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Dionysius van der Keessel

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Dionysius van Der Keessel

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BIOGRAPHICAL INTRODUCTION

Dionysius Godefridus van der Keessel was born in Deventer on 22 September 1738 as the youngest son of the Reformed church minister Dionysius van der Keessel (1700–1755), himself the son of a physician in Dordrecht, and Johanna Wilhelmina Cabeljau (c. 1705–1775).¹ To have a minister or physician in the family background was hardly extraordinary for a Dutch law professor in the eighteenth century.² Van der Keessel senior had been rather combative in protecting the unity of the Reformed church. Separatists, pietists, quietists, enthusiasts, and mystics were but a few of the groups he attacked in the lengthy titles of his pamphlets.³ He published several

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¹ Biographical and bibliographical information is taken mainly from Johan de Wal, biographical notice [1855] to Dionysius G. van der Keessel, *Select Theses of the Laws of Holland and Zeeland*, trans. Charles A. Lorenz (Cape Town: Juta, 1901), xi–xx; Abraham J. van der Aa, ‘Keessel (Dionysius Godefridus van der)’, in *Biographisch Woordenboek der Nederlanden* (Haarlem: Van Brederode, 1862), 10:87–88; Willem B. S. Boeles, ‘Levenschetsen der Groninger Hoogleraren’, in *Gedenkboek der Hoogeschool te Groningen ter Gelegenheid van Haar Vijfde Halve Eeuwfeest*, ed. Willem J. A. Jonckbloet (Groningen: Wolters, 1864), 84–85; Johannes van Kuyk, ‘Keessel (Dionysius Godefridus van der)’, in *Nieuw Nederlandsch Biografisch Woordenboek*, ed. Petrus J. Blok and Philipp C. Mollhuysen (Leiden: Sijthoff, 1914), 3:674–675; Margreet J. A. M. Ahsmann and Robert Feenstra, *Bibliografie van Hoogleraren in de Rechten aan de Leidse Universiteit tot 1811* (Amsterdam: NHUM, 1984), 132–138; Bert Krikke and Sjoerd Faber, ‘Dionysius Godefridus van der Keessel (1738–1816)’, in *Zestig Juristen: Bijdragen tot een Beeld van de Geschiedenis der Nederlandse Rechtswetenschap*, ed. Theo Veen, Peter C. Kop, and Govaert C. J. J. van den Bergh (Zwolle: Tjeenk Willink, 1987), 185–189; Theodoor H. Lunsingh Scheurleer, C. Willemijn Fock, and A. J. van Dissel, *Het Rapenburg. Geschiedenis van een Leidse Gracht* (Leiden: LUP, 1992), VIIb: 742–747.

² Jan H. A. Lokin, *De Groninger Faculteit der Rechtsgeleerdheid (1596–1970)* (The Hague: Boom, 2019), 205.

³ Abraham J. van der Aa, ‘Keessel (Dionysius van der)’, in *Biographisch Woordenboek der Nederlanden* (Haarlem: Van Brederode, 1862), 10:85–87.

against the Groningen preacher Wilhelmus Schortinghuis between 1744–1755, and had Schortinghuis's book on 'Heartfelt Christianity' banned by the synod of Overijssel, embarrassing the theological faculty at Groningen, which had already given its approbation.⁴ The first son was stillborn but the second son, Samuel Rudolphus van der Keessel (1737–1799), followed in his father's footsteps and became a minister of the Reformed church in Dordrecht. It seems Dionysius considered theology too, but chose law instead.⁵ Van der Keessel's father and grandfather had both studied at Leiden University. Dionysius and his brother Samuel would attend there as well,⁶ enrolling simultaneously in 1756 after spending two years studying liberal arts at the Athenaeum Illustre in Deventer. That both sons were able to attend university at Leiden despite the death of their father in the preceding year shows that the family was well to do, or could at least call on an extended family network to finance both a degree in theology and a degree in law. Dionysius van der Keessel obtained his degree from Leiden University in 1761 with a dissertation on the acquisitive prescription of the offspring of stolen slaves and animals.⁷ It is obvious from the complexity and style of the dissertation that he was preparing himself for a university career. Indeed, after a brief stint as an advocate in The Hague,⁸ he was invited to take up the post of professor at Groningen University in 1762.

Van der Keessel did not stay at Groningen for long. The faculty of law was marred at the time by the controversies surrounding professor F. A. van der Marck (1719–1800), a vocal and belligerent proponent of natural law who had been attempting to conscript local customary law into his assault on the status of Roman law, by explaining it from first principles.⁹ Van der Keessel was both too practical and too historicist to be convinced. In his teaching, he preferred to remain with the tried-and-tested examples of Böckelmann's *Compendium* for the course on the Institutes and van Eck's *Principia* for the Digest course.¹⁰

⁴ Johannes C. Kromsigt, *Wilhelmus Schortinghuis. Een Bladzijde uit de Geschiedenis van het Piëtisme in de Gereformeerde Kerk van Nederland* (Groningen: Wolters, 1904), 231–241.

⁵ Boeles, 'Levenschetsen', 84.

⁶ Willem N. du Rieu, ed., *Album Studiosorum Academiae Lugduno Batavae 1575–1875* (The Hague: Nijhoff 1875), 1053. The grandfather Godefridus had enrolled in 1682 (at 655) and the father Dionysius in 1718 (at 859).

⁷ Dionysius G. van der Keessel, *Dissertatio Juridica Inauguralis de Usucapione Partus et Foetus Rei Furtivae* (Leiden: Le Mair, 1761). See De Wal, biographical notice to *Select Theses*, xii.

⁸ One shouldn't make too much of van der Keessel's (limited) experience of practising law. Krikke and Faber, 'Van der Keessel', 185.

⁹ Corjo J. H. Jansen, *Natuurrecht of Romeins Recht. Een Studie over Leven en Werk van F. A. van der Marck (1719–1800) in het Licht van de Opvattingen van zijn Tijd* (Leiden: Brill, 1987).

¹⁰ Boeles, 'Levenschetsen', 85; Lokin, *Groninger Faculteit*, 183–184; Willem Otterspeer, *Groepsportret met Dame* (Amsterdam: Bert Bakker 2005), 3: 409.

Together with the advocate J. Wolbers he produced a lengthy advice on a matter of testamentary inheritance in Overijssel in 1766.¹¹ In complete opposition to van der Marck, from 1767 van der Keessel began to teach an amalgam of Roman law and local customary law, the *ius hodiernum*, as a product of particular *historical* development that could be understood and systematized by applying the terms and categories of Roman law.¹² He served a term as rector of Groningen university in 1768–1769, but it seems van der Keessel had had enough. Whether for the increase in pay and status, the proximity to family, or simply to escape the controversies in Groningen, in 1769 van der Keessel informed the curators that he would be leaving for Leiden.¹³ As a result, he was not involved in the head-on collision between van der Marck and the Reformed church at Groningen between 1770–1773, which resulted in the removal of van der Marck from office until 1795.

As is clear from his inaugural lecture at Leiden, van der Keessel had developed into a proponent of the *usus modernus*. The first public course he taught was an explication of difficult passages in the *Corpus Iuris*,¹⁴ probably based on van Eck's *Theses juris controversi*, which he had first taught as a private course in Groningen. In 1771 he added some criminal law to his repertoire, followed by Roman legal history in 1772 and a disputation course on conflict of laws in 1773.¹⁵ From a report submitted by the Senate in 1807 and again from the series of 1815, it appears that by that time van der Keessel held a regular course of lectures on the Institutes,¹⁶ on the Digest, on criminal law,¹⁷

¹¹ This advice of 9 December 1766 was published in Lambertus C. H. Strubberg, *Overysseelsch Advysboek, Behelzende Merkwaaardige, Zo Consultatoire Als Decisoire Advysen en Sententien, van Veele Voornaame Rechtsgeleerden in Overysseel* (Kampen: De Chalmot, 1785), 2: 40. Also noted by Krikke and Faber, 'Van der Keessel', 187.

¹² Margreet J. A. M. Ahsmann, 'Teaching the *Ius Hodiernum*: Legal Education of Advocates in the Northern Netherlands (1575–1800)', *Legal History Review* 65 (1997): 426 and 447–448. Also see Corjo J. H. Jansen, 'De Ontdekking van het Vaderlandse Recht in de Achttiende Eeuw', *Documentatieblad Werkgroep Achttiende Eeuw* 24. 1 (1992), 57–71.

¹³ He was appointed ordinary professor by the curators of Leiden on 10 October 1769 on a salary of fl. 1,400. Philipp C. Molhuysen, ed., *Bronnen tot de Geschiedenis der Leidsche Universiteit* (The Hague: Nijhoff 1923), 6: 56. His salary was raised to fl. 1,600 in 1799 (7:129) and to fl. 2,000 in 1802 (7:207), which in turn was raised to fl. 2,800 for all Leiden professors (partly to compensate for the loss of other emoluments) by art. 132 of the Organiek Besluit of 2 August 1815, *Staatsblad* 14. Also see Krikke and Faber, 'Van der Keessel', 185–187.

¹⁴ Series February 1770, in Molhuysen, *Bronnen*, 6:7*.

¹⁵ Series September 1771 through September 1773, in Molhuysen, *Bronnen*, 6:15*–16*.

¹⁶ The lecture notes have been published as Dionysius G. van der Keessel, *Dictata ad Justiniani Institutionum Libros Quattuor, Observato Ordine Compendii Auctore Johanne Frederico Böckelmann*, ed. and trans. Ben Beinart, B. L. Hijmans Jr., and Paul van Warmelo, 2 vols. (Cape Town: Balkema, 1965–1967).

¹⁷ The lecture notes have been published as Dionysius G. van der Keessel, *Praelectiones in Libros 47 et 48 Digestorum, Exhibentes Jurisprudentiam Criminalem ad Usus Fori Batavi Applicatam*

and on the *Introduction to Dutch Jurisprudence* of Hugo Grotius,¹⁸ as well as a private disputation course.¹⁹ In the meantime he had married Catharina Adriana Bodel, in 1772, and had moved to a capacious house on Rapenburg 71 adjacent to the Academy Building.²⁰ The couple had no children and so the house provided enough space for three library rooms and an auditorium with a separate entrance for private lectures.²¹ These private lectures were an important source of additional income for professors at Leiden and elsewhere. They also allowed professors to take a select few students under their guidance free of charge.

In his *Theses selectae*²² on the *Introduction to Dutch Jurisprudence* of Grotius, published in 1800, van der Keessel returns to the relationship between local law and Roman law. To answer the question of when Roman law should be applied as received law, he develops a systematic approach to the question of whether local law leaves any gaps and when Roman law may provide an answer.²³ Even the (comparative) customary law of neighbouring regions may be taken into account, but natural law is the very last resort. In the preface to this work, which at 345 pages is the only major work van der Keessel published during his lifetime, he explains his choice of a commentary on Grotius by stating his intention to provide a *systematic* introduction to the *ius patrium*, which is sorely lacking for those who leave the university to work in legal practice. Far from being superseded by the already-promised codifications, a commentary bringing Grotius up to date will aid in forming and interpreting the system of new national codes.²⁴ Even without the thousands of pages of

(Duce Cornelio van Eck) *et in Novum Codicem Criminalem*, 1809, ed. and trans. Ben Beinart and Paul van Warmelo, 6 vols. (Cape Town: Juta 1969–1981).

¹⁸ The lecture notes have been published as Dionysius G. van der Keessel, *Praelectiones Iuris Hodierni ad Hugonis Grotii Introductionem ad Iurisprudentiam Hollandicam*, 6 vols., ed. and trans. Paul van Warmelo, Lucas I. Coertze, and Henri L. Gonin (Cape Town: Balkema 1961–1975).

¹⁹ Molhuysen, *Bronnen*, 7:86*; Otterspeer, *Groepsportret*, 3:409.

²⁰ Catharina Bodel died in 1811. The house was purchased by the university following van der Keessel's death in 1816 and annexed to the Academy Building on Rapenburg 73.

²¹ Voorda attacked van der Keessel for giving his lectures 'in the smoke and fumes of a stove in a room at home'. Lambertus van Poelgeest, 'Mr. Bavius Voorda (1729–1799). Een Rechtlijnig Fries Jurist aan de Leidse Academie', *Leids Jaarboekje* 79 (1987): 117.

²² Dionysius G. van der Keessel, *Theses Selectae Iuris Hollandici et Zelandici, ad Supplendam Hugonis Grotii Introductionem ad Iurisprudentiam Hollandicam* (Leiden: Luchtmans, 1800).

²³ *Theses* 7–24. Also see review of *Theses Selectae* [etc.], by Dionysius G. van der Keessel, *Algemeene Vaderlandsche Letter-Oefeningen* 1 (1803): 59–63; De Wal, biographical notice to *Select Theses*, xviii–xix; Anne S. de Blécourt, *Pro Excolendo en de Rechtsgeschiedenis* (Groningen: Wolters, 1937), 85–87. Further literature in Jansen, 'De Ontdekking', 59.

²⁴ Ben Beinart, 'Van der Keessel's addresses to his students', *Acta Juridica* 1 (1972): 24–25. It should be noted that Grotius' *Inleiding* had already been updated and expanded by Groenewegen van der Made (1644), Schorer (1767), and Schorer/Van Wijn (1777). See

lecture notes published since the 1960s, this book alone would have cemented van der Keessel's reputation for producing a final statement of Roman–Dutch law that was workable in practice.²⁵

Living in troubled times, van der Keessel often attempted to walk the middle of the road politically. That does not detract from his belligerent temperament. Molhuysen characterizes him as such regarding discussions in the Senate and mentions the intransigent professor Bavius Voorda in the same breath.²⁶ With good reason, as the two became embroiled in a bitter quarrel over the right to teach the *ius hodiernum* (and the proper way to teach it) that only ended with Voorda's death in 1799.²⁷ Personal and political animosity aside, a major difference of opinion on the place of the *ius hodiernum* in the curriculum was at stake in this altercation between two Romanists.²⁸ Voorda wanted to give Roman law pride of place instead of wasting time on particularities better learnt in practice, treating statute and customary law as an afterthought best learnt by looking for parallels to and differences from Roman law. Almost as a precursor to Savigny, van der Keessel instead wanted to construct a system as complex as, and built upon, Roman law to explain the *ius hodiernum* from internal principles.²⁹ This meant teaching Grotius and the customs of Holland in full, in a packed two-year course that ignored other provinces, which was both more and less than Voorda had in mind.

Van der Keessel served as rector of Leiden University for three terms, 1773–1774, 1785–1786, and 1791–1792. His interest in statute and custom coupled with his faculty seniority meant he had a keen sense of the symbols of power including university privilege. Some instances may be illustrative. In 1792 and again in 1802 he was occupied with the question whether the magistrate of Leiden could impose certain taxes on professors as they were citizens of the academy and not of the city. Not without the Senate's permission, van der Keessel concluded, which was always granted when properly

A. J. Boudewijn Sirks, 'Hugo de Groot, Inleiding tot de Hollandsche Recht-Geleertheit, 1631', in *Juristen die Schreven en Blevén. Nederlandstalige Rechtsgeleerde Klassiekers*, ed. Georges G. G. M. M. Martyn, Louis A. M. J. A. Berkvens, and Paul Brood (Hilversum: Verloren, 2020), 45.

²⁵ The book was reprinted in 1860 and went through many editions after an English translation was published in 1855. See Ahsmann and Feenstra, *Bibliografie Leiden*, 134–135; Otterspeer, *Groepsportret*, 3: 330.

²⁶ Molhuysen, *Bronnen*, 6:vii: 'strijdlustig'.

²⁷ Van Poelgeest, 'Voorda', *passim*; Ahsmann, 'Teaching the *Ius Hodiernum*', 449–450.

²⁸ Ahsmann, 'Teaching the *Ius Hodiernum*', 450: 'in Leiden at least there was no room yet for two courses on the *ius hodiernum*'.

²⁹ Van Poelgeest, 'Voorda', 113–114; Ahsmann, 'Teaching the *Ius Hodiernum*', 450.

asked but should still be requested beforehand.³⁰ After the regime change of 1795, he approached the curators for a new text for the doctorate bull, now that the ‘ancient rights’ conferred in it had disappeared.³¹ When the inevitable proposal came in 1799 to abolish the academic tribunals, he fought a tenacious rearguard action together with Smalenburg and Luzac for this final academic privilege, extending its life until 1811.³² In 1806 and again in 1807 he petitioned for a new university seal.³³ When a shipload of gunpowder exploded in Leiden that same year to terrible effect, killing both Kluit and Luzac and levelling part of the city, he went to King Louis Napoleon on behalf of the Senate to narrate what had happened, and immediately sent him a petition for relief as well, asking *inter alia* for the ‘Hogeschool’ at Leiden to be named the Royal University of Holland instead, a request which was granted.³⁴ Academic privilege had its drawbacks too. In 1807, senior faculty including van der Keessel complained that the citizens of Leiden had been compensated with a temporary remittance of taxes while as citizens of the academy the professors received none.³⁵

From these brief biographical details, a general picture may be drawn. Van der Keessel was neither a convinced orangist nor a convinced patriot, but rather a staunch proponent of the old multilayered legal order, guarding established privilege while navigating the shoals of regime change. Preluding on the argument to be developed, he may also be characterized as a true believer in the orthodoxy of the Dutch Reformed church, a professor with an aversion to Enlightenment thought, and someone who became more and more truculent as he grew older. Yet when confronted with the new order, when Napoleon visited the soon-to-be Imperial University of Leiden in 1811, it seems the 73-year-old van der Keessel, then dean of the faculty, was left dumbfounded.³⁶ The restoration of the old order brought his pension too, in the form of compulsory retirement for professors over 70 as ordered by article

³⁰ Molhuysen, *Bronnen*, 6: 411–420 (residential tax), 7: 30 (taxes in general), 7: 195–198 (pauper tax).

³¹ Molhuysen, *Bronnen*, 7: 4.

³² Matthijs Siegenbeek, *Geschiedenis der Leidsche Hoogeschool van Hare Oprigting in den Jare 1575 tot het Jaar 1825* (Leiden: Luchtmans, 1829), 1: 385; Molhuysen, *Bronnen*, 7: 117, 7: 136–138, and 7: 149–154. The final meeting of the tribunal took place on 28 February 1811: Molhuysen, *Bronnen*, 7: 95*.

³³ Molhuysen, *Bronnen*, 7: 279 and 331.

³⁴ Molhuysen, *Bronnen*, 7: 297–302 and 328.

³⁵ Molhuysen, *Bronnen*, 7: 331.

³⁶ J. van Geuns, ‘Napoleon te Leyden’, *Vaderlandsche Letter-Oefeningen* 2 (1826): 523; Otterspeer, *Groepsportret*, 3: 219. Van Geuns is quoting from a period letter to his father and was present at Napoleon’s reception. A different version, no doubt tainted with *esprit d’esca-lier*, is found in the diary of Willem de Clercq, an entrepreneur, poet, and Réveil friend of

140 of the Organic Decree regarding education of 1815.³⁷ Less than a year later, van der Keessel died in Leiden on 7 August 1816.³⁸

MAJOR THEMES AND CONTRIBUTIONS

In the preface to his dissertation of 1761, van der Keessel mentions Cujas, Noodt, Bynkershoek, and Schulting with admiration, and names Scheltinga and Rücker in particular as his teachers. Both the subject and the methodology place him squarely within the ‘Dutch Elegant School’ of jurisprudence.³⁹ It is an erudite attempt to marry dogmatic interpretation with the textual reconstruction of classical Roman law, with little regard for practical relevance. A ‘modern’ argument from natural law or first principles is absent from the dissertation, although it surfaces in full in the accompanying theses, which breathe a spirit of natural theology perhaps surprising in the son of a Reformed church minister.⁴⁰ In light of this work, van der Keessel must have known that he was entering the proverbial hornet’s nest when he accepted a position at Groningen University in 1762.

Shortly before van der Keessel’s arrival, van der Marck had argued that local law should not be interpreted from Roman law but from first principles (1761) and that Roman law neither had, nor should have, subsidiary force of law (1761

Bilderdijk and Da Costa. Writing in 1822, he notes ‘Desire of Napoleon always to say something nasty to everyone. He tells the prof. at Leiden that all jurisprudence except for the Code Napoleon was foolish to which the old prof. Van der Keessel responded that he had always considered him a great man but now saw he was only a *breteur* [swashbuckler].’ Willem de Clercq, *Diaries*, diary entry 1822, from University of Amsterdam special collections, Ms. RA F IX, 9: 47.

³⁷ Organiek Besluit of 2 August 1815, *Staatsblad* 14. Van der Keessel was declared emeritus along with many others by a Royal Decree of 16 October 1815; see *Algemene Konst- en Letterbode* 45 (1815): 189. Siegenbeek, *Leidsche Hoogeschool*, 1: 428 is correct but De Wal, biographical notice to *Select Theses*, xix; van der Aa, *BWN*, 10: 87; and Boeles, ‘Levenschetsen’, 85 have the wrong year (1808).

³⁸ Boeles, ‘Levenschetsen’, 85 has the wrong date. Like many other Leiden professors of that period, van der Keessel was buried in the Old Graveyard at Katwijk. The grave has been cleared but a memorial stone bearing the university seal was placed at its approximate site in 2016. Korrie J. J. Korevaart, ‘Begraven in Katwijk. Frisse Lucht voor Leidse Leden van de Maatschappij’, *Nieuw Letterkundig Magazijn* 35.2 (2017): 1–5.

³⁹ Govaert C. J. J. van den Bergh, *Die Holländische Elegante Schule: Ein Beitrag zur Geschichte von Humanismus und Rechtswissenschaft in den Niederlanden 1500–1800* (Frankfurt: Klostermann, 2002).

⁴⁰ Theses VI–IX argue that humans are bound by natural law because it has been ordered by God to perfect the happiness of rational beings (thesis VI), which leads to the precept to love that which God loves (thesis VII), which in turns leads to the precept to not only cultivate piety and true religion, but also to surrender to each what is owed and increase human happiness (thesis VIII), which is only possible by working within and through human society (thesis IX).

and 1762) in Groningen or the neighbouring provinces. Building on his dissertation, van der Keessel (who had just turned 24) entered this debate with his inaugural lecture on 1 October 1762, on the question whether those parts of Roman law supposedly not in present use should still be taught at the universities – yes, was the answer.⁴¹ Unused parts of Roman law may still find use when the occasion arises, so the argument goes; universities should not merely educate for national service, but should keep foreign students and the colonies in mind too; and a full knowledge of Roman legal history sharpens the mind, serves as a repository for solutions, and aids the interpretation of other, received parts of Roman law. One example adduced by van der Keessel is the use of torture to extract confessions: if the Roman law of slavery had been studied more, he argues, it would have been realized that the Romans had restricted torture to the bodies of slaves, so that the institution should have disappeared in Europe together with slavery.⁴²

Conflict with van der Marck eventually became unavoidable.⁴³ It comes as no surprise that van der Keessel refused to join the learned society van der Marck had founded in 1761 for the furtherance of ‘national’ law, *Pro Excolendo jure patrio*.⁴⁴ In 1764, at the instigation of the rector Chevallier, a theologian, the Senate refused to allow a pupil of van der Marck’s by the name of Schukking to defend the proposition as part of his dissertation that Roman law had no force of law in the neighbouring province of Drenthe.⁴⁵ It was clear that the thesis had been drafted and approved by van der Marck, who protested

⁴¹ Dionysius G. van der Keessel, *Oratio Inauguralis, qua Disquiritur an Capita Illa Juris Romani Quae in Usu Hodie Non Esse Dicuntur in Academiis Doceri Expediat* (Groningen: Spandaw, 1762). Also see: review of *Oratio [...] an Capita Illa Juris Romani Quae in Usu Hodie Non Esse Dicuntur in Academiis Doceri Expediat*, by Dionysius G. van der Keessel, *Maandelyke Uittreksels of Boekzaal der Geleerde Waerelt* 96 (1763): 432–443; De Wal, biographical notice to *Select Theses*, xiii; De Blécourt, *Pro Excolendo*, 69–70.

⁴² Reviewing the oration, Luzac remarked that this particular example signalled that too much attention had been paid to history, not enough to natural law and philosophy. Elie Luzac, review of *Oratio [...] an Capita Illa Juris Romani Quae in Usu Hodie Non Esse Dicuntur in Academiis Doceri Expediat*, by Dionysius G. van der Keessel, *De Nederlandsche Letter-Courant* 99 (1762): 371–374. Beccaria’s well-known treatise dates from 1764 and appeared in Dutch translation in 1768. Van der Keessel may have returned to the topic at the end of his rectorate in 1769, in an address on ‘subjection or rather freedom through laws’, but it seems the oration has never been printed and no manuscript copy is known today: *Oratio de Legum Servitute Vera Libertate* (4 September 1769). Mentioned in *Bibliotheca Hagana Historico-Philologico-Theologica* 5.1 (1773): 666; Boeles, ‘Levenschetsen’, 85.

⁴³ Frederik A. van der Marck, *Waaragtig Verhaal van het Geene [...] Is Voorgevallen* (Lingen: Bauer, 1775), 6–15; De Wal, biographical notice to *Select Theses*, xiv–xv; Jansen, *Natuurrecht of Romeins Recht*, 206 *et seq.*

⁴⁴ De Blécourt, *Pro Excolendo*, 31 and 40; Lokin, *Groninger Faculteit*, 183. Van Poelgeest, ‘Voorda’, 113 is mistaken.

⁴⁵ Van Kuyk, ‘Keessel’, 3:817; Lokin, *Groninger Faculteit*, 180–181.

the rector's decision. The candidate agreed to withdraw the proposition, then published it anyway as an appendix, with a note stating the rector had forced him to withdraw it. The Senate was not amused and started court proceedings against Schukking, which eventually came to nothing. A year later, in 1765, a comparable incident occurred when another pupil of van der Marck's by the name of Hovingh defended a dissertation under van der Marck after it had been refused by his colleague Schröder, claiming that Roman law should not be applied in the courts of Groningen. Annoyed, van der Keessel responded with a long anonymous letter in print, arguing that the discussion was moot since as a matter of fact Roman law was applied, often providing superior solutions, while most rules of statutory or customary law had no basis in the precepts of natural law at all, and running through a wealth of examples.⁴⁶ Whatever its merits, the letter opens with an *ad hominem* attack on van der Marck. He is assumed to be the real author of Hovingh's dissertation because of the mudslinging it contains, at which no one in Groningen was as adept as van der Marck, to cover his complete lack of arguments. He had been ghost-writing dissertations 'for incompetent or time-wasting candidates'⁴⁷ to enhance his own stature, as if his ideas were gaining momentum.

The tone of the letter was lamented by a reviewer, who noted that even if the allegations were true, van der Marck had not attacked anyone the way this anonymous author had tried to do.⁴⁸ Of course van der Keessel's anonymous letter invited more pamphleteers to enter the arena in defence of van der Marck,⁴⁹ but its author did not respond any further. He left for Leiden instead. But he could not resist slinging a final barb at van der Marck from the safety of his new chair.

⁴⁶ [Dionysius G. van der Keessel], *Brief van een Groninger Rechtsgeleerde, over Zekere Dissertatie Onlangs te Groningen Uitgegeven Aangaande de Vrage, of 't met de Goede Staatkunde Overeenkome, in de Groninger Rechtbanken Vreemde, en Byzonder de Roomsche Wetten, te Gebruiken; Waar in de Argumenten door den Heere Prof. Van der Marck Bygebragt, Onpartydig Onderzocht, en Zedig Wederlegt Worden* (Groningen: Spandaw, 1765). The attribution to van der Keessel was doubted by De Wal, biographical notice to *Select Theses*, xv, but the rumour came on the authority of Tydeman and was canonized by Jan I. van Doorninck, *Vernomde en Naamloze Schrijvers Opgespoord op het Gebied der Nederlandsche en Vlaamsche Letteren* (Leiden: Brill, 1883), 1: 524.

⁴⁷ Van der Keessel had been annoyed with this phenomenon in any case. According to an anecdote reported by Tydeman, he dismissed an ignorant candidate from an examination, only for the candidate to receive his dissertation from another university two weeks later. See Johan Huizinga, *Verzamelde Werken* (Haarlem: Tjeenk Willink, 1951), 8: 51; Lokin, *Groninger Faculteit*, 195 fnt. 185.

⁴⁸ Review of *Brief van een Groninger rechtsgeleerde* [etc.], *Bibliothèque des Sciences et des Beaux Arts* 24.1 (1765): 280–282.

⁴⁹ Under pseudonyms such as 'Alethophilus Eleutherius' (Eilardus W. Uchtman) and 'Urbanus Hilarius'. De Blécourt, *Pro Excolendo*, 73–74.

On 12 March 1770, van der Keessel delivered his inaugural lecture at Leiden ‘on the wisdom of the Dutch lawmakers in receiving Roman law’.⁵⁰ He declares that the use of Roman law as a subsidiary system of law has come under attack from adepts of natural law, and that he is coming to its defence because he fears the consequences for legal practice. At most he will admit that natural law somehow informs equity, but it is inconstant and prone to arbitrariness while a great amount of certain positive law is necessary to order society. Local custom and statute contain so many omissions that a more extensive subsidiary system of law is indispensable. Natural law is too abstract and philosophical to be applied or understood by the people, and so either new laws should be promulgated, or recourse had to a system that has already produced written law in extenso – Roman law of course. Although new civil laws can be made, the task is exceedingly difficult and often leads to imperfections, as has happened in Prussia. It is also nearly impossible to unify the separate systems of the provinces of the Netherlands. And so the Dutch lawmakers are to be congratulated on their wisdom in appreciating the equity of Roman law, which contains solutions to all possible cases or at least the materials to arrive at one through interpretation. Van der Keessel then proceeds to clear away three objections. It is moot that Roman law is not in the vernacular: Latin is the scientific language, it can safely be translated, and laws will not be understood by an untrained readership no matter the language. It is also not pertinent that the interpretation of Roman law is not secure: that does not mean it is inconsistent, any more than the existence of discussion about the Bible or natural law proves these to be inconsistent. And finally, it is irrelevant that Roman law found its origin in a different political community: a large part is *ius gentium*, and what is particularly Roman is not based on the Roman constitutional order but on unchanging relations between people.

The period between 1783 and 1795 was marked by the collapse of the Dutch Republic as a result of the struggles between orangists and patriots, both backed by foreign powers. Within this period the future King William I, then prince William Frederic, was enrolled at Leiden in 1789–1790 for a one-year course in international law, political history, and private law to finish his education. The staunch orangists Kluit and Pestel would teach the first and second part; the third part was given to van der Keessel in spite of the

⁵⁰ Dionysius G. van der Keessel, *Oratio Inauguralis de Legislatorum Belgarum in Recipiendo Jure Romano Prudentia* (Leiden: Le Mair, 1770). Also see: review of *Oratio Inauguralis de Legislatorum Belgarum in Recipiendo Jure Romano Prudentia*, by Dionysius G. van der Keessel, *De Regtsgeleerde in Spectatoriale Vertogen* 4. 4 (1770): 81–98, De Blécourt, *Pro Excolendo*, 40.

misgivings of princess Wilhelmina, who ascribed to him a '*patriottisme voile*'.⁵¹ Van der Keessel had never voiced anti-orangist sentiments in public, and in fact had lauded stadtholder William V in his rectoral address of 1774 on instilling love of country, proclaiming that the office of hereditary stadtholder was the best way to unify the sovereign States and guarantee the wellbeing of all.⁵² Likewise, in his rectoral address of 1786 shortly before the patriot troubles, he had argued that the best way to restore peace to the Republic was to uphold the laws but with equity in mind.⁵³ He swore an orangist oath of loyalty in 1788 and was accused by Voorda, who refused to take this oath, of 'swerving patriotism' in consequence.⁵⁴ If anything, van der Keessel was politically rather middle of the road.⁵⁵ But the princess must have had in mind the affair of the summer of 1789 concerning the dissertation of J. J. Th. Duval. This pupil of the orangist Kluit had argued that the stadtholder had never originally been subject to the States. Van der Keessel disapproved the dissertation and tried to persuade Duval to withdraw it and obtain a doctorate on propositions instead. With the backing of Kluit, Duval refused and had the dissertation printed without faculty approval, which led to the faculty denying him the doctorate altogether, giving as its unofficial reason that he had attempted to undermine the accepted theory of the sovereignty of the States at the time of the foundation of the Dutch Republic. In the preface to his Latin 'dissertation' Duval blamed van der Keessel for the whole affair, who responded with a public *narratio* of events, supported by Pestel as dean of

⁵¹ Ben Beinart and Paul van Warmelo, 'Van der Keessel en de Studie van de Erfprins Willem Frederik, de Latere Koning Willem I, te Leiden 1789–1790', *Verslagen en Mededelingen van de Vereeniging tot Uitgaaf der Bronnen van het Oud-Vaderlandsche Recht* 14 (1974): 21–69; Otterspeer, *Groepsportret*, 3: 114.

⁵² Dionysius G. van der Keessel, *Oratio de Amore Patriae in Juventute Belgica Excitando Prudenterque Dirigendo* (Leiden: Le Mair, 1774). See Cornelis van Engelen, review of *Oratio de amore patriae [etc.]*, by Dionysius G. van der Keessel, *De Denker* 12 (1775): 121–136; review of *Oratio de amore patriae [etc.]*, by Dionysius G. van der Keessel, *Nederlandsche Bibliotheek* 3.1 (1775): 103–107.

⁵³ Dionysius G. van der Keessel, *Oratio de Aequitate Judicantium, Optimo Turbatae Reipublicae Remedio* (Leiden: Luchtmans, 1786).

⁵⁴ Van Poelgeest, 'Voorda', 117.

⁵⁵ After the regime change, van der Keessel (and Voorda) were required to swear another oath in 1797 to uphold the Batavian Republic. Voorda bluntly refused, van der Keessel took it with incomprehensible qualifications. See van Poelgeest, 'Voorda', 118–119. The text of the oath is in Molhuysen, *Bronnen*, 7:90–91: 'I declare the Batavian people to be a free and independent people and pledge to it my loyalty. I declare to have an immutable loathing of government by the stadtholder, federalism, aristocracy and anarchy. So I declare.' Van der Keessel wanted to have it noted that he was taking the oath 'as a declaration of his intended duty toward the fatherland'.

the faculty.⁵⁶ Van der Keessel argued half-heartedly that in refusing the dissertation he had wished to save the house of Orange from false friends, but in light of the tense mood after the orangist *restauration* of 1787, it comes as no surprise that anything less than staunch orangism was considered suspect. In any case, the prince had to attend van der Keessel's lectures under supervision.

The prince was fêted at Leiden. The Senate even attempted to impress him with the academic splendour attached to a promotion *more majorum*, for the first time in 15 years and at great cost to the candidate J. C. van der Kemp.⁵⁷ Van der Keessel served as promotor, which gave him the opportunity, in front of stadtholder William V and prince William Frederic, to expound his didactic programme in an oration on the effects of the study of civil law on the formation of good morals.⁵⁸ Unsurprisingly, some part of the oration is taken up with extolling the virtues of prince William Frederic as a student of law, and the remainder with the argument that the study of law grants a better understanding of both private virtue and public virtue, not by looking at particular rules but by understanding the underlying principles and causes, which are best grasped from Roman law. The study of law instils fear of God, love of good behaviour, and love of country next to the virtues of a good magistrate and the wisdom of a lawmaker. Whatever prince William Frederic made of all this, he seems not to have held any '*patriottisme voile*' against van der Keessel, to whom he granted an important chivalric order in 1815.⁵⁹

Van der Keessel served three terms of a year as rector of Leiden university.⁶⁰ As was customary, he ended each term with an oration delivered on the occasion of the *dies natalis* of the university. After the love of country in 1774 and the equitable judge in 1786, van der Keessel turned to the Christian advocate in 1792.⁶¹ Can such a thing exist? The advocate is occupied

⁵⁶ Johan J. Th. Duval, *De Vera Mente Foederis Traiectini circa Gubernatores Hollandia et Zelandiae* (Leiden: Koet, 1789); trans. *Over het Recht Verstand der Unie van Utrecht met Betrekking tot de Heeren Stadhouders van Holland en Zeeland* (Utrecht: Wild, 1790); Dionysius G. van der Keessel, *Narratio de Rebus a Se et a Facultate Juridica Gestis circa Nuper Evulgatam Dissertationem Joh. Jacob. Thom. Duval* (Leiden: Luchtmans, 1789).

⁵⁷ *Algemene Konst- en Letterbode* 96 (1790): 138–139; Siegenbeek, *Leidsche Hoogeschool*, 1: 325–326.

⁵⁸ Dionysius G. van der Keessel, *Oratio de Studio Juris Civilis ad Bonos Mores Formandos et Virtutem Colendam Aptissimo* (Leiden: Luchtmans, 1790). See De Wal, biographical notice to *Select Theses*, xviii.

⁵⁹ Van der Keessel was named knight in the Order of the Lion of the Netherlands on 18 November 1815. *Algemene Konst- en Letterbode* 49 (1815): 353.

⁶⁰ In 1805 and 1809 he refused to have his name added to the nomination, claiming bad health. Molhuysen, *Bronnen*, 7: 251 and 7: 339.

⁶¹ Dionysius G. van der Keessel, *Oratio de Advocato Christiano* (Leiden: Luchtmans, 1792).

with earthly matters, with the works of gentile jurists, with controversy in court (and not even his own), while the necessity of his office is not exactly apparent if judges dutifully adhere to the precept to hear both sides of an argument. But suits are brought daily and time-stressed judges find it difficult to be impartial, so that advocates are necessary to instruct the judge and ensure a fair hearing for their clients. Such a task is not unworthy of Christians and may be informed by Christian ethics, as van der Keessel then attempts to show. First he defines his terms. A Christian believes in God from natural reason, knows that he is fallen and cannot raise himself, but reads with gladness in revealed Scripture that he may be saved through Christ, who participated in human nature to fulfil the law; and for this reason he surrenders himself to Christ fully, to ponder his example and perform his work for the glory of God. It may be clear if unsurprising that van der Keessel is not straying an inch from the orthodoxy of the Dutch Reformed church.

From a different affair, it is equally clear that van der Keessel held no love at all for the new ‘natural theology’.⁶² In 1785 the German professor Johann Christoph Schwab, a follower of Wolff and Leibnitz, had been awarded first prize in the prestigious competition attached to the *legatum Stolpianum*⁶³ for an entry arguing that prejudice, ignorance, and blind faith in authority were the reasons Christian faith did not instil virtue in everyone. A year later, the dean of the faculty of theology, Broes, found it necessary to declare in public that none of the Leiden theologians had been involved in awarding the prize. Van der Keessel read Schwab’s work in 1787 and objected greatly to it.⁶⁴ It was built on a notion of intercultural natural religion rather than Scripturally revealed Christianity and completely glossed over the fundamental religious truth of salvation through grace, turning Christ into a moral teacher and the crucifixion into a moral example. Van der Keessel wanted the entire Senate to distance itself publicly from the work, much to the chagrin of the curators of the Stolpian legacy. But it seems that apart from Broes he stood relatively alone, and nothing happened.

Returning to his oration on the Christian advocate, van der Keessel next argued that since a large amount of law is necessary to order society, trained jurists are necessary to interpret these laws. A Christian jurist, then, feels

⁶² Otterspeer, *Groepsportret*, 3: 71–73.

⁶³ The alumnus Jan Stolp left a great amount of money to Leiden university in 1753 to institute a biennial prize of a gold medal worth fl. 250 for an essay in support of natural religion or moral philosophy, to be awarded by a committee of eight professors. Abraham J. van der Aa, ‘Stolp (Jan)’, in *Biographisch Woordenboek der Nederlanden* (Haarlem: Van Brederode, 1874), 17–2: 1021; Otterspeer, *Groepsportret*, 3:70.

⁶⁴ Molhuysen, *Bronnen*, 6: 304–306.

bound by justice, honesty, and Christian virtue to interpret and decide cases as if he were Divine justice itself, both in giving advice and taking up a case. He will not argue from uncertainty but, conforming to his oath, will take up neither cases that go against law nor those unapproved by law. Van der Keessel seems to attempt to set Christian advocates to a higher standard than others. He should not take up a case where the law is certain but the outcome uncertain because of difficulties of proof. Neither should he take up a case on the mere grounds that the law is uncertain, but should ask himself in good conscience whether he considers the case just. When it comes to a difference between strict law and equity though, the matter is different. Applied to the case of a creditor minority holding out against a creditor majority that wants to compromise with the debtor, a Christian advocate should not extend his office merely because it seems equitable to support the majority – because what is equitable varies with the persons, facts, and qualities from case to case, and so support of the strict law should take pride of place whenever there is any doubt, just to be sure.

The orator then gets into full reactionary swing.⁶⁵ Tax evaders do not deserve advocacy because they steal from the common good, and one should render to Caesar what is owed. In criminal law, no advocate should take up the case of a criminal whom he knows to be guilty. ‘I am not unaware of the voices crying that it is better to leave a wrongdoer unpunished, than to condemn the innocent. But all these things do not move me from this opinion.’ If a judge has to condemn once the crime has been established, then this is all the more true for an advocate bound by law, by oath, and by conscience. An advocate defending someone he knows to be guilty is himself guilty of furthering new crimes. In consequence, he should not petition for a pardon for convicted criminals, because the common good requires them to be punished. Turning from defence advocacy to bringing suit, the Christian advocate should realize that a right that can be claimed in court does not equate to a just cause; as in his private life, he should take piety and charity to heart. In separation proceedings, for instance, he should not take any case before describing the full horrors of separation and appeal to his client’s conscience and sense of morality. In matters of *iniuria*, clients should be dissuaded and court is the last resort, and in fact, the true Christian advocate will counsel against all litigation and first attempt to compromise the matter before arbiters. Should the just cause ever go to court though, then the

⁶⁵ De Wal, biographical notice to *Select Theses*, xvii: ‘The picture of the true Christian, sketched in the first part of this work, is not wanting in vivacity; but the examples by which he, in the second, explains the duties of Christian advocates are perhaps less justly chosen’.

Christian advocate is well advised to be unafraid, steadfast and quick, diligent, and lofty in spirit, certain of himself and the support of the laws, wary of his opponent, etc. If he takes this advice to heart, then confirmed and aided by God's grace, the advocate may look back on a life well spent, knowing that as an instrument of grace he has aided the miserable, established the force of law, and been most useful to human society. It must be said: the peroration is as gratuitous as the advocate's pay (*gratuitam operam*).

Van der Keessel's final rectoral address was not received well. An anonymous reviewer⁶⁶ paid it a backhanded compliment: 'although not providing a specimen of eloquence, it presents the duties of a good and honest advocate with good intentions and meticulousness'.⁶⁷ The reviewer objected more to the title, arguing that what was presented was in fact a deontology of honest lawyers in general, 'be they Christian, Jew, or Muslim', which could not be used to distinguish Christian advocates. 'In the entire oration on the Christian advocate, one will fruitlessly search for such a [Christian] duty, that is not inseparable from any honest advocate with every people, no matter their religion, that know the office of advocates'.⁶⁸ Moreover, in as far as the professor argued that advocates should not take cases 'against the law, nor unapproved by law', he was letting his oratory run away with him, at least if that meant he would deny fellow citizens advocacy when pursued for an act not forbidden by any explicit law. Where there is no law, there is no transgression (Rom. 4:15). In van der Keessel's discussion of strict law versus equity, the reviewer was hard pressed to find any trace of Christian charity; and in prohibiting an advocate from petitioning for a reprieve, he was not only trying to think for a sovereign government that was very capable of thinking for itself, but also displaying a marked lack of Christian forgiveness. Should not van der Keessel's Dutch Reformed Christian advocate, of all people, realize that he himself was only saved from certain ruin by grace, and then recognize the same condition in an unfortunate criminal? 'The professor', so the reviewer concluded, 'seems to us somewhat too precise. Exaggerated ethics bring

⁶⁶ Possibly the lawyer and historian Jacobus Scheltema (1767–1835), a sympathizer of the Patriot party who often contributed to the *Algemene Konst- en Letterbode*. Following the Prussian intervention of 1787, Scheltema went into exile in Steinfurt and befriended F. A. van der Marck there.

⁶⁷ Review of *Oratio de Advocato Christiano*, by Dionysius G. van der Keessel, *Algemene Konst- en Letterbode* 199 (1792): 124–125 and 200 (1792): 133–135 (quote at 124); also see Bernard H. D. Hermesdorf, *Licht en Schaduw in de Advocatuur der Lage Landen* (Leiden: Brill, 1951), 124–126.

⁶⁸ At 124. Also see review of *Oratio de Advocato Christiano*, by Dionysius G. van der Keessel, *Vaderlandsche Bibliotheek van Wetenschap, Kunst en Smaak* 5.1 (1793): 72–73.

prejudice to true virtue by their weak grounds, and often give reason to cast aside the one with the other.’⁶⁹

Fortunately, van der Keessel usually tempered his tone a little when addressing his students at the beginning or end of his lecture series. A collection of those addresses has survived.⁷⁰ ‘Throughout they are filled with an almost feigned humility, with deep religious faith, and with respect and love for his students for which he seemed to yearn in return’, as editor of the addresses, Beinart, notes.⁷¹ In particular in an address dated 1773, after considering that nothing is grander than the glory derived from his pupils, he offers them the advice he claims he has given many times before: namely to appreciate the burden that is entrusted to their good faith, wisdom, and integrity as judge or advocate. They are called to a path of justice, to defend only just causes and never vile acts, never to take money for service against a just cause, not to look for affection or favour, so that they may claim to have acted with justice when the time of judgement comes at the end of their life.⁷² In 1807, following the gunpowder disaster at Leiden, he grieved with his students and reminded them all life and fortune is in the hands of God.⁷³ This far more traditional piety may have resonated more with his students than the strangely stern and unforgiving words he spoke as rector in 1792.

Van der Keessel taught public and private courses in criminal law from 1771 until at least 1809.⁷⁴ His autographed manuscript of the lectures is dated 1780 but the many copies made by pupils show that he updated his course several times, and more often toward the end of his life to keep abreast of developments in the draft, revised draft, and eventually the promulgated version of the Criminal Code for the Kingdom of Holland of 1809.⁷⁵ For the greater part, his course consisted of a vastly expanded commentary on the *Principia* of van Eck, a synoptic Digest commentary from which van der Keessel lifted the part on books 47 and 48 of the Digest, the *libri terribiles* dealing with crime and punishment. Van Eck’s *Principia* were widely used in teaching, running

⁶⁹ At 135.

⁷⁰ Published and translated in Beinart, ‘Addresses’, 1–37.

⁷¹ Beinart, ‘Addresses’, 8.

⁷² Beinart, ‘Addresses’, 14–15.

⁷³ Beinart, ‘Addresses’, 36–37.

⁷⁴ Beinart and van Warmelo, preface to *Praelectiones*, xix. They refer to the series of 1772 (nt. 5) but the series of September 1771 already has van der Keessel teaching on book 48 of the Digest, see Molhuysen, *Bronnen*, 6:15*–16*.

⁷⁵ Paul van Warmelo, ‘Van der Keessel en Beccaria’, *Legal History Review* 35 (1967): 574; Beinart and van Warmelo, preface to *Praelectiones*, xxi–xxii.

through seven editions between 1689 and 1784.⁷⁶ It is a curious book, containing a summary of the Digest with a wealth of further references to parallel texts, writers, Scripture, and even canon law, strung together as if each carries the same authority. Van der Keessel's method is to follow the very brief text of van Eck with extensive discussion of Roman history and institutions, bringing the references up to date with some recent literature.⁷⁷ With the noticeable exceptions of torture and the death penalty, he is more interested in the historical background and systematic construction of Roman law than in the philosophy, politics, or even practice of 'modern' criminal law.⁷⁸

Van Eck's text provides plenty of opportunity for reflecting on the relation between criminal law and divine law. Yet none of that appears in van der Keessel's lecture notes. More often than not, he completely glosses over van Eck's references to discuss Roman law instead. To give examples: punishment for acts or intentions, theft from necessity, slaying a thief in self-defence at night, *talio* and money punishments, abortion, intimate relations with housemaids, irrelevance of the moment of death for murder, witchcraft, visits to astrologers, violence against parents, kidnapping, public acquittal, and the treatment of the bodies of executed criminals are all subjects for which van Eck refers to Scripture but which van der Keessel treats solely on the basis of Roman law.⁷⁹ As is understandable in a Roman–Dutch Protestant author, canon law is hardly mentioned either. Its stance on the penalty for defloration belongs to received law, though later interpretation has shifted it from its true intent.⁸⁰ Likewise, its rule on elopement with a betrothed differs from Roman law because of a different appreciation of the betrothal in both systems.⁸¹ Simony is treated in the context of Pertschius's 1719 dissertation on the matter: Protestants should not draw too many conclusions from canon law since it assumes the crime to be related to apostolic succession, but from a Protestant viewpoint, though still grave, simony merely means to solicit ecclesiastical office through payment.⁸² The canon law stance on usury, kissing another

⁷⁶ Cornelis van Eck, *Principia Juris Civilis secundum Ordinem Digestorum in Usum Domesticarum Scholarum seu Collegiorum, Quae Vocant, Vulgate et in Duas Partes Divisa* (Franeker: Gijsselaar, 1689). See Margreet J. A. M. Ahsmann, *Bibliografie van Hoogleraren in de Rechten aan de Utrechtse Universiteit tot 1811* (Amsterdam: North Holland, 1993), 73–74.

⁷⁷ Beinart and van Warmelo, preface to *Praelectiones*, xxv.

⁷⁸ Krikke and Faber, 'Van der Keessel', 188.

⁷⁹ Van der Keessel, *Praelectiones in Libros 47 et 48*, 1:4, 1:74, 1:116, 1:294, 1:340, 2:790, 3:1084, 3:1090, 3:1138, 3:1150, 3:1286, 4:1642, 4:1690, 6:2426–2428.

⁸⁰ Van der Keessel, *Praelectiones in Libros 47 et 48*, 2:822–828.

⁸¹ Van der Keessel, *Praelectiones in Libros 47 et 48*, 2:890.

⁸² Van der Keessel, *Praelectiones in Libros 47 et 48*, 4:1620.

man's wife, inferred adultery, and bestiality are referred to in passing.⁸³ That seems to be the full of it.

As a matter of fact, in 1,370 quarto pages of lecture notes, van der Keessel employs a verbatim Bible quotation only twice.⁸⁴ The first concerns Genesis 9:6, to which van der Keessel refers with supporting Scripture and modern writers for his statement that all murderers (not homicides) should be punished with death, and that not even a sovereign may grant a reprieve, as he is also bound by divine law except for pressing reasons of state. Modern writers like Thomasius are mistaken when they want to read this passage as prophecy instead of law. It is law, and although the Mosaic law has no authority in a Dutch court, it may be used to supplement the gaps in Dutch and Roman law.⁸⁵ The second Bible quotation falls in a prolonged discussion of the arguments for and against the use of torture in the criminal law of evidence.⁸⁶ It may be remembered that some of van der Keessel's interest in criminal law already appeared in his inaugural lecture in Groningen of 1762, when he stated that torture should have been abandoned when slavery fell into disuse. In his later lectures he qualifies that statement to the extent of turning it around completely. Now that torture belongs to received Roman law, it should certainly be maintained.⁸⁷ One of the many arguments against torture has been that it has no basis in Scripture, but others have argued that this silence implies tacit approval of the institution, and Leyser even draws an argument from Matthew 18:34–35 (quoted) arguing that the Greek refers to torturers instead of jailers. But van der Keessel will not weigh one quotation from Scripture against another.⁸⁸ One may wonder whether a Christian judge may give an accused over to torture, but that path leads nowhere since judges are slaves to the law (quoting Cicero) and cannot rule on its equity, but should excuse themselves from office if they feel moral compunction – *lex dura sed lex*.⁸⁹ It appears that van der Keessel turns to Scripture purely for those issues,

⁸³ Van der Keessel, *Praelectiones in Libros 47 et 48*, 1:500; 2:758 fnt. 11 (Ms. DE), 2:806, 2:862.

⁸⁴ Gen. 9:6: 'Whoever sheds human blood, by humans shall their blood be shed; for in the image of God has God made mankind', quoted in *Praelectiones in Libros 47 et 48*, 3:994. Matth. 18:34–35: 'In anger his master handed him over to the jailers to be tortured, until he should pay back all he owed. This is how my heavenly Father will treat each of you unless you forgive your brother or sister from your heart', quoted in *Praelectiones in Libros 47 et 48*, 5:1750.

⁸⁵ Van der Keessel, *Praelectiones in Libros 47 et 48*, 3:994–996 and fnt. 70a (Ms. DE, addition before 1792).

⁸⁶ Van der Keessel, *Praelectiones in Libros 47 et 48*, 5:1742–1778.

⁸⁷ Van der Keessel, *Praelectiones in Libros 47 et 48*, 5:1774–1778. See Van Warmelo, 'Van der Keessel en Beccaria', 574–580.

⁸⁸ Van der Keessel, *Praelectiones in Libros 47 et 48*, 5:1746 and 1750.

⁸⁹ Van der Keessel, *Praelectiones in Libros 47 et 48*, 5:1752.

the death penalty and the use of torture, that had been singled out for reform by Enlightenment thought, but largely left divine law out elsewhere.

The conclusion is warranted that in the thought of van der Keessel, divine law held little to no relevance to the practice of criminal law, but could be used to buttress a traditional position against the attacks of Enlightenment philosophers. Again, van der Keessel proves himself to be a lawyer and not a philosopher or a theologian. It is precisely from this standpoint that he attacks Beccaria: not only on these two issues of torture and the death penalty,⁹⁰ but more in general – '[Beccaria] not being an adequate legal expert, but one who seeks distinction in philosophy, has been able in the atmosphere of the present century to choose no more suitable road for earning glory than audaciously to criticize and to deprecate the criminal laws which have been received to date among most nations of Europe', van der Keessel notes in the 1783 preface to his lectures.⁹¹ *Philosophia simulata* is placed against *studio legum*, those who cogitate reform against those who wisely interpret received law – that is to say the law of Rome. One must say that van der Keessel has been remarkably consistent in developing the programme he had sketched in his Leiden inaugural lecture of 1770.

GENERAL APPRAISAL AND INFLUENCE

With good reason, van der Keessel is often referred to as the last great exponent of Roman–Dutch law. His only rival for the title is the Amsterdam advocate Joannes van der Linden, who was a pupil of van der Keessel.⁹² He did not publish much during his lifetime but has had an enduring influence through his students, who preserved lecture notes amounting to thousands of pages, edited and published half a century ago through the indefatigable work of the South African professors Beinart and van Warmelo. These lecture notes provide a final statement of Roman–Dutch private and criminal law on the eve of national codification. In his professorial career of over fifty years, van der Keessel lived through political upheavals that gave rise to six different regimes in twenty years. He often took

⁹⁰ See Van Warmelo, 'Van der Keessel en Beccaria', 573–583.

⁹¹ Van der Keessel, *Praelectiones in Libros 47 et 48*, 1:lii (trans. Beinart and Van Warmelo at liii).

⁹² Maarten W. van Boven, 'Linden, Joannes van der', in *Biografisch Woordenboek van Nederland 1780–1830*, Huygens Instituut, <http://resources.huygens.knaw.nl/bwn1780-1830/lemmata/data/Linden> [04–07–2018]; Janwillem Oosterhuis, 'Joannes van der Linden, Regtsgeleerd, Practicaal en Koopmans Handboek, 1806', in *Juristen die Schreven en Blevten. Nederlandstalige Rechtsgeleerde Klassiekers*, ed. Georges G. G. M. M. Martyn, Louis A. M. J. A. Berkvens, and Paul Brood (Hilversum: Verloren, 2020), 84–88. Van der Keessel thanks van der Linden in the preface of the *Theses Selectae* for preparing the registers.

a principled position in favour of a practical application of ‘technical’ Roman law and against philosophical Enlightenment thought that wished to sweep it away and replace it with natural law.

On Tuesdays, van der Keessel taught a private lecture series from his home on the Rapenburg for most of his working life. Among the prized pupils he invited to this disputation course were many of the future leaders of the Dutch Réveil movement of the early nineteenth century. He taught the polymath Willem Bilderdijk,⁹³ his later colleague as professor Hendrik Willem Tydeman,⁹⁴ the advocate and politician Maurits Cornelis van Hall,⁹⁵ and a generation later the poet Isaïc da Costa (who composed an epitaph for van der Keessel).⁹⁶ What connects these lawyers, writers, and poets is a common theme of orthodox Protestant, counter-revolutionary, conservative romanticism. A specific ideological influence cannot be established, but the question warrants further investigation as to how much the Dutch Réveil movement, or Bilderdijk as its central figure at least, was influenced by van der Keessel (and Pestel for that matter).⁹⁷ Bilderdijk’s lecture notes from 1781, which he kept his whole life, show that the seminars concerned technical cases of private law that had to be analyzed and argued.⁹⁸ Even so, Tydeman considered van der Keessel’s approach to Roman law to form a ‘school’ that was in conflict with the ideas about natural law promoted by the Amsterdam professor Hendrik Cras and by Seerp Gratama, van der Marck’s successor to the chair in Groningen.⁹⁹ And when Bilderdijk asked Tydeman whether any real ‘civilists’ still existed apart from van der Keessel, Tydeman referred him to

⁹³ Heleen C. Gall, ‘Bilderdijk en Van der Keessel’, *Het Bilderdijk-Museum* 1 (1984): 2–6; Heleen C. Gall, *Willem Bilderdijk en het Privatissimum van Professor D. G. van der Keessel* (Leiden: Jongbloed, 1986).

⁹⁴ Johan W. Tydeman, ‘Levensberigt van Mr. Hendrik Willem Tydeman’, *Handelingen Maatschappij der Nederlandsche Letterkunde* 2 (1863): 407 (‘his best and most advanced disciples attended the disputation course’). Van der Keessel figures prominently in the correspondence between H. W. Tydeman and Bilderdijk.

⁹⁵ Gall, ‘Bilderdijk en Van der Keessel’, 3.

⁹⁶ Isaïc da Costa, *Da Costa’s Kompletee Dichtwerken* (Haarlem: Kruseman, 1861), 1: 343.

⁹⁷ Already desired by Allard Pierson, ‘Dr. Kollewijns Bilderdijk’, in *Uit de Verspreide Geschriften van A. Pierson Verschenen in 1889–1895* (The Hague: Nijhoff, 1902), 1, 2: 122–123. Samuel Iperusz. Wiselius probably was a pupil of van der Keessel too, considering his dissertation *Tractatus Academicus Inauguralis de Successionibus Hollandorum* (Leiden: Mostert, 1790).

⁹⁸ Gall, ‘Bilderdijk en Van der Keessel’, 3–4.

⁹⁹ Hendrik W. T. Tydeman, *Briefwisseling van Mr. W. Bilderdijk met de Hoogleraren en Mrs. M. en H. W. Tydeman Gedurende de Jaren 1807 tot 1831* (Sneek: Van Druuten, 1866), 1: 233 (21 May 1810); De Wal, biographical notice to *Select Theses*, xvi–xvii. Gratama would later become one of Tydeman’s and Bilderdijk’s fiercest opponents: Lokin, *Groninger Faculteit*, 236–242. Also compare Isaïc da Costa, *Bezwaren tegen den Geest der Eeuw* (Leiden: Herdingh, 1823), 42–43.

Thibaut and Savigny (with whom he was in correspondence) and a select few others in the Netherlands, two of whom also were pupils of van der Keessel.¹⁰⁰

Van der Keessel's professional life was marked from the first to the last by the debate about the relative merits and position of Roman law and natural law. His way out of this morass was to attempt to develop the *ius hodiernum* of Holland systematically on the largely Romanist basis of Grotius's *Introduction to Dutch Jurisprudence*.¹⁰¹ Regime change brought a new order and would bring codified laws, as he foresaw in the 1800 preface to the *Theses selectae*. His students were not to worry, he told them, because Grotius and the law of Holland would remain a major influence on any codification project, and (unlike his well-prepared students) those involved would have a bitter time wedding Roman law and Dutch law to modern practice.¹⁰² Codified laws did come, but in a different form than imagined and with a heavier influence of French law. Van der Keessel's project could still be salvaged though, considering that the Napoleonic codes were to be adapted to local Dutch customs and legal traditions following the intercession of Louis Napoleon. For the drafts of the Commercial Code and Civil Code this task fell to his pupil Joannes van der Linden. In the case of the Criminal Code, the drafting committee was led by J. E. Reuvens, another pupil, while C. F. van Maanen, yet another pupil, was largely responsible for its final draft and implementation.¹⁰³ Even if van der Keessel's direct influence is not traceable and he may have disliked the entire idea and project of codification,¹⁰⁴ there was good reason to think the *ius hodiernum* would enter the codes and could play a part in providing a systematic framework for interpretation. But the Kingdom of Holland was short-lived and its adapted Napoleonic codes were

¹⁰⁰ Tydeman, *Briefwisseling*, 2:52 (29 April 1815) and 2:64–65 (26 May 1815). One is Albertus Jacobus Duymaer van Twist, professor of Roman law and the new '*ius gallicum*' at Groningen. Lokin, *Groninger Faculteit*, 246–247. The other is Angelus Jacobus Cuperus, van der Keessel's nephew and heir to half his estate, who was close to receiving a chair in natural law at Leiden in 1796. See Eduard van Biema, 'Cuperus (Angelus Jacobus)', in *Nieuw Nederlandsch Biografisch Woordenboek*, ed. Petrus J. Blok and Philipp C. Molhuysen (Leiden: Sijthoff, 1914), 1: 660–661; Krikke and Faber, 'Van der Keessel', 186–187; Otterspeer, *Groepsportret*, 3: 88. Maurits C. van Hall, *Ter Nagedachtenis van Mr. Angelus Jacobus Cuperus* (Amsterdam: Gartman, 1831), 8–12 notes that Thibaut had Cuperus's 1789 dissertation on the nature of possession translated and printed in 1804, and that Savigny praised it highly. See Friedrich C. von Savigny, *Das Recht des Besitzes* (Giessen: Heyer, 1803), xxviii–xxx. According to Tydeman's letter, however, some part of the dissertation had been ghost-written by van der Keessel.

¹⁰¹ Beinart, 'Addresses', 32–33.

¹⁰² Beinart, 'Addresses', 24–27.

¹⁰³ Beinart and van Warmelo, preface to *Praelectiones*, xxiii–xxiv.

¹⁰⁴ Beinart and van Warmelo, preface to *Praelectiones*, xxiii.

replaced by unmistakably foreign, French codifications. It would seem that once Napoleon came to Leiden in 1811, van der Keessel and the Roman–Dutch *ius hodiernum* indeed had little more to say.

One option was to doggedly pretend that nothing had happened. Following the abolition of torture in 1798, an unconvinced van der Keessel reduced his discussion of it from thirty pages of lecture notes to five, but still kept arguing its efficacy.¹⁰⁵ In a letter of 1809, Tydeman asks Bilderdijk whether he thinks the new Codes should influence the teaching of Roman law, or should the lectures continue, ‘just as good old van der Keessel keeps teaching criminal law on the basis of van Eck’s Terrible Books, in spite of all the new philosophy?’¹⁰⁶ Again, in 1814, having given up the full two-year course on Grotius and the *ius hodiernum*, van der Keessel taught the law of bills of exchange instead, but still on the basis of Grotius instead of the Code de Commerce.¹⁰⁷ This behaviour may be considered an ostrich strategy by an elderly professor who loathed change, but the ostrich is also the emblematic bird of lady Justice, believed to be able to digest even the hardest materials over time. The victory of codified law over van der Keessel’s *ius hodiernum*, understood as a layered order of statute and custom infused with principles derived from Roman law, was neither as immediate nor as total as it would perhaps seem.

First, a large part of codified law followed Roman law, as was apparent from every published draft.¹⁰⁸ Next, article 63 of the Organic Decree of 1815 placed courses on the Institutes, the Digests, natural law, public law, contemporary private law, and contemporary criminal law on the curriculum, leading to a doctorate in Roman law and contemporary law under article 85, with a little more weight placed on the Digests in final examinations. Third, since most practising lawyers and judges had been trained in Roman law and the *ius hodiernum*, and the French codes were initially considered to be a fleeting state of affairs, Roman–Dutch law carried great weight in the courts and would continue to do so until a generation or two had passed.¹⁰⁹ It was not until 1838 that a Dutch Civil Code and Commercial Code gained force of law, and not until 1886 that a Dutch

¹⁰⁵ Van Warmelo, ‘Van der Keessel en Beccaria’, 575; van der Keessel, *Praelectiones in Libros 47 et 48*, 5:1780–1783.

¹⁰⁶ Tydeman, *Briefwisseling*, 1:137 (14 June 1809).

¹⁰⁷ Beinart, ‘Addresses’, 30–33.

¹⁰⁸ Already noted by van der Keessel in a post-1804 addition to his preface of 1783, *Praelectiones in Libros 47 et 48*, 1: lvi–lvii.

¹⁰⁹ Eduard M. Meijers, ‘Rede van prof. mr. E. M. Meijers’, in *Herdenking Honderdjarige Burgerlijke Wetgeving 1838–1938* (Zwolle: Tjeenk Willink, 1939), 18; Hendrik Kooiker, *Lex Scripta Abrogata. De Derde Renaissance van het Romeinse recht. Een Onderzoek naar de*

Criminal Code came into being to replace the patched-up Napoleonic code. It turns out that although he lost some battles, van der Keessel eventually and unwittingly won his war to found the private law and criminal law of the early nineteenth century on Roman–Dutch law instead of natural law. He did so by arguing not from theology or philosophy, but from received law. His reasons are his own, but his traditionalist, orthodox Dutch Reformed church outlook reveals itself everywhere. Much like the Dutch Réveil of the 1820s, centred around so many of his pupils, for a short while this orthodox Christian, Romanist and romantic, conservative, and even reactionary professor had history on his side.

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