

Legal humanism and the renewal of jurisprudence

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The humanist movement transformed the study of law. The medieval jurists had studied Roman law through the glosses and commentaries accumulated since the twelfth century. They applied it to the problems of their time with a method that paid little attention to the historical context of the texts. The humanist jurists, beginning with the Italian Andrea Alciato and the French Guillaume Budé, sought to recover the original texts of Roman law, to understand them in their historical and philological context and to purify them from the accretions of medieval interpretation. This movement, known as legal humanism or the *mos gallicus*, the French method, found supporters in Basel and in the neighbouring Freiburg, where Ulrich Zasius taught.¹

Bonifacius Amerbach, who had studied with Zasius in Freiburg and with Alciato in Avignon, became the leading legal humanist of Basel. As professor of Roman law, city lawyer and adviser to the council, he combined the humanist approach to the texts with the practical needs of the city. His legal opinions, which he gave on many questions of public and private law, show a jurist who used the learning of the humanists to solve concrete problems. One of these problems was the question of interest, which the Reformation had reopened. Amerbach wrote opinions on the lawfulness of interest and annuities that Chapter IV examines.

The legacy of legal humanism can be seen in the Swiss legal tradition, which combines respect for the text with attention to its purpose and context. The Swiss Civil Code of 1907 famously directs the judge, where the law provides no rule, to decide according to the rule he would establish as legislator.² This provision, which is admired by comparative lawyers throughout the world, expresses a confidence in the reasoning of the judge that has its roots in the humanist tradition of understanding the law as a rational order.

1 Notes

1. On legal humanism (*mos gallicus*) and its representatives Alciato, Budé and Zasius, and its reception in Basel through Bonifacius Amerbach, see the literature on the history of legal science. To be verified. ↩
2. Art. 1 para. 2 Swiss Civil Code (SR 210): in the absence of a provision, the court shall decide in accordance with customary law and, in the absence of customary law, in accordance with the rule that it would make as legislator. ↩

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