio patrias conscripsit’). *Conscribere* – a task that a mere scribe could have performed – was of less importance than that of *legem condere*, the term Tiraqueau used in his written portrait of the British queen. The word choice was certainly intentional: every educated jurist was familiar with the meaning and implication of *legem condere* (to establish, to found the law, in harmony with the divine precepts), which was associated with the higher degree of power (*imperium*) exercised by the *princeps*. *Iurisdictio*, one of the main concepts used to explain the production and ‘interpretation’ of law (and thus the notion of public authority itself) in the medieval and early modern European tradition is, for various reasons, hardly translatable with the present-day term ‘jurisdiction’. As its etymology indicates, *ius dicere*, ‘to say the law’, meant to declare in each case what was right and just, according to a pre-existing, divine order (which was ‘unavailable’ to the political authorities). If the texts of the *querelle* show ‘a pervasive concern with questions of authority and subordination’ and with the ‘nature of authority’ itself, the fundamental vocabulary relevant to a historical reading of these sources can be retrieved in the hundreds of late medieval and early modern legal glosses, commentaries, and treatises that built the semantic field of *iurisdictio* and *imperium*. The Byzantine empress Theodora (ca. 500–548), wife of Justinian I, was another frequent target of criticism regarding women’s contribution to
government and lawmaking. She offered further proof of the negative effects of women’s intervention in the superior task of condere leges. Theodora was blamed for negatively influencing Justinian, the main responsible for the compilation of ancient Roman jurisprudence (the body of texts later known as the corpus iuris civilis, which, together with the corpus iuris canonici, defined jurisprudence as a discipline), whom she had infected with her ‘superstitions’. Reproducing the usual narrative of popular lexica for women, Hommel accused her of defending her sex too generously (‘sui sexus patrocinium ubique liberaliter suscipiens [...]’) and of persuading Justinian to grant several ‘privileges’ to the ‘inferior sex’ (‘imo plura alia sequioris sexus privilegia suasisse putatur’). One of these privileges consisted of limitations to women’s imprisonment. In 1623, the Vatican archivist Niccolò Alemmani had published Procopius’s Anecdota, which had renewed interest in Theodora’s life; it depicted both the empress and the emperor in negative and decadent terms. At the beginning of the eighteenth century, jurists’ circles still actively discussed it: in 1731, the prestigious jurist Johann Peter Ludewig (1668–1743), chancellor at the University of Halle, who had succeeded Christian Thomasius in the university chair, had written a thorough response committed to correcting the ‘errors and calumnies’ and to restoring Justinian and Theodora’s reputation. Two years earlier, another famous jurist, the previously quoted Abraham Wieling (1693–1746), had presided over the defence of an extensive dissertation on the same topic, presented at the University of Franeker in 1729. Another dissertation, by the young Johann Friedrich Jugler (1714–1791), later known for his amendments to the famous Bibliotheca Historiae Litterariae by Burkhard Gottlef Struve (1671–1738), focused on the topic of Theodora’s alleged legal wisdom. Jugler responded directly to Ludewig’s arguments and disparaged her intellectual skills. He argued that Theodora’s role as adviser was not due to her erudition (adparatus eruditionis), for that could only be acquired through formal education, but depended on her cleverness in practical affairs. She was merely a shrewd (versuta) woman, instead of an erudite one.

Further recurrent tropes about women rulers in the history of the legal tradition concerned Countess Matilda of Canossa (1046–1115). Based on an early passage by Burchard of Ursberg (Abbas Ursbergensis), which dated to 1133, the noble lady had allegedly charged Irnerius with the task of renovatio of the study of Justinian’s compilation (‘ad petitionem Mathilde comitisse renovavit’). Once again, Hommel’s position was to deny her any role or authority in ordering Irnerius to compile the Roman law (‘aut Mathildem? cuius auctorialitatem Irnerium ius Romanum reddessisse, nonnulli fabulantur’). The action of persuasion, he said, did not require any iuris peritia (‘ad persuadendum aut excitandum nulla requiritur iuris peritia’). He was probably familiar with Gianvincenzo Gravina’s argument that the Ursbergensis testimony was historically unreliable. Hommel used, in this instance the term iuris peritia, which was stricter and more technical than iuris notitia imbutis, to be merely ‘imbued’
in some ‘notions of law’ (*iuris notitia*). Analogously, the Halle professor Daniel Nettelbladt (1719–1791), in a short section dedicated to women in his work, had chosen to allude to women *instructed* in legal expertise (*de foeminis iuris peritia instructis*), with the same purpose of restricting the merits of the mythical and the historical examples under scrutiny.\(^{62}\)

Women involved in legal praxis occupied a more reduced space in Hommel’s *De foeminis iuris notitia imbutis*, although they were no less relevant to the author’s argumentation. The Roman Caia Calphurnia (or Caia Afrania), Hortensia, and Plotiana were the usual candidates to qualify as female lawyers in the common inventories of illustrious women.\(^{63}\) Hommel’s bitter lines about them were not another trivial literary game to denigrate the heroines of popular collections. The negative image of the ‘quarrelsome woman’, of medieval origin,\(^{64}\) and as lively as ever in the eighteenth-century *querelle* texts, was connected to a highly sensitive topic for jurists. It could be associated with one of the persistent controversies in the jurisprudential tradition: the role of lay practitioners or pettifoggers (*rabulae, leguleii*). From medieval and sixteenth-century treatises to recent orations – from Antoine Favre’s *De erroribus pragmaticorum et interpretum iuris* (1598) to Johann Gottlieb Heineccius’s *De iurisconsulis semidoctis* (1727) – learned jurists complained about the lack of technical knowledge and the immoderate ambition of the *rabulae*, whose vices unnecessarily increased the volume of litigation in the courts. Indeed, the primary pedagogical goal of *historia litteraria iuris* as a legal literary genre was to provide the necessary *eruditio* for a real jurisconsult to distinguish himself from uneducated practitioners.

It is in this framework that we should read the condemning lines about the ‘excessively talkative’ (*nimium verbose*) Afrania. According to Valerius Maximus, she was the origin of the general ban on women in the administration of justice, crystallised in the previously mentioned Digest’s passage (50.17.2). Hommel approved of this decision, which had righteously prevented the ‘contentious genre’ of bringing cases to court and protected tribunals from being disturbed by women’s constant quarrels (‘ne porro foeminarum rixis tribunal turbatur, sed a postulando abstinere illud contentiosum genus’\(^{65}\)). He mentioned Afrania’s unbearably strident voice, which sounded like bells, with recourse to Juvenal’s *Satyrs*.\(^{66}\) Contemporary *opuscula*, such as a piece by Gottlob August Jenichen (1709–1759)\(^{67}\) and a dissertation, the defence of which was presided over by Johann Reich in 1706,\(^{68}\) show a renewed interest in this ‘quarrelsome’ character. Nettelbladt also expanded his commentaries on women’s ‘itch for litigation’ (*in mulieribus litigandi pruriginem*) in the second edition of his work.\(^{69}\) Likewise, in 1779, Hommel introduced changes to the third chapter (‘Ius civile Romanum’) of his *Litteratura iuris* to allow for a more detailed exploration of his concern about women’s *litigandi prurigo*, a feature associated with the *rabulae*.\(^{70}\) He added a harsh judgement about what was probably the first elementary legal handbook for women, *Institutes du droit civil pour les*
*dames*, which was printed in Helmstedt in 1751. Its author, Johann Heinrich Kratzenstein, had presented it as a partial translation of Justinian’s *Institutes* aimed at offering some basic notions of jurisprudence to the ‘beautiful sex’. As soon as it was published, this ‘legal primer’ for women was severely criticised in the legal journals of the time.\(^7^1\) I believe that its publication was one of the main reasons that led Hommel to expand his discussion of women jurists, practitioners, and readers of law books in the revised version of the *Litteratura iuris*. Hommel and others were also concerned with the ‘disadvantages’ associated with the growing amount of legal literature published in Romance languages instead of Latin, since they would be available for women. He feared that this kind of ‘legal catechisms’ would also cause an undesirable increase in litigation in the courts (and indeed, in certain jurisdictions, petitions brought to the courts by women as plaintiffs or defendants represented a substantial part of the total amount of lawsuits\(^7^2\)):

The architect of this kind of catechisms hopes that the nebulous heads of these rustic people can be enlightened by the catechisms, but, believe me, they will be darkened, and, by understanding even less than they understand now, indeed, inflated by their abnormal wisdom, they will raise worthless and frivolous legal disputes which otherwise had never occurred to them.\(^7^3\)

Nevertheless, Kratzenstein’s handbook was not the only one to attract Hommel’s attention in relation to the women’s question. The Leipzig professor made another significant addition to the new edition of his *Litteratura iuris*. This was related to the curious dissertation *Bitisia Gozzadina seu de mulierum doctoratu apologetica legalis-historica dissertatio* (‘Bittisia Gozzadina, or an Apologetic Legal Historical Dissertation on the Doctoral Degree of Women’), printed in Bologna in 1722 under Carlo Antonio Machiavelli’s name,\(^7^4\) although it had actually come from the pen of his brother Alessandro, a notorious forger in the Italian learned community.\(^7^5\) Important bibliographical repertoires for jurists, such as Martin Lipenius’s *Bibliotheca*, cited Machiavelli’s *dissertatio*.\(^7^6\) The episode that had inspired Machiavelli’s book was the frustrated attempt of the young noblewoman Maria Vittoria Delphini Dosia to earn the degree of doctor in laws, which generated a vivid debate in the Bolognese society of the time. Reviews appeared in journals such as *Il Giornale dei letterati, Mercurio storico e politico*\(^7^7\) and in the German *Acta eruditorum Lipsiensia*.\(^7^8\) The Dosia family had mobilised efforts to convince the university’s authorities and secured the patronage of Elizabeth Farnese, wife of Philip V of Spain, as well as the support of Cardinal Ulisse Gozzadini, bishop of Imola (allegedly a descendant of the legendary Biltisia).\(^7^9\) Hommel expanded the references to this event in the second edition of his work, mentioning the *Acta Lipsiensia* and an oration written by Andreas Westphal, professor in Greifswald.\(^8^0\)
To make the case for Delphini Dosia, Machiavelli highlighted a woman who was assumed to have enjoyed *auctoritas* as a jurist in Bologna, according to several catalogues of women, such as Hilaire de Coste’s *Eloges*, Damião de Froes’s *Theatro heroíno*, and several recent academic dissertations. Her name was Biltisia (or Bitisia, Beatrix) Gozzadini, and she had come from a family of jurists. Machiavelli did not hesitate to build his thesis upon forged documents, such as a fictitious medieval calendar to prove Gozzadina’s public acknowledgement as a jurist. His *Dissertatio apologetica* was a sort of florilegium—an selva of tropes, commonplaces, and loci regarding women’s legal condition, and also introduced several alleged precedents of women jurists to the history of legal studies in Bologna.

Any discussion of Gozzadina’s qualifications as a jurist must be understood as a statement about Delphini Dosia’s contested aspirations. Given the considerable repercussions of the incident, and other cases of ‘exceptional women’ who held academic positions in Bologna, such as the physicist Laura Bassi (1711–1778) and the mathematician Maria Gaetana Agnesi (1718–1799), Hommel felt compelled to tackle these issues as well. Agnesi’s name had been invoked by Kratzenstein as one of the sources of inspiration for his *Institutes du droit civil pour les dames*. Not only Hommel but also other prestigious authors such as Nettelbladt (who was less inclined to similar ‘micrological’ details in his narrative), expanded their notes on Machiavelli’s book in the subsequent editions of their works. Learned jurists raised their voice to offer an authorised version of the exceptional cases that could impact their own academic expertise, just as others were doing in medicine and theology. Despite its fruitless outcome, cases such as Delphini Dosia’s functioned as new foci of discussion, inciting reconsideration of various topics of the *querelle* for different purposes. These apparently anecdotal lines on women’s intellectual authority, hidden inside legal compendia written for a male professional readership, function as an expressive ‘barometer of social and cultural tensions’ in the field of jurisprudence.

Biltisia Gozzadini was the only woman who, according to Hommel, fulfilled all requisites to be taken seriously as a *juris consulta*. First, she was of noble origin and had learned Latin, which was an unusual skill for a woman and indispensable for accessing legal texts. She had ‘despised the loom and the needle to devote herself to the study of Latin and the law’ (*filia Nobilis Bononiensis quae colum et acum contempsit et studio linguae latinae et iuris se dedit*). Second, she had received the doctorate in laws (*iuris utriusque doctrix solenniter creata*). Third, she had taught both privately and publicly, beginning with the lecture on Justinian’s *Institutes* (the usual starting point in the academic *cursus honorum* in law) and later as a paid instructor, and she had finally ascended to a public lectureship (*primum Institutiones Iustiniani priuatim, deinde salario constituto et ad professionem anno 1539 vocata etiam publice interpretata est*). She had also authored a number of legal treatises, although printed under a pseudonym or someone else’s name (*sub nomine ficto*.)
et alieno\textsuperscript{95}). This last qualification was essential. On the one hand, it associated Gozzadina with the vicious, illegitimate forms of authorship which he had condemned in two separate chapters of the \textit{Litteratura iuris}.\textsuperscript{96} On the other hand, anonymity gave the story certain verisimilitude. Anonymity or pseudonymity would have been the only possible forms of authorship for a woman in this context, considering that there was not a single woman's name in the basic early modern repertoires of legal authors, such as Giovanni Battista Ziletti's \textit{Index}\textsuperscript{97} or Wolfgang Freymon's \textit{Elenchus}.\textsuperscript{98} Jurists were unlikely to have accepted the \textit{auctoritas} of a woman in the long chains of \textit{opinio communis doctorum}, the pillar of scholastic legal reasoning.

Finally, what made her existence as a \textit{jurisconsulta} `digestible' was the virtue of chastity. A virgin skilled in law (`\textit{iuris virgo peritissima}'), Gozzadina had died without knowing a man (`\textit{viri inexperta obiit}'\textsuperscript{99}). Other possible candidates for the podium of female jurists were the members of the family of Giovanni D'Andrea (ca. 1271–1348), canon law professor in Bologna (his wife Milanzia and his daughters Novella and Bettina), and the daughters of Francesco Accursio (ca. 1181–ca. 1259), the founder of the school of the glossators. None of these women, however, met all the requirements as Gozzadina did. Novella D'Andrea, present in several catalogues of the time,\textsuperscript{100} nearly achieved full qualification as a woman jurist. Like her sister Bettina, she had been `imbued', or initiated in legal knowledge by her father (`\textit{imbuit etiam doctrina sua Ioannes Andreae par filiarum}'), to the point that she became capable of replacing him during his illness at the public lectures of canon law in Bologna. She did so covered in a veil, `so that Cupid would not expel Minerva from the breasts of the students' (`\textit{patre aegrotante e suggestu iura praelegisse scholaribus, velamine vultum opereint, ne Cupido ex auditorum pectoribus Minervam propelleret}'\textsuperscript{101}).

Even if Gozzadina was more qualified than the other well-known female figures, Hommel's characterisation shows a clear ambivalence towards her. He did not go so far as to dismiss her case as mere fiction (\textit{fabula}), as he did with other alleged female authorities (such as Matilda), but he did not take her completely seriously as a historical precedent. In the paragraph he devoted to her, he quoted \textit{ad verbum} Hilaire de Coste (who situated her in the sixteenth century, as transcribed supra) and simultaneously Machiavelli's fictional character (thirteenth century). Hommel did not make any effort to solve this chronological inconsistency. In fact, following the traditional scholastic method of reasoning in jurisprudence, as in other disciplines, the historical truth of the case under examination was of secondary value. Rather, the exercise emphasised the discussion of a certain premise and its possible consequences, and tested opposite opinions and authoritative exempla regarding each \textit{quaestio}. The Leipzig jurist was clearly interested in making a statement about Delphini Dosia's case. It is even possible that Gozzadina's story, which offered a more substantial subject for discussion, motivated him to move the women's chapter to the second part of the \textit{Litteratura iuris} in its later edition (since, as mentioned above, the second
part of the book encompassed the *vitae iurisconsultorum*, the lives of the ‘real’ jurisconsults). Yet his aim was to undercut her consideration as a real jurist and to relegate her in the realm of exceptionality rather than to integrate her into a chain of female predecessors. By discussing women’s participation in the history of jurisprudence, his main concern was with the discipline’s honour and with jurists’ self-image as scholars. As McLeod has outlined, women’s characterisations have often been more descriptive of their creators than of women themselves.¹⁰²

This brief incursion into the world of jurists demonstrates that not even jurisprudence, one of the most self-referential and hermetic academic disciplines,¹⁰³ was irresponsible to the *querelle des femmes*. The *querelle*, as a trans-generic set of questions, ‘appeared in virtually all kinds of narratives.’¹⁰⁴ It is not enough, however, to simply acknowledge its presence in various cultural and scholarly environments. On the contrary, it is necessary to explore possible reverberations between texts and contexts,¹⁰⁵ the various uses of arguments and tropes related to the women’s question, how they served different agendas,¹⁰⁶ and how they evolved through intersections with different academic traditions. The taxonomy of women jurists scrutinised by Hommel and other eighteenth-century jurists offers rich examples of these various social uses. Their discourses were motivated by recent episodes closely related to the academic arena, such as Delphini Dosia’s frustrated doctorate in laws in Bologna or the publication of Kratzenstein’s legal ‘catechism’ for women. The *querelle*’s topics offered learned jurists tools to engage in the debate, even if their purpose was, in most cases, to exclude, to correct, or to ‘domesticate’ the characters that proliferated in the popular galleries of illustrious women. It also offered them an occasion to present the image of the ideal legal scholar in the context of the emergence of new disciplines such as Kameralistik and Polizeiwissenschaften in the German area, which were challenging the old jurisprudence’s social relevance. Moreover, the intersection between the *querelle* and academic jurisprudence resulted in new themes and formats for legal literature available to law students and legal practitioners, and in the insightful reassessment of traditional texts and themes. These intersections have also helped, in certain cases, to disseminate a more pro-feminine approach to legal solutions and interpretations.

In short, early modern jurisprudence should be taken into account if we want to understand the broad impact of the *querelle*, its ubiquity and persistence, and particularly if we want to understand the various cultural roles that representations of female intellectual authority, agency, and authorship played in early modern European societies.
Notes

1. I thank John Burden for his careful reading of the manuscript and helpful comments and corrections. I was able to finish this paper thanks to a fellowship at the Herzog August Bibliothek, Wolfenbüttel, during the autumn of 2019. This research was developed in the frame of the project Tradición y Constitución (reference code DER2014-56291-C3-1-P), Ministerio de Economía y Competitividad, Spain.


3. Agrippa’s work has been defined as ‘one of the most revolutionary manifestos of the Renaissance’ (Pierre Béhar, ‘From the Cabala to the Glorification of Woman: Agrippa von Nettesheim’s De nobilitate et præcellentia foemini sexus’, in German Life and Letters, 2014, 67(4), 455–466).


The body of civil law, *ius civile* (i.e., the medieval rearrangement of emperor Justinian I's recompilation of Roman legal texts) and the body of canon law, *ius canonicum* (formed by Gratian's *Decretum*, written ca. 1140, and other texts sanctioned by the papacy from the thirteenth century onwards), were the two pillars of the so-called *ius commune* tradition. As with other learned disciplines of late medieval birth and early modern development, such as theology and medicine, it consisted of a corpus of texts, authorities, questions, commonplaces, and tropes, which functioned according to the scholastic way of reasoning. Its formation and diffusion crossed political and religious boundaries. As with any other fields of knowledge, jurisprudence was a cultural artefact rather than a product of a local sovereign or a parliament's will, completely different from what we understand as 'law' in contemporary societies. For overviews on the historical formation of legal tradition, see Aldo Schiavone, *Ius. L'invenzione del diritto in Occidente*, Turin, Einaudi, 1994.

'Feminae ab omnibus officiis civilibus vel publicis remotae sunt et ideo nec iudices esse possunt, nec magistratum gerere nec postulare nec pro alio intervenire nec procuratores existire' (Digest 50.17.2) (Trans.: 2. Ulpianus, On Sabinus, Book I. Women are excluded from all civil or public employments; therefore they cannot be judges, or perform the duties of magistrates, or bring suits in court, or become sureties for others, or act as attorneys). Canon law sources reproduced similar prescriptions: see, for example, Gratian's *Decretum*, C. 33 q. 5 c. 17, and Decretals, 5. 40.10. One of the best accounts on women's condition according to the early modern legal literature is still António Manuel Hespanha, 'El estatuto jurídico de la mujer en el derecho común clásico', in Revista Jurídica. Universidad Autónoma de Madrid, 2001, 4, 71–88.

For a detailed account on these genres, see Karin Schmidt-Kohberg, 'Manche Weibspersonen haben offtmals viel subtilere Ingenia als die Manspersonen. Weibliche Gelehrsamkeit am Beispiel frühneuzeitlicher Frauenzimmerlexika und Kataloge', Sulzbach, Taunus, 2014; for a comprehensive bibliography in German and English, see Jean M. Woods and Maria Fürstenwald, *Das gelehrte Frauenzimmer. Kataloge der Schriftstellerinnen, Künstlerinnen und gelehrt Frauen von 1606 bis zur Gegenwart*, Stuttgart, Metzler, 1984.

Hippel's *Über die bürgerliche Verbesserung der Weiber* (Berlin, Voß, 1792) is one of the unique examples of the use of legal tradition to employ a pro-woman approach. A partial English translation of Hippel's work has been edited by Timothy F. Sellner under the title *On Improving the Status of Women*, Detroit, Wayne State University Press, 1979.

On Hommel’s biography, see Gerd Kleinheyer and Jan Schröder (eds.), *Deutsche und Europäische Juristen aus neun Jahrhunderten. Eine biographische Einführung in die Geschichte der Rechtswissenschaft*, Tübingen, Mohr Siebeck, 2017, 206–210 (Hagen Hof);


21. Carl Ferdinand Hommel, *Catalogus Testium Alphabeticus: ex quo cognoscitur, qui testes plane inhabiles, qui semitestes, qui plus quam semitestes, et qui semitestibus fide mores sint..., Vratislaviae, Korn, 1780* (translated into German in 1843).

22. Theodor Schimmelpfeng edited this work under the title *Hommel redivivus*, oder Nachweisung der bei den vorzüglichsten älteren und neueren Civilisten vorkommenden Erklärungen einzelner Stellen des Corpus iuris civilis, Kassel, Theodor Fischer, 1858. See the critical note in Landsberg, *Geschichte*, vol. 3/1, 398.

23. Hommel worked on some of the volumes of Georg Beyer’s *De utili et necessaria autorum iuridicorum et iuris arti inservientia notitia schediasma*, whose first volume appeared in 1726.

24. Carl Ferdinand Hommel, *Palingenesia librorum iuris veterum sive Pandectarum loca integra: ad modum Indicis Labitti et Wielingi oculis exposita et ab exemplari Taurelli Florentino accuratissime descripta*, Leipzig, Georgius, 1739; *Abraham Wieling’s Jurisprudentia Restituta, seu Index chronologicus in totum juris Justinianaei corpus* (Utrecht, Abraham van Paddenburgh, 1739), and Jacques Labitte’s *Index legum omnium quae in Pandectis continentur: in quod singulae ad singulos iurisconsultorum libros ex quibus desumptae sunt* (Paris, Nivellius, 1557) were basic reference works for professional jurists.

25. See, for instance, various articles from his pen in Johann August Bach (ed.), *Unpartheyische Critik über juristische Schriften inn- und ausserhalb Deutschland*, Leipzig, Lankisch, 1750–1758.


33. For an English translation of Immanuel Kant’s celebrated text of 1798, see Mary J. Gregor (trans.), The Conflict of the Faculties [Der Streit der Fakultäten], New York, Abaris Books, 1979.


37. Chapter XIX: ‘Micrologica, siue iureconsultos qui simul fuerunt theologi, iureconsultos in sanctorum numerum relatos, pontifices, cardinales, electores imperii, qui summus in iure honores assecuti, medicos, philosophos, iurisperitia claros et mathematicos, nec non poetas, iureconsultos ex concubina natos, caelibes, ridicula iurisconsultorum elogia, homonymos, coecos, suptores et huius furfuris alia continens’; in Hommel, Litteratura, 1761, 342–351.

38. This chapter title, used in the first edition of 1761, was changed to 'Iurisconsultorum class'es in the second edition.

45. 'Quendam etiam inter has sibi locum vindicat Belini Britannorum regis filia, Cambria Formosa, quae Antenoro secundo Francício regi nuptis, et leges Sicamborum uno libro scripisses dictur. Neomagum condidit, in quo anno orbis 3590 vivere desiit.' (Hommel, Litteratura, 1779, 312; ed. 1761, 394).

46. '[…] quae leges proprio ingenio patrias conscripsit, si vera sunt, quae in Legibus Connubialibus Tiraquellus his verbis tradit: Marcia Proba omnibus propemodum artibus liberalibus doctissima, quae condidit et scriptis leges patrias, quas Maricanas vocat […]' (Hommel, Litteratura, 1779, 312; ed. 1761, 394). Giuseppe Aurelio di Gennaio (Ianuario), one of Hommel's most recommended authors, went further, blaming Marta Proba of usurping the laws elaborated by a sagacious jurisconsult, for the sake of her own vanity: 'De legibus patriis a Martia Proba scriptis, facile credam, illas, a sagace Jurisperito conceptas, feminam dominatricem in ornamentum suarum vanitatum sibi usurpasse' (Iosephi Aurelii de Ianuario, Respublica Jurisconsultorum. Editio novissima, Neapoli, Aere Dominici Terres, 1752, 17). For Hommel's praise of Ianuario's work, see his Prolegomena (Hommel, Litteratura, 1761, 7).


48. The sedes materiae were, among others, Digest 1,1,9; 1,3,32; 1,4,1; 1,21,1; 2,1,3; 2,2,1; Codex 1,14 (pr., 1, 2, 19); 3,13,1. The indispensable points of departure for understanding the medieval genesis of iurisdiction are Pietro Costa, Iurisdiction. Semantica del potere politico nella pubblicita medievale (1100–1433), Milan, Giuffrè, 1969 (repr. 2002, with an insightful prologue by Bartolomé Clavero), and Jesús Vallejo, Ruda equidad, ley consumada. Concepción de la potestad normativa (1250–1350), Madrid, Centro de Estudios Constitucionales, 1992. The act of iurisdiction, which was a characteristic exercise of publica potestas in those centuries, consisted of ius dicere (declaring what was right in every case, according to the divine order) and the solving of controversies. The task of interpretari was also a sort of normative act in this context (Vallejo, Ruda equidad, 317–320), since there were no formal hierarchies of legal sources as we know in contemporary legal systems. A fundamental reference for the so-called jurisdictional turn in legal historical studies, showing the relevance of the jurisdictional paradigm as a key to reading contractualists such as Locke, or the genesis of the separation of powers, is Bartolomé Clavero, El orden de los poderes: historias constituyentes de la trinidad constitucional, Madrid, Trotta, 2007. Luca Mannori offers an overview of the transition from the old ‘government of justice’, based on iurisdiction, to a model based on the separation of powers between three branches of government in Mannori, ‘Justicia y Administración entre Antiguo y Nuevo Régimen’, in Revista Jurídica de la Universidad Autónoma de Madrid, 2007, 15(1), 123–146.

49. Hommel, Litteratura, 1761, 396 (with the marginal annotation ‘Exempla spuria’ for Theodora and Matilda). This passage was suppressed in the edition of 1779. For the image of Theodora in the Frauenzimmer lexica, see, for instance, how the jurist Gottlieb Siegmund Corvinus (writing under the pseudonym of Amaranthes) depicted her: ‘Theodora. Des Kaysers Justiniani Gemahlin, der zu Gefallen so viele herrliche Privilegia und Wohlthaten vor das weibliche Geschlechte der Kayser Justinianus in sein Corpus Juris setzen lassen. Sie lebte im sechsten Jahrhundert, und hegte viel ketzerische und irrige Lehren […] auch dadurch ihren Gemahl selbst endlich verführte […]’. Vid. Procopium in Arcan. Histor. It. D. Schmid. Mulier. Heterodox. §24 p. 33’ (Amaranthes, Nutzares, 2010). Justinian's superstition, which was traceable in several passages (such as D.48,8, Ad legem Corneliam de siccariis et veneficis) was another familiar topic for learned jurists.

50. Novellae 134,9 (see also Nov. 134,10–13) (for a standard edition of Justinian's texts, see Corpus iuris civilis, Paul Krüger and Theodor Mommsen (eds.), Berolini (Berlin), Weidmann, 1877).

Johannes Petrus Ludewig, Vita Iustiniani M. atque Theodorae, Augustorum nec non Triboniani, iurisprudentiae iustinianae proscenium, Halae Salicae, Impensis Orphanotrophei, 1731, vii. On Theodora’s consideration as docta femina, see especially 155–157; on her piety and attitudes of religious toleration, see 367.

The defence of the dissertation, by Johan Dow, was presided over by Wieling: Schediasmatis tumultuarii De Iustiniano et Theodora Augustis, Franekeriae (Franeker), G. Coulon, 1729.

Ioannis Friderici Iugleri, Commentatio De eruditione Theodorea Augustae. Editio secunda, Hamburg, 1742. Also, the Portuguese jurist and diplomat Duarte Ribeiro de Macedo (1618–1680) wrote Vida da Imperatriz Teodora (Lisbon, 1677).


Hommel, Litteratura, 1761, 396. Hommel suppressed the references to Matilda in the second edition of his work.


Plotiana was quoted, for instance, by Frawenlob (Schmidt-Kohberg, ‘Manche’, 202).


Hommel, Litteratura, 1761, 393. This passage was changed in the second edition.

"Grave videbatur Romanis foeminae in tribunal audire" (Hommel, Litteratura, 1779, 311). Nettelbladt was even harsher in his judgement (Nettelbladt, Initia, 1764, §177, 149). St Paul’s words about women’s silence in the church had been incorporated into canon law.
sources, such as Gratian’s *Decretum*. For a consistent analysis of medieval legal sources regarding women: Giovanni Minnucci, ‘La donna giudice, Innocenzo III e il sistema del diritto comune’, in *Vergentis* 2017, 4, 77–106.

67. Jenichen’s *Observationes selectae de C[aia] Afrania* were originally written in 1734, according to the author. They were added to Augustin Leyser’s *Mediationes ad Pandectas… Volumen IX. Et ultimum*, Leipzig, Meisnerus, 1748.

68. The *Dissertatio apologetico-votiva qua Calphurnia sapientissima inter mortales femina a conuitis Ulpiani vindicatur* consists of a congratulatory piece issued on the occasion of Jacob Otto’s doctoral promotion in laws (August 11, 1706).


85. Laura Bassi (1711–1718) was, together with Maria Gaetana Agnesi, one of the first women to hold a university position, having contributed to the spreading of Newtonian physics. See Monique Frize, *Laura Bassi and Science in 18th Century Europe. The Extraordinary Life and Role of Italy’s Pioneering Female Professor*, Heidelberg, Springer, 2013.


88. In medicine, a few years before, in 1754, a polemical argument arose around the medical degree earned by Dorothea Leporin Erxleben at the University of Halle. See Elisabeth Poeter, ‘Gender, Religion, and Medicine in Enlightenment Germany: Dorothea Christiane Leporinis’s Treatise on the Education of Women’, in *National Women’s Studies Association Journal*, 2008, 20(1), 99–119. Analogous dissertations on women with medical expertise include: Polycarp Schacher (praeses) and Johann Heinrich Schmid (respondens), *Dissertatio Historico Critica: De Feminis Ex Arte Medica Claris/Von Weibern die sich in der Arztneywissenschaft gerühmt gemacht...,* Leipzig, PhD diss., May 8, 1738.


91. Campbell coined this expression in ‘The Querelle’, 362.


99. The lack of chastity was precisely the main vice of another woman supposedly learned in law, Susanne Cujas, the daughter of the French jurist Jacques Cujas, a recurrent reference in the catalogues of women and mentioned also by Hommel. Some references in Beck Varela, ‘Nostri studii’, 149.

100. Novella was quoted by ‘ipsa docta mulier Christina de Pisa’, according to Hommel (*Litteratura*, 1761, 395; 1779, 313). Januario also had quoted Pizan’s authority in his *Respublica iurisconsultorum*, 12.


