

Commentarii de iure civili

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[136] *Commentarii de iure civili*

(Commentaries on Civil Law)

1589-1596

Hugues DONEAU (Hugo DONELLUS) (1527-1591)

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Hugues Doneau was born 23 December 1527 in Chalon-sûr-Saône (France) and died 4 May 1591 in Altdorf (Germany). He began his legal studies in Toulouse, but, at the age of twenty, he changed for the university of Bourges to develop a more humanist approach to the civil law. In 1551 he obtained the doctoral degree. Because of the religious strife between Catholics and Protestants (Huguenots), which resulted in the 1572 Saint Bartholomew's Day massacre, Doneau, being a Huguenot himself, fled to Geneva, home of the protestant reformer Calvin. Soon after, on 27 October 1572, he was offered a position at the university of Heidelberg in the Rhineland-Palatinate. However, when Ludwig VI succeeded his protestant father Frederick III in 1576, Lutheranism gained the upper hand in the Palatinate and Doneau's position again became delicate. This urged him to accept, in 1579, a position as professor of civil law at the newly founded university of Leiden in the Dutch Republic. Once more, due to religious quarrels, Doneau was forced to resign on 25 April 1587. By accepting a professorship at the university of Altdorf, near Nürenberg, in 1588, Doneau entered a relatively quiet period of his life, which lasted until his death.

The first two volumes of *Commentarii de iure civili* were published during Doneau's lifetime in Frankfurt upon Main: Vol. I (books 1-5, 1589); Vol. II (books 6-11, 1590). Also in Frankfurt, but posthumously, Scipione Gentili edited all commentaries in 1595-97, the first two volumes of which are a reprint of the 1589-1590 volumes: Vol. I (1596); Vol. II (1597); Vol. III (books 12-16, 1595); Vol. IV (books 17-22, 1595); Vol. V (books 23-28, 1596). A third edition by the same editor contained all books in one volume (Hannover, 1612). A fifth edition, the first of six volumes of Doneau's *Opera omnia*, appeared in Luca in 1762-1770. It has chapters and summaries taken from Oswald Hilliger's *Donellus Enucleatus*, [137] an abridgement of Doneau's 28 book version, which was published in Jena in two volumes in 1610-1613. A complete overview of all editions is given by Ahsmann & Feenstra. No translations of Doneau's Latin work were made.

In the first book, Doneau makes some general remarks on law, justice and legal sources. Books 2 and 3 deal with the law of persons, books 4 to 16 with the law of things and books 17 to 28 with the law of actions.

In Doneau's age, continental European jurisdictions used the law in Justinian's *Corpus iuris civilis* and canon law as subsidiary sources of law. As a result, civil law scholarship in France, the Dutch Republic and the German regions was

mainly based on Roman and, to a lesser extent, on canon law. Doneau likewise taught and wrote in this *Ius Commune* tradition. His *Commentarii* aimed at treating the civil *Ius Commune* in a systematic way. Thus, they concerned the Justinianic law as it was interpreted since its reception. According to Doneau, however, ages of scholarly activities had produced an unfathomable mass of legal literature, from which it was nearly impossible to gather the true meaning of the fragments contained in the *Corpus iuris*. In Doneau's view, the main cause of the rampant growth of literature, because of which so many of Doneau's students could no longer see the wood for the trees, was the incomprehensible order in which Justinian had put the texts. Doneau saw it as his task to bring light in the legal obscurity by providing a means for the correct understanding of the *Corpus* such as Justinian had meant it to be understood (book 4, ch. 36, § 3). He hoped to realize this by treating the Roman fragments in a more logical order. This demanded a thorough reorganization of the texts. Moreover, since Doneau held that the proper meaning of fragments could not be known without understanding the whole (Prolegomena, xlv), an overview of the entire *Corpus* was required. The *Commentarii* were the result of this not too modest task.

Yet, Doneau's *Commentarii* were more than a sophisticated summary of the *Ius Commune*. Doneau added legal innovations of his own. Already on the first pages of his work, the author contended that subjective rights should be the focal point of every treatise on private law. After all, the law originated in the rights a person naturally had, e.g. the right of ownership to an object (book 2, n. 7, § 4). Justinian's Code, however, departed from the actions a person could institute to pursue one's right. Whether a person bringing an action had a preconceived right, independent from this action, was not given much attention in the *Corpus*. Doneau considered this to be the world upside down.

Compared to the works of contemporaries, such as Cujas and other more historically minded jurists, Doneau's *Commentarii* appear less inspired by a real 'Humanistic' approach. In line with Doneau's aim to distil Justinianic law from the interpretations by pre-Renaissance jurists, his *Commentarii* are devoid of textual criticism and Greek texts. It can with Stein be defended that Doneau belonged to a moderate group of jurists inspired by Humanistic ideals, but who did not lose sight of the practical use to which legal doctrine eventually had to be put. As a corollary, Doneau in the preface to his *Commentarii* even acknowledged and praised the efforts of his medieval predecessors, such as Accursius and Bartolus, for endeavouring exactly what he himself thought he could do in a more sophisticated and [138] successful manner, i.e. providing a tool for future jurists to get to the very heart of the legal matter. In keeping with that view, Doneau not infrequently drew from the writings of the medieval writers so often depreciated by his Humanistic colleagues (without however explicitly referring to his medieval sources).

Some scholars hold that Doneau was the first to put the Roman civil law into a system. Yet, similar developments had already taken place in Italy and the Iberian peninsula. E.g., in 1583, Garcia wrote his *Tratado utilísimo y muy general de todos los contratos* in which he began with discussing the rights a contract bestowed on a party before dealing with the available remedies, thus abandoning Justinian's order. The same holds for the theory of subjective rights of which Doneau is reputed to be one of the pioneers and which he posits in the first book of the *Commentarii*. Already in the 13th, Jacques de Révigny coined the rudiments of this theory. Seeing that Doneau frequently drew from the works of the school of Orléans, it is not beyond reasonable speculation that in this respect too he took his cue from his predecessors.

To my opinion, the relevance of Doneau's *Commentarii* for legal history has to be looked for somewhere else. First, Doneau brought back the enormous mass of medieval jurisprudence written on Roman law to a coherent account of surveyable proportions. Secondly, Doneau's theory of subjective rights, expounded in his commentaries, percolated into the legal writings of Grotius. That Grotius indeed had read Doneau has been pointed out by Ahsmann. Thirdly, not differentiating between scholastic arguments, Accursian solutions or Humanistic methodological approaches to come to an interpretation of difficult points of law, Doneau served as a model to the *Usus Modernus Pandectarum*-scholars. Still tied to the *Mos Italicus* tradition, 18th-century German scholars such as Samuel Stryk and Johann Schilter gratefully drew from Doneau's eclectic summary of the civil *Ius Commune* in which he, notwithstanding his critical attitude, did not dismiss the doctrine of earlier *Ius Commune* writers, but reshaped it and presented it into a work easy to consult and to digest.

Online version (Nürnberg 1822-1834) available at the website of Harvard University Library.
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