

# Bovigus – Revisiting a Legal Discovery

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In 1838 a German law professor discovered an animal that biology has never heard of. His feat was acknowledged as being one of history's boldest examples of legal reasoning, but ill feelings on the part of more established colleagues prevented its positive reception. The professor went on to become one of the most renowned legal scholars of his day, but his discovery fell into oblivion. Now it is time to revisit and extend this research.

## Introduction

**The Journal of Irreproducible Results** publishes the most stunning findings from all sciences, but rarely ever from the legal domain – despite the notorious curiosity, creativity, and confidence of legal scholars. After all, which discipline creates irreproducible results at a greater rate and with greater zeal? **Lawyers regularly come up with stuff that common sense cannot reproduce**, and scientists of other provenance surely have a keen interest in so powerful a methodology.

German lawyers are particularly famous for their rigid methods of reasoning, which result partly from semantic theory, and partly from historical experience. 19<sup>th</sup> century German jurists were yet surrounded by the aura of polymaths, and their inquisitive creativity sometimes even enticed them to challenge the real world on the grounds of their legal world view.<sup>1</sup> Indeed so mythical an age it was that reality had better feared the onslaught of legal argument, lest in the process it be redefined past all recognition.

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<sup>1</sup> As opposed to the so-called natural fallacy, we may call that a normative fallacy (cf. T.D. Campbell 1970).

Take the case of the German scholar Philipp Eduard Huschke of Breslau. He would become one of the most influential German law professors of the early 19<sup>th</sup> Century when in 1838 he revealed an astonishing truth about nature, of which the nascent natural sciences were absolutely unaware. Aged only 37 at the time, he accomplished a yet-unequaled acrobatic feat on the high bar of legal reasoning, the “forever most daring work of erudite legal constructivism” (Fuchs 1965): He discovered the bovigus.

## The Discovery

What is a bovigus? The following description is taken part and parcel from Huschke's book *The constitution of King Servius Tullius as a basis for Roman constitutional history* (1838):<sup>2</sup> The bovigus is an animal that has become extinct. It was “the most savvy of all beasts of the field, therefore must have had 4 feet”. Its closest surviving kin is the goat with “its own special vividness and sharp sight”. Its name reflects its purpose, namely to help humans plow their fields by driving the bull (Latin *bovem agere*). To that end, bovigus had a trunk and tusks resembling those of the elephant. In Roman trade, the bovigus would have been worth 75 monkeys.

The bovigus became extinct with the advent of humankind, but unlike other animals wiped out by man, it only had itself to blame. For it was the exact same animal that abused its powers “by lending them to its presumed

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<sup>2</sup> Unless indicated otherwise, any quotations in this paper are my translation from passages of chapter 5 (pp. 245) in Huschke's book, which can be freely accessed at [books.google.com](http://books.google.com).

counterpart in the world of spirits, the fallen creature” to tempt Eve to the Fall of Man! Consequently, the bovigus was turned into a serpent “by the Master and Censor of creation, thereby depriving it of its dignity among animals [...] and in effect condemning mankind to work the land with sorrow and arduous manual labour”.<sup>3</sup>

Huschke did not reveal how many specimens of the bovigus breed had existed, but he mentioned the female variant *boviga*, so there seem to have been at least 2 *bovigi*.

## The Methodology

Biologists, paleontologists, and theologians are thunderstruck. How could Huschke reconstruct so much lost knowledge? Easy: By audacious legal inference. Huschke had studied the political work of the sixth king of ancient Rome (578-535 BCE), a man by the name of Servius Tullius. Under his rule, Roman society had been divided into 5 castes. Huschke began to muse: Had not the human hand also 5 fingers? In all the elegance of legal conceit, he extrapolated a simple conjecture: “The spirit or universal nature of man produces unity from 5 categories”.

Why then did Roman law only mention 4 animals – namely horse, ass, mule, and bull – whose sale required the vendor to undergo a special alienation ritual (*mancipatio*)? If the “universal spirit” always united 5 entities, one animal must have gone missing. Huschke was intrigued, and set out on a systematic quest. There are, he figured, only 2 activities “that embody the universal nature of man [... namely] ordinary movement and poaching up the earth by own means, i.e. digging.” Since humans “are of such noble spirit [...] that they can never submit to the physical world, but can only rule and be served by it”, they are provided with animals “which are but reflections of certain aspects of the tangible human nature, having come alive as animate physical beings”. So, Huschke concluded, there must be animals that

relieve man from both moving – which he subclassified into moving people (walking), moving things (carrying) and moving both people and things (traveling) – and digging.

Now it is easy to see that walking is reflected in the horse, carrying in the ass, and traveling in the mule, whereas the bull “by the testimony of nature and all political peoples” is an emanation of digging. But the bull alone does not suffice, for someone has to “walk alongside, drive the bulls and manually steer the plough [...] but this again is physical movement, which man in his universal nature must be relieved from.” Huschke’s conclusion is beautifully inevitable: “Another animal is therefore required in order for creation, as it emerged from God’s hand, to not be incomplete.” Enter the bovigus.<sup>4</sup>

## Critical Reception

Already before his ground-breaking discovery, Huschke had suffered rejection on the part of his famous colleague Friedrich Carl von Savigny, being labeled an “enthusiast dreamer” who “in his religious agitation” asserts “an even better understanding of the deep significance of historical phenomena than God almighty himself” (Savigny 1837). That was in the first half of the 19<sup>th</sup> Century.

In the second, another jurist as famous as Savigny also had a word on the matter: Rudolf von Jhering. Just like Savigny, Jhering grudging Huschke his brilliant discovery and repeatedly derided his research (cf. Jhering 1858, Jhering 1884). The scorn of his colleagues seems to even have influenced the obituary that characterized the late Huschke as a “highly gifted and eminent” scientist, albeit a “quite queer” one whose “vivid imagination” tempted him to “often draw more than daring conclusions” (Schirmer 1886). Consequently, Huschke’s discovery fell into oblivion, to be resurrected only occasionally as a cautionary tale of “bovigus, bovigism, and genuine legal science” (Fuchs 1916).

We may appreciate that the fate of Huschke was tragic in the classical sense: renowned as an “earnest worker” who “unrestrainedly and

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<sup>3</sup> See the similar description in the King James Bible: “[Gen. 3:14] And the Lord God said unto the serpent, Because thou hast done this, thou art cursed above all cattle, and above every beast of the field; upon thy belly shalt thou go, and dust shalt thou eat all the days of thy life. [Gen. 3:17] And unto Adam he said, [...] cursed is the ground for thy sake; in sorrow shalt thou eat of it all the days of thy life”.

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<sup>4</sup> The precise characterisation of the bovigus as resembling the goat, having trunk and tusks and being valued at 75 monkeys then followed from other feats of legal wizardry laced with plain conjecture, which herein we shall not bother with.

full of honesty and extraordinary vigor” advocated his ideas, never intending to “create caricatures”, he still came to be mocked as the “prototype of a legal dreamer.” (Bekker 1892)

Huschke had anticipated that Science was not prepared for the magnificent insights he had to offer. When deriving the principle of 5-foldness from the human hand, he regretted “that here I cannot elaborate on the inner workings of this correspondence”, and was prepared to see his reasoning “reproached for the nonce as haphazard babble by anyone who cannot discover this correspondence himself”. Also, “The reader might surmise that I have made up this whole line of reasoning just to have 5 animals correspond to the 5 castes. This is by no means true. Already years ago I had recognized the necessity of a bovigus in the system of civilian motion, long ere I had considered any relationship with the Roman caste system. It troubled me dearly to find only 4 animals in Roman law, and for a long time I did not know where to scare up that missing animal.”

## Reviving Bovigus Research

We cannot but marvel at the integrity of this upright scientist who faced such entirely unwarranted disrepute. Thus I feel that bovigus research deserves much more attention than it has garnered so far. Let me thus propose an extension of Huschke’s research. While preparing this paper, I have come across a provision in German law, dating 26<sup>th</sup> June 2004, that finally casts some light on the bovigus mystery. It’s Sec. 1 (2) no. 3 Animal Plague Act (*Tierseuchengesetz*) which lists domestic animals within the meaning of the act. Its leading subletters a) and b) name exactly 5 animals which we may therefore assume to be the most important ones. You will already have guessed which they are: horses, asses, mules, cattle and – zebras!

We know for a fact that the 2004 legislature was not influenced by Huschke’s research. So should he actually have foreseen the knowledge of today? Well, as everyone knows, the biological nomenclature for the ordinary plains zebra is *Equus quagga*. The former part of that name (Latin for “horse”) puts zebras into the horse genus, while the latter relates to a certain variant of zebra called the quagga. Let’s use this knowledge to test Huschke’s predictions: Did the quagga have 4 feet? Yes. Was it both vivid and sharp-sighted? Indeed it was. Did it

become extinct a long time ago? You bet! Not a single quagga survived the 19<sup>th</sup> Century. Need I say more about the predictive power of legal thought?

## Conclusion

When Huschke discovered the bovigus, Science was not prepared for a finding as novel and unorthodox as his. Times have changed. Today scientists are willing to consider even the inconvenient and irreproducible truths. We should therefore encourage renewed interest in bovigus research, which might evolve into an interdisciplinary field of study with obvious relevance for lawyers, biologists, paleontologists, theologians and – not less – psychiatrists.

Even linguists may find interesting subject matter, for Huschke in 1838 not only coined the quasi-Latin neologism “bovigus”; he also considered this the reason for why the snake was called *boa* or *bova* in Latin. Call it a coincidence, but the following year, 1839, witnessed another coinage enter the English language: bogus.<sup>5</sup>

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<sup>5</sup> Online Etymological Dictionary, [www.etymonline.com/index.php?search=bogus](http://www.etymonline.com/index.php?search=bogus): “counterfeit money, 1839, Amer.Eng., apparently from a slang word applied in Ohio in 1827 to a counterfeiter’s apparatus.”