HABENT SUA FATA BASILICA

ON THE OCCASION OF THE COMPLETION OF THE GRONINGEN BASILICA EDITION What are the Basilica?

'The Basilica is a Parisian fortress, assaulted by the mob on the 14th of July, 1789.'

This was one of the answers given by students of law to the above question during an examination. Naturally, the question during the resit was 'What is the Bastille' but nobody answered: 'The Bastille is a compilation of laws of Leo the Wise from the year 900'.

The student's answer shows how much the Basilica and daily life have drifted apart and, for those who do occupy themselves daily with the Basilica, it is a good thing to be aware of this every now and then. Those who are, those rarissimi, who working in the nooks and crannies of European universities and institutes, have devoted themselves to Byzantium and to Byzantine law in particular, have today gathered here in Groningen and we are very pleased to be able to welcome you all. It is not necessary to explain to you what the Basilica are and I imagine how pleasant it must be for you to converse with people you do not know on your favourite subject without first having to go into lengthy explanations. The Basilica have been at the centre of the lives of three persons. They have devoted their working lives to them, or rather, as one of them put it so beautifully, they have imposed a lifelong slavery upon themselves. This particularly applies to the originator of the edition, Prof.H.J. Scheltema. The last three volumes which have now appeared in print, had after all been completed in manuscript two weeks before his sudden death on the 2nd of December 1981, and everyone present at the time will remember with strong feelings of wonder the improvised ceremony in Koos Kerstholt's café where dr Holwerda offered the completed manuscript in an empty shoe-box, just as thirty years before he himself had been offered his first papers in a shoe-box by Scheltema, whose only accompanying remark was: 'It is a mer à boire'. On this occasion they saw a deeply moved Scheltema, very unlike the man they knew. It was as if with the completion of the manuscript he anticipated the completion of his life.

Scheltema had conceived the plan of making a new edition at an early stage, even long before he became a professor in Groningen. After the completion of his dissertation¹, in the 1930s, Scheltema had taken an interest in the Greek sources of law and, on a superficial examination of the manuscripts, it had struck him how unreliable the Basilica-edition by Fabrot and Heimbach was. It was at this early stage that Scheltema considered a new edition. On September 19th, 1938 he sent a letter from Groningen to his sister-in-law, Mrs Scheltema-Blase, in which he wrote:

Scheltema defended his thesis, Proeve eener theorie der actiones arbitrariae, on October 27th 1934.

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'I have just been fully installed in my railway-station² and I realize more and more how spacious my newly acquired residence is. At long last I have a separate library and study which, as has always been my ideal, does not have any windows so that no day-light can come in. Here I retire with my Greek manuscripts, and were the city bombed I wouldn't notice'. And further down he writes: 'In the near future the first volume of my Basilica will be published; you will hear more about it in due time'. What exactly he had in mind with this self-confident remark can no longer be discovered. Perhaps, like many other of his remarks, it should be taken cum grano salis. In 1939 he first publicly revealed his occupation with the Basilica in an article, entitled: 'Probleme der Basiliken'. It opens with: 'Eine Neuausgabe der Basiliken läßt noch auf sich warten, obwohl sie zu den dringendsten Aufgaben der heutigen Romanistik gehören dürfte'. His exotic activities attracted the attention of the University of Amsterdam where his gifted brother F.G. Scheltema, whom he greatly admired, had been professor until that year, the year of his death. H.J. Scheltema became an unsalaried university lecturer in Byzantine law. On the 16th of April, 1940 he started his lessons with a public lecture with the title: 'Observations on Greek adaptations of Latin legal sources'. In this article he sharply criticized Heimbach's edition 'which for the greater part is a copy of a number of older editions, by Cuiacius, Fabrotus, Ruhnkenius, Reitz' (p.13) and he subsequently explains his intentions. 'Ultimately the aim will be to collect material for a new edition of the Basilica, which is as yet in the vague distance.' He was not at all blind to the problems which this Herculean labour would entail. 'The palaeography will have to be an important auxiliary science.' 'An adequate dictionary does not exist.' 'The abundant material will have to be classified in the form of a palingenesia.' 'At present (already) Romanists tend to browse through the Byzantine material and dig up whatever suits their needs. Such a method is of little value, however; what we are waiting for, though, is the Byzantinist who can create a more reliable method." This will be considered much more work for a philologist than for a jurist. Indeed the support of philologists which has so far been painfully lacking as far as legal texts are concerned, is undoubtedly required in this case. On the other hand, in order to be able to work independently, a thorough knowledge of law is also required. Or rather, a thorough knowledge of Roman law, and, possibly, even of one's own, national, in this case, Dutch law. The latter may seem strange, but it is my firm belief that it is hardly possible to see the interpretation of legal texts from the past in the right perspective, unless a constant comparison can be made with the current legal interpretation. After all, the way in which a jurist tends to use the laws is often not clear to the layman, and at this point, the Byzantine jurist is little different from

² Scheltema lived at that time in Groningen railway-station.

³ TRG 16 (1939), 320-346.

today's jurist.' This last observation is very typical of the views held by Scheltema, who, being a legal historian, considered himself a jurist studying history and not a historian writing about law.

Less than a month later the Germans invaded our country and prevented him from carrying out his intentions. At the request of Mrs Hazewinkel-Suringa, Scheltema for some time replaced Bregstein, his brother's successor on the chair in commercial law, who in November 1940 had been dismissed on account of his Jewish descent. For that purpose Scheltema had to work up a strange, unfamiliar subject within a short time. The outcome of these efforts was a much-praised manual on Dutch insurance law which he managed to write unsupported by his library when he went into hiding in the last few years of the war. 4 This, however, did not stop him from studying the Greek legal sources. He continued his lectures as an unsalaried university lecturer in Byzantine law at home until November 1941 and one of his four students, the later Romanist R. Feenstra remembers the room in which the glasses filled to the brim with sherry could be found among the photographs of Greek manuscripts, and where a canary bird flew about freely. Even in 1941 he managed to write a substantial article 'De antiquae jurisprudentiae reliquiis in libris byzantinis oblectamentum'. 6 He wrote in Latin in order to avoid German which he otherwise mastered fluently and perfectly. When he was wanted by the Germans, he managed to secure his most valuable papers by breaking into his sealed house and afterwards sealing it again with the ring he was wearing as ex senator of the student society Vindicat. He went underground. On 27-11-1943 he writes to his sister-in-law, Mrs Scheltema-Blase: 'I still have plenty of work to fill my days, devoting myself to all sorts of hobbies: Greek, Roman law and walking.' And in an undated letter to her he writes: 'During this past winter I indulged in Coptic which I am now able to read a little and I also did much on Roman and Byzantine history.'

Immediately after the liberation, the professor of constitutional law, Van der Pot, offered Scheltema a chair in Groningen which, due to lack of financial means, would include a variety of tasks, i.e. part of civil law, law of civil procedure, commercial law and Roman law. Scheltema had become an expert in all these fields and left his mark on them. Fortunately, he was wise enough to limit himself to one task and by Royal Decree of 27–12–1945 he was appointed professor of Roman Law and its history. Two months before, on the 19th of October 1945 he had, in consultation with the law faculty of Amsterdam, delivered his valedictory lecture in Byzantine Law, which, as far as I know, has not been passed down to us. He did not expect

⁴ Verzekeringsrecht, Groningen 1945; the third edition has been revised by F.H.J. Mijnssen and appeared in 1986.

⁵ R. Feenstra, 'Herdenking van Herman Jan Scheltema', Jaarboek der Koninklijke Nederlandse Akademie van Wetenschappen 1984, 193-199.

⁶ TRG 17 (1941) 412–456.

many people because he writes that the student-generation of 1941 had practically disappeared, among them his best student, Arthur Meerwaldt, who had been killed in a German prison.

On the 11th of May, 1946 he publicly assumed his office in Groningen with a speech, that did not deal with the Basilica, but with the interpolation criticism which was at the time studied generally and enthusiastically. Scheltema had many objections to textual criticism by non-philologists and was at that time the only one to raise these objections openly and sharply.

Immediately after his accession to office, Scheltema started to carry out his monumental plan along the lines which he had set out in his Amsterdam speech. In 1948 he enlisted a gifted student of the Hellenist W.J.W. Koster. This student, who was to study palaeography and philology, was Douwe Holwerda, and as we already mentioned before, he received his first tasks and papers in a shoe-box. Not to be ignored is an event which shows that the gods were favourably disposed towards the Groningen undertaking: In order to become familiar with the subject-matter, Holwerda was advised by Prof. Scheltema to study a rare work, the Allgemeine Encyklopädie der Wissenschaften und Künste by Ersch und Gruber, namely volumes 86 and 87, that dealt with Griechisch-Römisches Recht. Shortly afterwards, Holwerda, living at Houwerzijl at the time, got a present from a fellow-villager who had cleared up his attic. He presented two books to Holwerda, 'because Mr Holwerda was so learned'. These books happened to be volumes 86 and 87 by Ersch und Gruber. At about the same time at a jumble sale which used to be held in the open air in the 'Grote Markt', Prof. Scheltema bought a work of Zachariä on the Basilica, which was — and still is — unavailable in any Dutch library.8

In 1949 Scheltema acquired his second staff-member, the student Nicolaas van der Wal, whom he also instructed in palaeography and whom he set to work on a dissertation about the Greek commentaries on the Justinian Codex. After Scheltema had secured the support of the publisher Wolters and the financial support of the newly founded Netherlands Organisation for the Advancement of Pure Research—the Groningen edition was project No.1—he once more publicly announced his intention by means of a prospectus printed in 1949 and by making a statement during the 8th Byzantine Congress held in Palermo in 1951. In 1953 the first volume of the Scholia finally appreared, with Scheltema as the sole editor, complete with a Latin praefatio in which a word of thanks is addressed to the viri ornatissimi Holwerda and Van der Wal. Criticism was not long in coming and its tone was initially sharp. It came from two eminent Romanists Adolf Berger (1882–1962) and Fritz Prings-

⁷ Letter of October 12th, 1945.

⁸ C.E. Zachariae von Lingenthal, Anekdoton lib.XVIII Basilicorum cum scholiis antiquis. Specimen Codicis palimpsesti Const.Bibliothecae S.Sepulchri qui solos libb.XV-XVIII Basilicorum integros cum scholiis continet, Heidelbergae 1842, Lipsiae apud J.A. Barth.

heim (1882-1967), with Franz Wieacker in their tracks. What was then the matter? Scheltema had not been the only one who had come to realize the necessity of a new Basilica-edition. Already after the First World War Noailles had devoted himself to a new edition. In vain. During a congress of historians in Brussels in 1923, De Francisci had advocated a new edition and for that purpose he had associated with Paul Collinet, Vinogradoff and Rostowzew in 1927. All in vain. 9 It was during the third international Byzantine Congress in Athens in 1931, after a speech by Leopold Wenger on the same subject, that a committee of scholars was set up under the supervision of the Academy of Athens and of Demetrios Pappoulias in particular. Still all in vain. In the 1930s Berger and Pringsheim were the self appointed spokesmen of the international company. Both men were to suffer a tragic fate. On account of their Jewish descent they were forced to leave Germany, Berger to the United States, Pringsheim to England. For this reason alone Scheltema was in principle sympathetically inclined and this made the growing conflict all the more tragic. In 1937 Pringsheim had written an elaborate essay, entitled: 'Zum Plan einer neuen Ausgabe der Basiliken', but the Prussian Academy of Sciences had refused to print it for the above-mentioned reason. This treatise in which views were expressed that were different from the views on which Scheltema had founded his edition, was put by Pringsheim at the disposal of the reviewer Franz Wieacker who, to put it mildly, had not exactly been a resistance hero in the Third Reich. 10 The criticism of both gentlemen mainly concentrated on the following points: the absence of a translation; the separation of the text from the scholia by the constitution of a Series A and a Series B; the failure of marking the old and new scholia; the editing the manuscripts one after the other, even if they give the scholia on the same text, and the absence of a so-called catena. Yet underlying the criticism, especially of Berger's, one can sense a deeper reason, namely resentment. Although he had to admit that Scheltema's edition was a considerable improvement of Heimbach's edition — 'un progrès considérable' — it hurt him that Scheltema had not come to him and Pringsheim for fatherly advice. 'Il semble presque incroyable mais il est néanmoins vrai qu'on doit la publication du volume en question aux efforts d'un seul homme dont le courage et ambition méritent une admiration sincère, même si tout n'a pas réussi comme on expectait et désirait. C'est le professeur de l'Université de Groningue, H.J. Scheltema qui a entrepris cette tâche gigantesque qui — non seulement selon mon opinion personnelle — exigeait une collaboration de plusieurs experts et savants, une collab-

⁹ In 1928 Litten and Juncker (Forschung und Fortschritte IV 234) wrote: 'Eine kritische Herausgabe der Basiliken kann nur unter Auspizien einer grossen wissenschaftlichen Akademie von einem nach einheitlichem Plan arbeitendem Stab geeigneter Mitarbeiter geleistet werden'.

About Wieacker in this respect: O.K. Brahn, 'De Duitse onderscheiding "Pour le mérite" (Friedensklasse) en een ontwerp voor een nieuw Duits burgerlijk wetboek uit 1942', Nederlands Juristenblad 1981, 588-589. Wieacker's review can be found in SZ 71 (1954), 474-486.

oration intense fondée sur une base internationale ...'. 11 This last idea was exactly what Scheltema did not want. He did not wish for congresses and committees, but he wanted to present a fait accompli and he had only one purpose in mind: the edition of a philologically reliable text. Professor Seidl from Erlangen realised this as well, when he wrote: 'Denn wir werden auch sehen: der Stand der Überliefering ist derartig, daß in einem gelehrten Kollegium die Meinungsverschiedenheiten nie aufhören und damit die Edition vermütlich auch nicht Zustande kommen würde.' 12 Scheltema ought to be praised because he limited himself to the most unrewarding and at the same time most demanding work, namely to 'eine vollständige Wiedergabe dessen, was in den Handschriften zu lesen ist, und eine paläographisch genaue Wiedergabe dessen, was sie enthalten .. denn nur so besteht Aussicht, dass von einem Gelehrten allein die Edition der Basiliken und ihrer Scholien in einem normalen Menschenleben durchgeführt werden kann'. Seidl continued to support Scheltema afterwards and conferred on him an honorary doctorate of the university of Erlangen.

Meanwhile an occasion had presented itself for lashing out more fiercely. On 30th March 1953 Van der Wal had obtained his doctorate cum laude on a dissertation, entitled: 'Les commentaires grecs du Code de Justinien'. Along the lines of an, unfortunately, only too well-tried method, criticism was poured out on the first product of the young scholar's pen. I cannot go into the criticism concerning the content of the dissertation, but I do want to say a bit more about the tone of this criticism. Those who know Mr Van der Wal will be astonished to learn its contents, while most surprised of all must have been Van der Wal himself at the time, when he heard from Wieacker that he had displayed 'eine leidenschaftliche und selbstbewußte Argumentation und eine Entschiedenheit, die zuweilen an Parteilichkeit für die eigenen Hypothesen streift, und welche die Übergänge vom Möglichen zum Wahrscheinlichen, vom Wahrscheinlichen zum Sicheren verwischt'. ¹³ Pringsheim demanded from the 'junge Autor' 'ein höheres Maß von Selbstkritik ...' and naturally 'eine gerechtere und vorsichtigere Bewertung der Vorgänger'. ¹⁴ Berger ¹⁵ was so hard on the 'giovane studioso, a cui manca quell'esperienza nelle fonti giuridiche bizantine di più di guaranta anni' that Scheltema felt compelled to protect him. Berger's criticism concentrated on the exact explanation of the word 'procanon', in which Berger thought he saw a contamination of προχείμενος χάγων, to which he consequently

¹¹ TRG 22 (1954), 182: 'Je l'ai exprimé dans une lettre au Prof. Scheltema en 1950 après avoir reçu le premier prospectus de son édition'. It is by the way not true that Scheltema never sought Berger's advice. According to Van der Wal there was a lively friendly exchange of letters between them until the Groningen scholars began to differ from Berger's opinions and went their own way.

¹² E. Seidl, review of *Basilicorum libri LX*, B I, *BZ* 47 (1954), 175-178.

¹³ SZ 71 (1954), 493.

¹⁴ TRG 22 (1954), 201.

¹⁵ A. Berger, 'Studi sui Basilici V. Di nuovo su "Procanon", IURA 5 (1954), 110-111.

gave the meaning of 'a canon referring to the previous text of the Basilica'. ¹⁶ The explanation of Van der Wal, which actually followed the explanation of Zachariae and Heimbach in which 'procanon' means the short rule referring to the following text, was, in connection with the whole dissertation, criticized so heavily and so rudely that, in the words of Scheltema, 'das Ganze den Eindruck macht, dasz die von Van der Wal verfaszte Schrift völlig lächerlich sei ... Diese Besprechungsmethode birgt für den Rezensenten eine Gefahr in sich: es könnte ja passieren, dasz jemand die niedergemachte Abhandlung durchliest und zu seinem Erstaunen entdeckt, dasz die angeprangerten Absurditäten in ihrem Zusammenhang gar nicht absurd sind; eine solche Erfahrung würde das Urteil über den Rezensenten vielleicht beeinträchtigen'. The meaning of 'procanon' was once more clarified by Scheltema by a number of examples which he concluded with: 'So ist auch προθεωρία nicht die θεωρία des vorhergehenden Gesetzes, ebensowenig wie der Vorgeschmack einer Zigarre der Geschmack der vorigen Zigarre ist'. ¹⁷ Berger never did react to Scheltema's essay and afterwards shifted his attention to other fields of interest.

When in 1956 two more volumes appeared, one text-volume with Van der Wal as co-editor, and one of the scholia with Holwerda's name added to that of Scheltema, Pringsheim published, unaltered, his above-mentioned 'Plan einer neuen Ausgabe der Basiliken', made in 1937, with a bitter preface in which he complained that the Groningen editor, 'der — ganz anders als ich im Aussicht hatte — bei der Vorbereitung seines Planes niemandes Rat eingeholt hat 18, von seinen vielen Kritikern im allgemeinen so bewundert und in seiner Methode und Leistung ermutigt worden ist, dass er für Rat und Hilfe unzugänglich sein dürfte'. However, not much attention was paid to this document, especially since many views had proved to be outdated and untenable since 1937. From the sentence I just quoted from Pringsheim it appears that the Groningen enterprise did not provoke exclusively negative criticism. Yet, the reason why I paid more attention to the violent criticism from these two scholars is two-fold. First, because Scheltema with his undertaking had become fairly isolated, an isolation which Seidl alone could not remove. Pringsheim,

¹⁸ In a note he adds: 'Der des grössten Kenners der Basiliken, Adolf Berger, war ganz unentbehrlich.'

A. Berger, 'Procanon. Note on a rare term in the scholia to the Basilica', Festschrift Fritz Schulz II (Weimar 1951), 14.

¹⁷ H.J. Scheltema, 'Über den Ausdruck 'Procanon'', TRG 23 (1955), 83-92. The article opens with a line from the Aeneid: Quid me alta silentia cogis rumpere?

Pringsheim wrote in 1963 a last and bitter article on the scholia on the Basilica. In this article he tried to save the so-called *Katenen*-theory of Hans Peters. F. Pringsheim, 'Über die Basilikenscholien', SZ 80 (1963) 287-341.

Except Seidl also E. Volterra praised the first result in IURA 5 (1954), 407-413, and with him A. Dain in Revue historique du droit français et étranger 32 (1954), 578-582 and P. de Francisci in Studia et Documenta Historiae et Iuris 21 (1955), 342-346.

unlike Berger had returned to Germany after the war and was a man of great authority. For long afterwards only the Heimbach-edition was cited in Germany and even today separate mention is often made of it. When I came to work for Scheltema in 1967 he told me: "We edit the Basilica here and we do it only for ourselves". The second reason for my digression is that ultimately the greatest recognition for the Groningen edition in fact also came from Germany, namely from Frankfurt. It was in various respects a memorable day that brought Prof. Dieter Simon to the steps of Scheltema's residence, 8 Hoge der A, in 1970. First of all, this was the one and only way to approach the almost unapproachable. Not by means of a letter, which was very likely to remain unnoticed, nor by means of a telephone-call that would not be answered, but with a surprise attack, a fait accompli. During his visit Simon said to me: 'Jede Zeile, die er geschrieben hat, habe ich gelesen' and when I told this to Scheltema afterwards, he was sincerely astonished and surprised. 'From Germany, of all places' was his reaction. Much more important, however, is that this visit of Simon and his staff marked the beginning of an intensive cooperation between Groningen and Frankfurt, which was not only scholarly but which has developed beyond that into a solid friendship. After all that has been said it will be clear that it was initially not without difficulty but ultimately without reserve that Scheltema accepted Frankfurt's outstretched hand. This scholarly cooperation was ultimately crowned on 22 February 1982 with a 'Samenwerkingsovereenkomst' between the University of Groningen and the Max Planck Institut für europäische Rechtsgeschichte of Frankfurt. However, this is not merely an exchange on paper, as is often the case nowadays. Guest-lectures are given and reciprocated, microfilms of manuscripts are exchanged and there is a lively correspondence; before long a substantial volume will appear with an edition of Byzantine lexica by staff-members from Groningen and Frankfurt.

In the course of time the two staff-members, already selected by Scheltema as his students, have developed into undisputed authorities in their speciality. Both of them have been granted a personal professorship on account of their expertise which is, after all, the hardest way of acquiring such a post. The merits of Holwerda and Van der Wal are best illustrated in mentioning one unique example of their gigantic efforts, namely their share in the rendering of the text of the books 15–18 of the Basilica. I paraphrase Holwerda's own words²¹: The Berlin palimpsest with the books 15–18 proved to be unfindable despite investigations up to the highest level. It must have fallen a prey to the acts of war in the years 1940–1945. What remained was an edition of Zachariä von Lingenthal which had in its footnotes an exact enumeration of what he had thought he could decipher in the barely readable

²¹ Ter nagedachtenis H.J. Scheltema 1906–1981, bezorgd door J.H.A. Lokin en W.R.H. Koops, 2nd edition, Groningen 1983, 14–15. This booklet contains Scheltema's bibliography and enumerates also his poems, published under the name N.E.M. Pareau.

parts. Since it was also clear from Zachariä's information on the last codex, in what sort of handwriting this codex had been written, Scheltema, Holwerda and Van der Wal, thanks to their experience with this handwriting, have been able to imagine what Zachariä had seen, and consequently were more than once able to suspect what was really there in the places where Zachariä's decoding did apparently not make sense. They have given an accurate account of their method of working with Zachariä's data in the relevant Prolegomena in a way which enables experts to verify them. And without derogating from Zachariä's merits it can be stated that Scheltema, Holwerda and Van der Wal have made a considerably better edition without the manuscript than Zachariä with the manuscript.

After Scheltema's death, the last three volumes completed in manuscript were prepared for publication by Holwerda and Van der Wal with the help of Egbert Forsten, the accurate as well as enthusiastic publisher. About 5,000 folia have been decoded and the edition numbers 3,131 pages of printed text and 3,954 pages of scholia. Their patient and painstaking work over forty years which was performed in silence and thus does not render easy popularity, has carved from the refractory rock the raw diamonds with which others will probably shine. Yet their slave labour has made the cutting of these diamonds possible. The three men restricted themselves to what Seidl described in 1953 as 'die mühevollste Aufgabe, bei der es am wenigsten möglich ist, sogleich mit der Entdeckung historischer Zusammenhänge zu brillieren'. We would like to thank them symbolically for this hard labour by offering them the last volume of the Groningen edition. Before doing so, however, I must utter one last word in connection with university politics, which I would like to address to the Rector Magnificus.

The Groningen undertaking of the Basilica-edition, without having ever been trumpeted or premeditated or even reported on, fits exactly all the fine words so abundantly written by officials nowadays about international cooperation, research that opens up new horizons, about scholarly exchange, and about a university whose influence extends beyond the boundaries of Meppel and Dokkum. However, what the university ought to realize is that all this would never have been possible without either a top level professorship in classical Greek to train future Holwerdas, if I may say so, however few they may be, or a similar chair for Medieval and Modern Greek, which is nowadays a minimum requirement for allowing Groningen to play the international role which it is fortunately playing at the moment. Now that all the conditions for continuing this high level are there, namely an expert and promising Nachwuchs, Groningen can only otherwise lose on this point.

I have three copies of the last volume with me; I would like to offer the third one to the Rector Magnificus as the symbol of the university. Since I do not expect him to read it every night before going to sleep, I hope that he will present it to the University Library. The two others will be more familiar with the work. With

the presentation and with this symposium, which will start after the coffee-break, we would like to honour them, as well as the memory of Scheltema.

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