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## **Reforming legal education in Leuven. The humanist ideas of Diodorus Tuldenus (1594 – 1645)**

**ABSTRACT:** The University of Leuven was fertile ground for new ideas pertaining to education in the early seventeenth century, after the university was reorganised by an archducal ordinance in 1617. Humanist ideas had already been percolating in Leuven since the mid-sixteenth century, prompting modest educational reforms by figures such as Ramus and Corselius. Guided by lofty ideals on the nature of jurisprudence, the Leuven law professor Diodorus Tuldenus endeavoured to tie these various ideas together and to develop them in a coherent pedagogical framework. His goal was a noble one – to fundamentally reform the way young law students were prepared for a career in the legal profession.

**KEYWORDS:** *Mos gallicus*, Institutes of Justinian, University of Leuven

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## 1. *The University of Leuven and law faculties in the early 17<sup>th</sup> century*<sup>2</sup>

Aside from the respite years offered by the Twelve Years' Truce (1609-1621), the Southern Netherlands were essentially a warzone in the first half of the seventeenth century. The economic history of the Low Countries during this period illustrates that the Southern Netherlands experienced a sharp decline compared to its Northern neighbour, the Dutch Republic, for which the start of the seventeenth century heralded the start of a golden age.<sup>3</sup>

It would however, be a mistake to assume (as a persistent scholarly legend has it<sup>4</sup>) that this caused widespread intellectual anemia. The continent-spanning Iberian Empire, *Belgica Regia's* many urban centres and the Madrid Court were potent assets, which enabled the spread and development of scientific knowledge to a great degree.<sup>5</sup> Building an academic career in the Southern Netherlandish centres of learning was then contingent upon being able to make use of the networks of 'fixers' – individuals part of the academic community, that, while not always strictly speaking empowered to act on behalf of the academic community, knew the conduits of power inside out. Erycius Puteanus<sup>6</sup> (1574-1646), disciple of Justus Lipsius (1547-1606), was such a core figure in

<sup>2</sup> Cf. L. Waelkens, *The seventeenth century: an old law faculty for a new age*, in L. Waelkens, F. Stevens and J. Snaet (eds.), *The History of Leuven's Faculty of Law*, Bruges 2014, pp. 93-142; E. De Maesschalck, *Leuven en zijn colleges, treffpunt van intellectueel leven in de Nederlanden (1425 - 1797)*, Gorredijk 2021, 368 p.; V. Brants, *La faculté de droit de l'université de Louvain à travers cinq siècles*, Brussels 1920, pp. 110-149.

<sup>3</sup> See, among many others: C. Alvarez-Nogal and C. Chamley, *Debt policy under constraints: Philip II, the Cortes, and Genoese bankers*, in «Economic History Review», LXVII (2014), pp. 192-213; C. Lesger, *Clusters of achievement: The economy of Amsterdam in its Golden Age*, in: P. O'Brien et al. (eds.), *Urban achievement in Early Modern Europe. Golden Ages in Antwerp, Amsterdam and London*, Cambridge 2001, pp. 39-62; J. De Vries and A. van der Woude, *The first modern economy. Success, failure and perseverance of the Dutch economy, 1500-1815*, Cambridge 1997; J.C.H. Blom and E. Lamberts, *Geschiedenis van de Nederlanden*, Amsterdam 1994, pp. 157-158; H. van der Wee and J. Materné, *De Antwerpse wereldmarkt tijdens de 16de en 17de eeuw*, in: J. Van der Stock (ed.), *Antwerpen, verhaal van een metropool. 16de-17de eeuw*, Antwerp 1993, pp. 19-31; L.J. Wagenaar, *Onder actionisten. Ontstaan van de aandelenhandel in Amsterdam in de zeventiende eeuw*, in: G. De Clercq (ed.), *Ter beurze. Geschiedenis van de aandelenhandel in België, 1300-1990*, Bruges 1992, pp. 87-105.

<sup>4</sup> An overview is given in S. Dupré and G. Vanpaemel, *Introduction*, in S. Dupré, B. De Munck, W. Thomas and G. Vanpaemel (eds.), *Embattled territory: The circulation of knowledge in the Spanish Netherlands*, Ghent 2015, pp. 7-13.

<sup>5</sup> *Ibid.* pp. 7-22.

<sup>6</sup> Th. Simar, *Étude sur Erycius Puteanus (1574 - 1646): considéré spécialement dans l'histoire de la philologie belge et dans son enseignement à l'Université de Louvain*, Leuven 1909.

the academic landscape, who could provide access to essential connections at the Spanish Court for his chosen protégés.<sup>7</sup>

The early seventeenth century was marked by the archducal visitation of the faculty, which started in 1607 and was carried out by two archducal mandataries; Johannes Drusius, abbot of the Park Abbey and Stephan Van Craesbeke, member of the Council of Brabant.<sup>8</sup> The stated intention of the visitation was to list all the ails that had befallen the university since the start of the civil war, to then rectify them and restore the university to its former glory by means of an archducal ordinance – which was ultimately issued in 1617.<sup>9</sup> In this sense, both the organisation of a visitation and the enacting of an ordinance as the university's new constitution can be seen in a broader context of archducal codification and institutional state-building during the interwar years, regulating and fixing (in both senses) practices which had somehow gone astray.<sup>10</sup>

Yet the literature on the subject indicates that we need not trust the stated reasons for the visitation too much – academics were hardly all passive subjects at the will of increasingly centralised public power. They were actors with their

<sup>7</sup> G. Vanpaemel, *Royal Patronage and Early Modern Science in the Spanish Netherlands*, in S. Dupré et al. (eds.), *Embattled Territory*, Ghent 2015, pp. 141 and 146; T. Van Houdt, *Justus Lipsius and the Archdukes*, in M. Laureys and Ch. Bräunl (eds.), *The world of Justus Lipsius: a contribution towards his intellectual biography*, Rome 1998, pp. 405-432; A. Welkenhuysen, *Scrabbling with Erycius Puteanus. The Album of his Friends and Correspondents*, in D. Sacré and J. Papy (eds.), *Syntagmata. Essays on Neo-Latin Literature in honor of Monique Mund-Dopchie and Gilbert Tournoy*, Leuven 2009, pp. 639-677. As such, aside from providing these brokerage services for Diodorus Tuldenuus, he helped launch the career of astronomer Michiel-Florent van Langren and coached him on the ways on how to best navigate the channels of courtly power. Aside from temporal power, he also maintained a broad correspondence network with both prominent humanists and church prelates (such as Fabio Chigi, who would become Pope Alexander VII in 1655, a decade after Puteanus' death). These correspondents could, in turn, be counted on to furnish him with opportunities abroad. As such, the Bologna humanist Bartholinus (unsuccessfully) campaigned to have Puteanus granted academic tenure in the University of Bologna. What made this network possible was in part Puteanus' link to his own master and fixer-in-chief in his own time; Justus Lipsius. See: K. de Jonge and M. Delbeke, *Across Borders. Architecture and Knowledge in the Seventeenth-Century*, in S. Dupré et al. (eds.), *Embattled Territory*, Ghent 2015, p. 325; D. Sacré, *New Light on the Roman Professor and Neo-Latin Poet Henricus Chifellius (1583-1657)*, in «Humanistica Lovaniensia», LXII (2013), p. 460; Th. Simar, *Étude sur Erycius Puteanus*, cit., pp. 10-11.

<sup>8</sup> B. Boute, *Academic Interests and Catholic Confessionalisation: The Louvain Privileges of Nomination to Ecclesiastical Benefices*, Boston 2010, p. 441.

<sup>9</sup> For the text of the Visitation Ordinance; E. Reusens, *Documents relatifs à l'histoire de l'Université de Louvain (1425-1797)*, 5 vol., Leuven 1881-1903, I, pp. 600-636.

<sup>10</sup> See L. Waelkens, *The seventeenth century*, cit., p. 99; J. Roegiers and P. Vandermeersch, *Les archiducs et l'université de Louvain*, in W. Thomas and L. Duerloo (eds.), *Albert & Isabella: Essays*, Brussels 1998, pp. 285-290.

own demands that they very much liked granted by the archdukes. That is not to say that the university was not in dire straits financially and materially after the ravages of decades of war at the end of the sixteenth century<sup>11</sup>, but it suited some academic actors well indeed that this was a context in which the public authorities were eager to solve things.<sup>12</sup>

For the theologians, the competition offered by the Jesuit college prompted the negotiation of graduation conditions so as to exclude Jesuit-trained pupils from degrees.<sup>13</sup> For the law faculties, the flashpoint was the membership of the *collegium strictum*, the entity responsible for awarding the *doctor in utroque iure* and collection the associated exam fees. Since the creation of the *regius* chairs<sup>14</sup> (later archducal chairs) to teach the *Paratitla* and the Institutes, these *regii* aspired to a place in that select company. It is a testament to the lobbying acumen of the ordinary chairs of the law faculties that they used the 1617 Visitation Ordinance to solidify their bargaining position. As only the best candidates ought to be appointed professor, the city of Leuven could only appoint new *ordinarii* or *extraordinarii* following the advice of the *collegium strictum*.<sup>15</sup> It is this power (which they enforced in court) which allowed them to lock enterprising *regii* out of membership.<sup>16</sup>

<sup>11</sup> Between 1575 and 1586 various faculties closed down because of the fighting, an epidemic broke out in Leuven in 1578 and the law faculty itself ceased operations between 1584-1586. Waelkens adds that brigandism was still rampant in the countryside in the 1590's. These dire circumstances caused an exodus of qualified personnel and made a lasting impact on the reputation of the Leuven university. L. Waelkens, *The sixteenth century: a time of renewal and change*, in: L. Waelkens, F. Stevens and J. Snaet (eds.), *The History of Leuven's Faculty of Law*, Bruges 2014, pp. 80-82.

<sup>12</sup> B. Boute, *Academic Interests*, cit., pp. 431-486. The precise degree of latitude the academics of the different faculties enjoyed in negotiating the terms of the Visitation Ordinance is a matter of scholarly contention. See T. Quaghebeur, *The University of Louvain under the Constant Threat of Visitations. 1617-1702* in «Revue belge de philologie et d'histoire», LXXXV (2007), p. 696.

<sup>13</sup> J. Roegiers, *Awkward neighbours. The Leuven Faculty of Theology and the Jesuit College (1542-1773)*, in R. Faesen and L. Kenis (eds.), *The Jesuits of the Low Countries: Identity and Impact (1540-1773): Proceedings of the International Congress at the Faculty of Theology and Religious Studies, KU Leuven (3-5 December 2009)*, Leuven 2012, pp. 153-175; B. Boute, *Academic Interests*, cit., p. 461, esp. pp. 455-458.

<sup>14</sup> The *king's chairs* were created by benefice of king Philipp II in 1557. See V. Brants, *La faculté de droit de l'université de Louvain*, cit., pp. 27-30.

<sup>15</sup> L. Waelkens, *The seventeenth century*, cit., p. 112; B. Boute, *Academic Interests*, cit., p. 452-453: a reading, however, which does not seem to be supported by the literal text of the Visitation Ordinance.

<sup>16</sup> B. Boute, *Academic Interests*, cit. p. 461.

Regarding the curriculum of law students, the Visitation Ordinance fixed the study course at four years: one year studying the *Paratitla* of the Code and the Institutes – which was taught by the *extraordinarii*, followed by three years of a closer study of the Digest, taught by the three *ordinarii*. In these three years, chapters of the Code not touched upon by the treatment of the *Paratitla* in the first year and the Novellae were only to be taught in so far as they pertained to subject matters treated in the Digest.<sup>17</sup> This topic of the legal curriculum will be revisited later (see *Cb.* 3 and 4).

## 2. *Diodorus Tuldenus*

### 2.1. *Biography*<sup>18</sup>

Theodoor van Tulden (or later: van Thulden), Latinized as Diodorus Tuldenus, was born in 1594<sup>19</sup> to a knightly family of jurists in the town of ‘s-Hertogenbosch, in the northern part of the Duchy of Brabant, when the town was still under control of the Spanish crown (which it would be until 14 September 1629<sup>20</sup>). His father and brother were jurists and both served as mayor of ‘s-Hertogenbosch, the latter would later go on to serve as the Vice-Chancellor of the Council of Brabant. Tuldenus’ son, Jan Florent van Tulden, would go on to become a jurist as well, and serve as member of the Privy Council and Council of State at the court of Charles II in Madrid. For Jan Florent’s service to the Spanish crown, the House van Tulden would be made a baronial house after his death in 1696.<sup>21</sup>

Tuldenus studied *artes* at Leuven, under the tutelage of the aforementioned Leuven humanist Erycius Puteanus, who taught Latin at the *collegium trilingue* of

<sup>17</sup> Art. LXXXVIII Visitation Ordinance.

<sup>18</sup> For biographical information on Tuldenus (and some other authors), we are still largely indebted to two works of Brants. Where no detailed reference is given, the information in this chapter is based on these sources; V. Brants, *Un juriste belge du XVIIe siècle. Diodore Tulden, Professeur à Louvain*, Brussels 1915, 35 p.; V. Brants, *La faculté de droit de l’université de Louvain*, cit., pp. 1-285, on Tuldenus’ teaching pp. 39-40. To Brants, we also owe the first study into the figure of Tuldenus as teacher and a first systematic study into legal education at the Leuven law faculty.

<sup>19</sup> Municipal archive of ‘s-Hertogenbosch, registers of the Register’s Office, baptismal record of Theodoor (Theodoricus) van Tulden, 22 July 1594, DTB-003; [https://denboschpubliek.hosting.deventit.net/detail.php?nav\\_id=1-1&id=751903685&index=17](https://denboschpubliek.hosting.deventit.net/detail.php?nav_id=1-1&id=751903685&index=17) (last consulted: 10 November 2021).

<sup>20</sup> See J.I. Israel, *The Dutch Republic. Its Rise, Greatness and Fall 1477-1806*, Oxford 1998, p. 507.

<sup>21</sup> J. van den Leene, *Le théâtre de la noblesse du Brabant*, Liège 1705, pp. 170-173.

Erasmus of Rotterdam for almost forty years.<sup>22</sup> Puteanus, as a humanist after Lipsius, was convinced of the importance of personal guidance and committed education of students (see *supra* Ch. 1), which clearly manifested in his relation towards his prized pupils – Tuldenus among them. Here, Tuldenus was part of Puteanus' private academy of eloquence; the *Palaestra Bonae Mentis*. This rarefied institution dedicated to the Socratic discussion of philosophical subjects (in the broad sense) was under the direct patronage of Archduke Albert<sup>23</sup> and during its most vibrant years (1610-1615, when Tuldenus was a student) enjoyed Europe-wide fame.<sup>24</sup>

Aside from exercising a profound influence on Tuldenus' humanist method and convincing him that humanist learning was a necessary complement to the legal science, their close relationship is demonstrated by the fact that during the siege of Leuven in 1635, Tuldenus found refuge in Puteanus' home – his so-called 'Arx', now the Keizersberg in Leuven. In their correspondence, this special relationship is made manifest by Tuldenus' manifold expressions of praise and thanks<sup>25</sup>, going so far as to state that he considers Puteanus as a father to him<sup>26</sup>, and that Puteanus can certainly call him his son.<sup>27</sup>

After his studies in the arts, he went on to read law at the same university, and obtained his licentiate in 1615, and then spent five years in his hometown, practicing as a lawyer and city councillor (at the insistence of his brother and presumably with Puteanus' approval<sup>28</sup>). During this time, he wrote his first work – the *Dissertationes Socraticae*<sup>29</sup> – inspired by and modelled after the exercises in the *Palaestra*, which was published in 1620.<sup>30</sup>

<sup>22</sup> J. Papy (ed.), *The Leuven Collegium Trilingue 1517-1797: Erasmus, humanist educational practice and the new language institute Latin – Greek – Hebrew*, Leuven 2018.

<sup>23</sup> From 1610 onwards. Th. Simar, *Étude sur Erycius Puteanus*, cit., p. 12.

<sup>24</sup> *Ibid.*, pp. 143-149. It seems no coincidence that these vibrant years played out during the first part of the Twelve Years' Truce, when it seemed as if the peace in the Low Countries could become permanent. See J.I. Israel, *The Dutch Republic and the Hispanic World 1606-1661*, Oxford 1982, p. 16 ff., esp. 25.

<sup>25</sup> See Letters from Tuldenus to Puteanus, Royal Library of Belgium (KBR) ms. 19112, i.a. nr. 2, 12, 14, 16, 17, 38, 39.

<sup>26</sup> Letters from Tuldenus to Puteanus, KBR ms. 19112, nr. 36.

<sup>27</sup> Letters from Tuldenus to Puteanus, KBR ms. 19112, nr. 32.

<sup>28</sup> Letters from Tuldenus to Puteanus, KBR ms. 19112, nr. 38, where he asked for Puteanus' approval.

<sup>29</sup> D. Tuldenus, *Dissertationes Socraticae*, Leuven 1620.

<sup>30</sup> Letters from Tuldenus to Puteanus, KBR ms. 19112, nr. 10, 36, 38.

In that same year, he was made the second *regius* professor in Leuven (seemingly with a dispensation for his lack of a doctorate), joining his colleague Antonius Perezus (1587-1672, see *infra* Ch. 2.3 and 3.2), who had been nominated as *regius* in 1619, just one year before. Perezus would be made the *secundus legum*, the second ordinary professor of the Digest, in 1628.

In 1627, the first chair of civil law of the University of Ingolstadt was offered to Tuldenus, which he declined, opting to stay in his fatherland (despite the lucrativeness of this offer). With the loss of 's-Hertogenbosch to the Dutch Republic in 1629, the van Tulden family lost its ancestral holdings, and Tuldenus was compelled to ask the King's Treasury for modest accommodations to continue his service to his country. In the request<sup>31</sup>, he didn't neglect to mention the very lucrative offer he had declined out of patriotism, something he had also finely remarked in the preface to the first edition of his *De Iurisprudencia extemporalis*, published in 1628 and dedicated to the Estates of Brabant, in saying that he had voluntarily chosen to remain in 'this Sparta'.<sup>32</sup>

In 1633, he became holder of the first chair of the Digest, taking over from Stephanus Weymsius (1553-1633). Petrus Stockmans (1608-1671) took over his place as *regius*. With it, Tuldenus became the foremost professor of civil law at the University of Leuven (and the entire Southern Netherlands) with the title of Antecessor, presumably at least in part because of his ailing financial situation.<sup>33</sup> He joined the ranks of the ordinary professoriate with colleagues Perezus (the second chair) and Wilhelmus Masius (1588-1667, made *tertius* in 1628). Certain is that Tuldenus' nomination involved no small degree of lobbying and greasing the wheels.<sup>34</sup> The crowning achievement of his juridical career would be his appointment as a Councillor and Master of Requests of the Great Council of Mechelen in July 1645. A mere four months after his appointment to this prestigious position, he died in Mechelen on the 19th of November 1645. Both his *ordinarii* colleagues would significantly outlive him in their respective offices. He would be succeeded by Michiel van de Perre (1583-1658, great-nephew to Wesenbecius, see *infra* Ch. 3.2) as *primarius*.

Near the end of his life, coinciding with the start of the Jansenist movement, he seems to have been well aware of the posthumous (1640) publication of the *Augustinus* of Cornelius Jansenius (1585-1638). In a letter dated 6 April 1642 to

<sup>31</sup> See V. Brants, *Diodore Tulden, Professeur à Louvain*, cit., pp. 11-12.

<sup>32</sup> D. Tuldenus, *De iurisprudencia extemporalis*, Leuven 1628, p. vi.

<sup>33</sup> That Tuldenus declined the Ingolstadt offer not long before his financial situation took a turn for the worse seems a particularly unfortunate turn of events, but may have contributed to a sense of urgent sincerity which expediated his promotion.

<sup>34</sup> D. Tuldenus, *Initiamenta jurisprudentiae*, Leuven 1702, *oratio auspicalis XIII de officio Antecessoris Jurisprudentiae*, pp. 59-60.

the famous Dutch Calvinist poet, man of letters and polymath Constantijn Huygens (1596-1687), Tuldenus recommends the work to him and sends him a copy, saying that Jansenius seems to hold very similar doctrinal positions as the Calvinists, which he manages to explain clearly.<sup>35</sup> That Tuldenus' entire *oeuvre* was published (print runs from 1702 to 1715) posthumously in an *opera omnia*-edition by the presumed Jansenist publisher and beadle of the faculty of Arts – Aegidius Denique<sup>36</sup> (1684-1728) – just before the papal bull *Unigenitus* (1713) broadly condemned Jansenist doctrine, might be a first indication regarding the side he was considered to have been on. The counterpoint that Tuldenus' work was considered neutral ground because in 1702 Denique obtained an approbation from the virulently anti-Jansenist censor Marcelis for Tuldenus' *De civili regimine*<sup>37</sup> (and his commentary on the Digest), can be called into question. After all, other parts of the *opera omnia* had missing or outdated *imprimaturs* – a violation of the printing rules then in force, which required new approbations for new editions of already-published works.<sup>38</sup> This will be the subject of further study.

## 2.2. Bibliography

Tuldenus' various published works and the order in which they were written reflect his *curriculum vitae* and the various steps of a legal education in the university of Leuven.

His first work, the abovementioned *Dissertationes Socraticae*, was inspired by the exercises in Puteanus' *Palaestra*. Published in 1620 (with reissues of the same

<sup>35</sup> J.A. Worp (ed. and transl.), *De briefwisseling van Constantijn Huygens 1608-1687, vol. 3 1640-1644*, letter n. 2978, dated 6 April 1642; “Hierbij zend ik u een boek van den priester Jansenius, onlangs te Leuven verschenen. In dat werk worden dingen gezegd, die overeenkomen met uwe dogma's, en zij worden op duidelijke wijze gezegd, zonder schoolsche geleerdheid. [...]”.

<sup>36</sup> R. Roovers, *Aegidius Denique, drukker te Leuven (1684-1728) en pedel van de Artesfaculteit*, unpublished licentiate thesis KU Leuven Faculty of Arts, Leuven 1988, pp. 41-60; D. Cammaerts, *Censuur en drukkers in Brussel, Leuven en Mechelen onder Mechels aartsbisschop Humbertus de Precipiano (1690-1711)*, unpublished master thesis KU Leuven Faculty of Arts, Leuven 2020, pp. 11-21.

<sup>37</sup> D. Cammaerts, *Censuur*, cit., p. 17.

<sup>38</sup> Ordonnance regarding the printing, sale and import of books, images and refrains, 11 March 1616, *Placcaeten ende ordonnantien vande Hertogen van Brabant, Prinsen van de Nederlanden*, vol. 1, Antwerp 1648, art. 5, pp. 473-476. See S. van Rossem, *Het gevecht met de boeken. De uitgeverstrategieën van de familie Verdussen (Antwerpen, 1589-1689)*, unpublished doctoral dissertation University of Antwerp Faculty of Arts, Antwerp 2014, p. 54.



and only edition in 1622 and 1623)<sup>39</sup>, the work deals with personal ethics on the one hand, and public ethics/governance on the other.

His second is *De principiis iurisprudentiae*, (ed. prim. 1621<sup>40</sup>, ed. sec. 1655<sup>41</sup>, ed. ter. 1702<sup>42</sup>), on the nature of justice, a topic which therefore must have been of particular interest to him already in the very beginning of his academic career. Next to abstract considerations on law and justice, the work deals with sources of law and a few public law questions. His preface to the work is especially interesting as a mission statement regarding his vision on what jurisprudence ought to be and what currently ails the legal world. His next publication deals especially with these ails and their remedies; *De causis corruptorum iudiciorum et remediis* (ed. prim. 1624<sup>43</sup>, ed. sec. 1702<sup>44</sup>). The entire first book concerns the most potent remedy for these ills – a good legal education – and is thus of particular interest for the present contribution.

Starting with his appointment to the *regius* chair of the *Paratitla* in 1620, he held an inaugural lecture at the start of every academic year. His fifth lecture – on the study of law, was published as a separate booklet in Cologne in 1624.<sup>45</sup> The rest of his inaugural lectures (thirteen in total over thirteen years) were published together with an eulogy for the *primarius* preceding Tuldenus – Stephanus Weymsius – in 1633<sup>46</sup> (ed. sec. 1702<sup>47</sup>).

His next two publications are aimed at his teaching activities as *regius*; the alternating tuition of the *paratitla* and the Institutes. His commentary on the Institutes, for usage in teaching, was first published in 1628<sup>48</sup>, eight years after his appointment as *regius* professor (ed. sec. 1633<sup>49</sup>, ed. ter. 1702<sup>50</sup>). His commentary on the Code (his most widely reprinted work) was likely first published

<sup>39</sup> They carry the same STCV (Short Title Catalogus Vlaanderen) fingerprint: 162004 - # a1 \*2 \$v : # a2 2\* e\$ - # 1b1 A ec : # 1b2 2I2 essio - # 2b1 A q : # 2b2 2I S

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<sup>42</sup> STCV Fingerprint: 170202 - # b1 A i : # b2 K2 itu

<sup>43</sup> USTC (Universal Short Title Catalogue) Fingerprint: e-ia uaei- i-ns imho 3 1624R

<sup>44</sup> STCV Fingerprint: 170202 - # b1 A \$ : # b2 X3 \$A

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<sup>50</sup> STCV Fingerprint: 170202 - # a1=a2 \*2 . - # b1 A , : # b2 2X2 ?\$ibid.

between 1630 and 1631<sup>51</sup> (ed. sec. 1633<sup>52</sup>, ed. ter. 1650<sup>53</sup>, ed. quar. 1701<sup>54</sup>, ed. quin. 1712<sup>55</sup>). In the prefaces of these works, he expounds on how he teaches (and how one ought to teach) the classical subject matter necessary for a legal degree. This subject will be revisited later.

Also in 1628<sup>56</sup>, he published the first part of *De iurisprudentia extemporalis* (not to be confused with *De principis iurisprudentiae* or the *Initiamenta iurisprudentiae*), a work of legal maxims and the various means of juridical interpretation, part two followed in 1629<sup>57</sup> (ed. sec. 1643<sup>58</sup>, “1702 edition” or edition 2b in 1702<sup>59</sup>, ed. ter. 1715<sup>60</sup>). In 1631<sup>61</sup>, a work followed on ethics and psychology – *De cognitione sui* (ed. sec. 1706<sup>62</sup>).

This concludes his prolific writing period – likely in part because of his new occupation as primary professor of the Digest. Consultations of his on inheritance and matrimony were published, as well as one on usury.<sup>63</sup> His commentary on the Digest (on the basis of which he likely taught) was published

<sup>51</sup> In his eleventh inaugural lecture, he mentions having written the commentary on the Institutes ‘a few years back’. As the second edition of the Code was already in print in 1633, this window of time for the first edition seems highly credible. D. Tuldenus, *Initiamenta iurisprudentiae*, Leuven 1702, *oratio auspicalis XI: In explicationem Codicis praefatio*, p. 53; “*Aliquot ab hinc annis praeparaveram Commentarium ad Institutiones, [...]*.”

<sup>52</sup> Uncatalogued.

<sup>53</sup> STCV Fingerprint: 165002 - # a1 )(2 \$&\$ : # a2 2)(2 num, - # b1 A I : # b2 5K \$bonoru

<sup>54</sup> STCV Fingerprint: 170102 - # a1 \* m : # a2 \*3 e\$j - # b1 A n : # b2 4T2 usam\$r - # c1 a \$ : # c2 e2 ost

<sup>55</sup> Fingerprint: 171202 – # a1 \* m # a2 \*3 one\$j # b1 A on # b2 4T2 causam\$

<sup>56</sup> STCV Fingerprint: 162804 - # a1 \*2 en : # a2 \*3 ulis - # b1 A \$ : # b2 Z2 llus

<sup>57</sup> STCV Fingerprint: 162904 - # a1=a2 \*3 OBI - # b1 A f : # b2 2C3 onsu

<sup>58</sup> STCV Fingerprint: 163404 - # a1 \*2 tû : # a2 \*3 ing - # b1 A a : # b2 3V3 tione\$in\$

<sup>59</sup> As this edition’s STCV Fingerprint (170202 - # a1=a2 \* L - # b1 A u : # b2 2I3 , \$si) differs from the 1643 ‘true’ second edition (163404 - # a1 \*2 tû : # a2 \*3 ing - # b1 A a : # b2 3V3 tione\$in\$), it does concern a new edition, even though it is nowhere indicated as such.

<sup>60</sup> STCV Fingerprint: 171504 - # a1 \* nt : # a2 \*2 es - # b1 A t, : # b2 3R2 utriq

<sup>61</sup> Fingerprint: 163104 # b1 )(ij r\$com # b2 Zz tate # c1=c2 2Z 2Ij pentq.

<sup>62</sup> Uncatalogued.

<sup>63</sup> X., *Consultatien, advysen en advertissementen gegeven en geschreven bij verscheiden treffelijke rechtsgeleerden in Holland en elders*, Rotterdam 1664, V, cons. 84, p. 282-288 on a matrimonial case (together with Andreas Vallensis, Michaël van den Perre and Antonius Perezius); *Ibidem*, V, cons. 16b, p. 87-90 on an inheritance case (together with Jacobus Santvoert and Michael vanden Perre); Franciscus Kinschotius, *Responsa sive consilia iuris*, Brussels 1653, *responsum* 56, pp. 510-533 on usury (written by Franciscus van Kinschot and signed by Tuldenus, as well as Jacobus Santvoert, Michaël van den Perre and Valerius Andreas).

posthumously in 1702<sup>64</sup> (only edition). His final work on political theory and public law was likely written at some point after 1624<sup>65</sup>, but was only published posthumously in 1702<sup>66</sup>.

Conspicuously lacking from this overview is a commentary on the final part of the *Corpus Iuris Iustinianum*; the *Novellae*. As the only part of the *Corpus* which had no dedicated course in the Leuven law curriculum, there was no immediate need for Tuldenus to write a dedicated coursebook on it<sup>67</sup>.

### 2.3. Tuldenus' vision on legal education

Jurisprudence is two-faced. This fundamental truth informs Tuldenus' publications, teaching and vision on legal education. This theme, which he explores at length in the preface of *De principiis iurisprudentiae*, is delivered in the florid-yet-cogent rhetoric and style Tuldenus frequently uses. He considers that the art of jurisprudence, acquired through a legal education, is a terrific instrument, in both senses: in the hands of a righteous person an engine of equity and justice for the benefit of the common good<sup>68</sup>, in the hands of the wicked the perfect means to enrich oneself<sup>69</sup> and a cover for fraud and corruption.<sup>70</sup> In other

<sup>64</sup> STCV Fingerprint: Part one: 170202 - # a1 \* \$L : # a2 2\*2 rat,\$ - # b1 A s : # b2 3T3 itur.\$l

Part two: 170202 - # a1 \* i : # a2 3\*2 eo\$copi - # b1 A ep : # b2 6E2 ctio\$est.\$7.\$

<sup>65</sup> See Letters from Tuldenus to Puteanus, KBR ms. 19112, nr. 29. The letter is undated, but he mentions having just completed *De civili regimine*, and the *De causis corruptorum* has already been published. The state of the legal profession as a whole is still very much on his mind, which leads one to suspect it was not written long after.

<sup>66</sup> STCV Fingerprint: 170102 - # a1 \* m : # a2 \*2 \$N - # b1 A e : # b2 2H tan

<sup>67</sup> It should be noted, however, that in 1599, the Leuven law professor Petrus Gudelinus (1550-1619) had introduced lectures on the Novels of Justinian. Gudelinus' successors did not continue this practice. The 1617 Visitation Ordinance no longer left room for such a lecture series. Gudelinus' notes *de iure novissimo* were posthumously published in 1620. Interestingly, this posthumous publication includes a written version of a speech Gudelinus delivered on 5 March 1599. It seems that he planned his course on the Novels in a time slot that was usually used for the Institutes: *Dubius eram an reverterer ad Institutiones, quibus interpretandis Maiores nostri principaliter hanc horam destinarunt*. See: P. Gudelinus, *Oratio praefationis loco ab authore habita anno MDXCIX V. Martii cum has ad ius novissimum praelectiones auspicaretur*, in Id., *Commentariorum de iure novissimo libri sex*, Antwerp 1620.

<sup>68</sup> D. Tuldenus, *Initiamenta jurisprudentiae*, Leuven 1702, *oratio auspicalis V de consultissima ad jurisprudentiam via*.

<sup>69</sup> Cf. D. Tuldenus, *De causis corruptorum Iudiciorum et remediis*, Leuven 1702, lib. 1, cap. 6-7 and 8-11.

<sup>70</sup> D. Tuldenus, *De principiis iurisprudentiae*, Leuven 1702, pp. 1-2; D. Tuldenus, *Initiamenta Jurisprudentiae. Laudatio funebris Stephani Weymsii*, Leuven 1702, p. 62, §11.

words, the art of the jurist lends itself equally to good and evil. Yet these evils which corrupt the art of jurisprudence have their proper causes, which can be identified and countered – that is the essence of *statesmanship*<sup>71</sup>, and the fact that this statesmanship exists is conversely proof that those evils can be uprooted.<sup>72</sup> The name of this foe of jurisprudence – or the ‘false jurisprudence’ – is Sophistry<sup>73</sup>, the mere art of eloquence and clever inventions without prudence or morals.<sup>74</sup> The peddlers of this art in his time, and thus Tuldenus’ self-declared foes are the *scholastics*.<sup>75</sup> More specifically (as is clear when his work is read in its entirety), those are the adherents of Bartolism in his present day, the practitioners of jurisprudence without attention to the arts.

A prime cause of this corruption and enabler of ‘false jurisprudence’ is *inexperience*; as such, Tuldenus laments the sorry state of legal training in the law schools, which seem to spew out innumerable hordes of ill-trained jurists, who hide behind their inexperience and adherence to authority to obscure their failings.<sup>76</sup> To combat this inexperience, the one effective weapon is good legal education<sup>77</sup>, training jurists-to-be in an honest and mature method of interpretation (*sincera et matura interpretatio legum*).<sup>78</sup> Students must love their discipline and always keep in mind that the main goal of their studies is to help their fellow citizens and support their own fatherland.<sup>79</sup> The moral character of the aspirant-

<sup>71</sup> “Prudentia Civilis”, from Cicero’s *De Republica* 2, 25, 46.

<sup>72</sup> D. Tuldenus, *De principiis iurisprudentiae*, Leuven 1702, p. 2; “Non esset in rebus humanis Prudentia illa Civilis, quam Architectonicam appellamus, si mala Rempublicam excedentia, causas suas non haberent; occultas quidem illas, sed quae inveniri tamen atque erui possint [...]”

<sup>73</sup> Elsewhere he identifies the False Jurisprudence as the *ars calumniandi* – the art of duplicity and deception in the legal science; D. Tuldenus, *Initiamenta Jurisprudentiae. Laudatio funebris Stephani Weymsii*, Leuven 1702, p. 62, §11.

<sup>74</sup> D. Tuldenus, *De principiis iurisprudentiae*, Leuven 1702, p. 2; D. Tuldenus, *Initiamenta Jurisprudentiae. Laudatio funebris Stephani Weymsii*, Leuven 1702, p. 62, §11; D. Tuldenus, *De causis corruptorum Iudiciorum et remediis*, 1702 Leuven, lib. 1, cap. 15.

<sup>75</sup> *Ibid.*

<sup>76</sup> D. Tuldenus, *De principiis iurisprudentiae*, Leuven 1702, p. 1: “An illa tot examina cum immeritis titulis alibi ex scholis provolitantium, omnes Fori modestiam, omnemque Tribunalium gravitatem, et quietem Reipublicae, ipsiusque Justitiae sanctitatem adfligunt? addito scilicet imperitiae specioso nomine, id est ‘imprudentiâ’, additâ auctoritate, id est, ‘perviciaciâ’; ut licentiosore fraude grassetur.”; D. Tuldenus, *De causis corruptorum Iudiciorum et remediis*, Leuven 1702, lib. 1, cap. 16, pp. 31-34.

<sup>77</sup> *Ibid.* 2.

<sup>78</sup> D. Tuldenus, *De causis corruptorum iudiciorum et remediis*, Cologne 1624, lib. 1, cap. 7.

<sup>79</sup> D. Tuldenus, *Initiamenta jurisprudentiae*, Leuven 1702, *oratio auspicalis V de consultissima ad jurisprudentiam via*, p. 30-31. That students need to love their discipline, was a common concern of legal humanists. See, for instance: Anonymus, *De iurisconsulto perfecto liber*, Speyer 1588, cap. 2, p. 13.

jurist was therefore of the utmost importance; a law faculty should function as a seminary which had the formation of the complete person as its goal.<sup>80</sup> More important than disputations on a whole range of technical issues was the ability to distinguish between equitable and inequitable solutions. Jurisprudence should always be directed to these virtues and should never be reduced to an instrument which you can use to argue in every possible direction – that way lies the poison of sophistry. In his *De causis corruptorum iudiciorum et remediis*, Tuldenus illustrates this crucial insight with reference to criminal law cases. Just like abortion in some cases required a capital punishment, in other cases a banishment was already sufficient as a penalty; everything depended on the intention and the motives of the perpetrator and on the other circumstances of the case. A good jurist had to be able to decide wisely.<sup>81</sup>

To achieve this goal of the complete formation of the person, a good education in the *regina artium aliarum* – jurisprudence – therefore has to be diverse<sup>82</sup> and include training in the humanities, philosophy, dialectic, alongside moral training and statesmanship<sup>83</sup>. This knowledge of the arts, philosophy and dialectic is essential and instrumental to a mature and balanced understanding of the true – “good” – jurisprudence, but may never become a goal in and of itself. An aspiring jurist should foremost strive to excel in the legal field and treat the study of the arts accordingly, not endeavour to have passing knowledge in all fields (of the arts).<sup>84</sup> A single-minded pursuit of philosophy<sup>85</sup> for its own sake hence risks being overly theoretical, and whoever pursues rhetoric without moral training is guilty of that most severe of sins – sophistry.<sup>86</sup> The total lack of education in the humanities is tantamount to barbarism and also leads to sophistry<sup>87</sup>, the error of the Bartolists. Claiming that the old Italian masters such

<sup>80</sup> D. Tuldenus, *De causis corruptorum iudiciorum et remediis*, Cologne 1624, lib. 1, cap. 6.

<sup>81</sup> D. Tuldenus, *De causis corruptorum iudiciorum et remediis*, Cologne 1624, lib. 1, cap. 15.

<sup>82</sup> D. Tuldenus, *De causis corruptorum Iudiciorum et remediis*, Leuven 1702, lib. 1, cap. 9, pp. 13-14.

<sup>83</sup> D. Tuldenus, *De principiis iurisprudentiae*, Leuven 1702, p. 2: “Nisi doctrinâ Civili Moraliq̃ue Jurisprudentia miscentur; neque ad Probitatem pertinere videtur; neque ad Remp̃ublicam & Juventus non Prudentiae momentis; D. Tuldenus, *Initiamenta jurisprudentiae*, Leuven 1702, *oratio auspicalis V de consultissima ad jurisprudentiam via*.

<sup>84</sup> D. Tuldenus, *De causis corruptorum Iudiciorum et remediis*, Leuven 1702, lib. 1, cap. 10, pp. 14-18. An interesting statement coming from Tuldenus, who was a man of letters and published two works on philosophy in the broadest sense.

<sup>85</sup> He does however consider philosophy to be a noble and good thing, see i.a. D. Tuldenus, *Initiamenta Jurisprudentiae. Laudatio funebris Stephani Weymsii*, Leuven 1702, p. 62, §11.

<sup>86</sup> D. Tuldenus, *De causis corruptorum Iudiciorum et remediis*, Leuven 1702, lib. 1, cap. 9, pp. 13-14.

<sup>87</sup> D. Tuldenus, *De causis corruptorum Iudiciorum et remediis*, Leuven 1702, lib. 1, cap. 10, pp. 14-

as Bartolus himself did not enjoy an extensive education in the humanities, and that one can therefore be a perfectly capable jurist without this education is fallacious; their legal learning was deficient, but such were the ills of their time.<sup>88</sup> One cannot apply those standards to the jurists of Tuldenus' time.

One field of law in particular should not be neglected (though lamentably, it was) in the legal curriculum and when discussing the different passages of the *Corpus iuris civilis*: public law (*ius publicum*). This of course goes hand in hand with Tuldenus' virtue of statesmanship, and the reason for Tuldenus' inclusion is not only the desire for an all-rounded formation. The goal was to increase the attractiveness of the studies in law for the higher nobility and the future governing elite, a concern he shared with authors like Le Douaren (see *infra* Ch. 3.2).<sup>89</sup> Despite the best efforts of scholars like Tuldenus and Perezius (see *supra* Ch. 2.1) to include a good deal of public law in their regular lectures, it would however not receive a proper place in the Leuven law curriculum before the early eighteenth century, when Amandus Bauwens was appointed as the first Leuven professor of public law.<sup>90</sup> Tuldenus regretted this lack of attention, as he believed that a focus on public law would allow the faculty to also attract the children of the leading class, who too often were condescending about the law faculty. According to Tuldenus, a faculty of law indeed must not only educate future *litigatores*, but especially also future *gubernatores*, for whom the knowledge of public law was of the utmost importance.<sup>91</sup>

It follows from the above, that to avoid the regurgitation of droves of unqualified and inexperienced jurists with undeserved titles, not everyone can be admitted to legal education. Ideally, only those detached from pecuniary concerns can truly be trusted to study jurisprudence for selfless reasons (though with the possibility of exceptions for gifted students)<sup>92</sup>, as hoping to profit from one's legal training is precisely the cause of many of the problems ailing

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<sup>88</sup> D. Tuldenus, *De causis corruptorum Iudiciorum et remediis*, Leuven 1702, lib. 1, cap. 9, pp. 13-14.

<sup>89</sup> F. Duarenus, *Ad Andream Guillartum, clarissimi viri Andree Guillarti, libellorum in Regia magistris, filium, De ratione docendi, discendique iuris conscripta Epistola*, in C. Lagus, *Iuris utriusque traditio methodica (...) Adiecta sunt doctorum aliquot virorum opuscula, De ratione docendi, discendique Iuris civilis*, Basel 1553, pp. 1008-1023, here p. 1023.

<sup>90</sup> L. Waelkens, *The eighteenth century: the best law faculty of Brabant*, in: L. Waelkens, F. Stevens and J. Snaet (eds.), *The History of Leuven's Faculty of Law*, Bruges 2014, p. 136; V. Brants, *Faculté de droit*, cit., p. 303.

<sup>91</sup> On the importance of the *gubernatoriae leges*, see: D. Tuldenus, *De causis corruptorum iudiciorum et remediis*, Cologne 1624, lib. 1, cap. 7 and 15b.

<sup>92</sup> D. Tuldenus, *De causis corruptorum Iudiciorum et remediis*, Leuven 1702, lib. 1, cap. 6, pp. 8-10.

jurisprudence.<sup>93</sup> It is precisely this privileged (read: aristocratic) class that Tuldenus was most hoping to reach out to and attract with an increased emphasis on public law. A student should only commence his legal training when he has a certain maturity (not much younger than 20); younger students often lack self-discipline, a student of laws should already have some experience in society, and most importantly, one has to have finished the necessary preparatory education for a degree in law – the arts.<sup>94</sup> Finally, a candidate should ideally only graduate when he is over the age of twenty-five<sup>95</sup> (taking, of course, exceptions into account) and following an evaluation of the knowledge of legal doctrine of the candidate.<sup>96</sup> The latter should not only encompass a disputation of a thesis, but the candidate should also have to provide legal advice on a common juridical question in practice.<sup>97</sup> Crucially, before a candidate could be granted a licentiate's degree, his morals should also be tested.<sup>98</sup>

Clear from all of this is Tuldenus' idealism regarding the nature of law and the qualities a legal practitioner should possess. It is relatively clear what he raves against, but the terminology used is less focused (though one might consider this an inevitable consequence of the diffusion of his thought over multiple works). Sophistry seems a particularly malleable term, sometimes seemingly used as a capital-S synonym of false jurisprudence, sometimes referring to the project of teaching law without eye for the arts or moral education, or simply the absence of knowledge of the arts in general. Yet excessive emphasis on eloquence and rhetoric in an education of the arts is also (here in the more 'traditional' meaning) sophistry.

One might be inclined to read in this a particularly shallow and *buzzword*-like usage of sophistry (every combination of 'intellectual ingredients' in a legal practitioner that he disproves of, and all those faulty combinations collectively), though Tuldenus was no neophyte in the philosophical traditions of Antiquity. In his eulogy for his predecessor Weymsius, where he makes reference to Plato, these varied rebukes against sophism are tied together, though the reasoning remains somewhat oblique.<sup>99</sup> Following the reasoning through, it is clear that Tuldenus perceives the innovation of the Sophists with some clarity: the

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<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*, lib. 1, cap. 8, pp. 11-13.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*, lib. 1, cap. 16, pp. 31-34.

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

<sup>99</sup> D. Tuldenus, *Initiamenta Jurisprudentiae*, Leuven 1702, *Laudatio funebris Stephani Weymsii*, p. 62, §11.

creation of a dichotomy between what is natural (or: ‘real’) and convention (what merely *appears* real) or the distinction between *physis* (φύσις) and *nomos* (νόμος).<sup>100</sup> Ergo, giving someone the means (through a legal and rhetorical education) to draw the line between *justice* and *jurisprudence* (as a fallible simulacrum of justice) as the Sophists had done in slightly different terms, is always a risky proposition. To someone like Tuldenus, for whom any distinction between jurisprudence and justice is anathema (jurisprudence *is* and *has* to be just)<sup>101</sup>, those who would be entrusted with the instrument of jurisprudence need to be carefully selected and moulded so as to make sure they always use it to pursue justice. The allure of treating jurisprudence as an art (in part) detached from very real and binding norms of natural justice has philosophical and ethical consequences, but also results in very real practical ills. At times, this dichotomy between the Jurisprudence of Logic (*Jurisprudentia Logica*) and the Sophist Jurisprudence (*Jurisprudentia Sophistica*) – as he calls them in the eulogy – even seems to gain a metaphysical edge.<sup>102</sup>

This distinction between false and true jurisprudence then traces back to what the Socratic philosophers had raved so against; false is drawing a line between what is supposedly mere artifice and what is natural or ‘normative’, true is accepting the natural order of things as a given. The one is sophistry, the other the pursuit of truth (or when it specifically concerns the legal science: the ‘true jurisprudence’). Tuldenus confirms as much when he states that no one since Plato can reasonably claim sophistry and jurisprudence to be the same – yet to Tuldenus the problem was an even greater one in an era with a professional jurist class, where a legal and rhetorical education was easier to obtain than ever before. Or with an aphorism: this sophistic jurisprudence was born in Plato’s era, but had now reached adolescence.<sup>103</sup> And the consequences of the proliferation of this false jurisprudence are grave indeed; sedition, war, endless court battles that destroyed families and the community of nations as a

<sup>100</sup> See in particular; F.D. Caizzi, *Protagoras and Antiphon: Sophistic debates on justice*, in: A.A. Long (ed.), *The Cambridge Companion to Early Greek Philosophy*, Cambridge 1999, pp. 311-331. Also relevant are: F. Heinemann, *Nomos und Physis. Herkunft und Bedeutung einer Antithese im Griechischen Denken des 5. Jahrhunderts*, Darmstadt 1978, 221 p., esp. pp. 110-162; P. Woodruff, *Rhetoric and relativism: Protagoras and Gorgias*, in: A.A. Long (ed.), *The Cambridge Companion to Early Greek Philosophy*, Cambridge 1999, pp. 290-310, esp. 300-305.

<sup>101</sup> See i.a. D. Tuldenus, *Commentarius in Pandectas*, Leuven 1702, ad D.1.1.1*pr*, cap. I-II, pp. 1-2; D. Tuldenus, *Initiamenta Jurisprudentiae*, Leuven 1702, *oratio I effigies jurisprudentiae topice figurate articulataque*, pp. 1-10;

<sup>102</sup> D. Tuldenus, *Initiamenta Jurisprudentiae*, Leuven 1702, *Laudatio funebris Stephani Weymsii*, p. 62, §11.

<sup>103</sup> *Ibid.* “*Nemo hanc distinctionem commentitiam putet: tot ante secula Platonis fuit. Tunc enim nascebatur, quae hodie adolevit.*”



whole. Contrary to what some (like the eminent Lipsius himself) may claim, such litigiousness was not inherent in the nature of jurisprudence itself<sup>104</sup> (and thus did not simply increase proportionally and naturally with the proliferation of jurisprudence), but rather is caused by its cancerous counterpart, feeding off of the growth of jurisprudence like ryegrass in a fertile field.<sup>105</sup> In this context, we need not look far for the inspiration for Tuldenus' suggestion that (realistically) only the aristocrat class should be allowed access to legal training – it echoes the many remarks in Plato's oeuvre indicating that hoping to make a living from one's learning (like the Sophists) renders one morally suspicious and worthy of scorn.<sup>106</sup>

What is certain is that Tuldenus – crucially – transmits this idealistic sensitivity into a genuine desire to make a lasting impact on the legal ecosystem in three fields; the administration of justice, the content of legal reasoning, and legal education (see *infra* Ch. 3.2).<sup>107</sup> It is to the practical implementation of the latter field in the program of study that we shall now turn our attention.

### 3. *The program for the first year of the legal studies*

#### 3.1. *General overview*

Tuldenus argues – with a reference to the famous guidance by Emperor Justinian in his preface to the *Institutes*<sup>108</sup> – that it does not make sense to immediately overwhelm new students with detailed information. Instead, studies at a law faculty should start with an accessible introduction to the law. In line with the 1617 Visitation Ordinance, in their first year at the Leuven university, students followed two classes of civil law, namely one on the *Institutes* of Justinian and another on the *paratitla* of the Code and the Digest, according to the

<sup>104</sup> Letters from Tuldenus to Puteanus, KBR ms. 19112, nr. 29.

<sup>105</sup> D. Tuldenus, *Initiamenta Jurisprudentiae*, Leuven 1702, *Laudatio funebris Stephani Weymsii*, p. 62, §11.

<sup>106</sup> Plato, *Laches* 186c; *Meno* 91b; *Protagoras* 310d, 313c, 349a; *Gorgias*. 519c–d; *Hippias Maior* 281b–283b; *Sophist* 223a, 224c, 226a. See D.D. Corey, *The Sophists in Plato's Dialogues*, New York 2015, p. 189.

<sup>107</sup> His mission statement to this end is to be found in the preface of his *De principiis iurisprudentiae*; D. Tuldenus, *De principiis iurisprudentiae*, Leuven 1702, pp. 1–2.

<sup>108</sup> Cfr. Inst. 1,1,2: “(...) *Alioquin si statim ab initio rudem adhuc et infirmum animum studiosi multitudinem ac varietate rerum oneraverimus, duorum alterum aut desertorem studiorum efficiemus aut cum magno labore eius, saepe etiam cum diffidentia, quae plerumque iuvenes avertit, serius ad id perducamus, ad quod leniore via ductus sine magno labore et sine ulla diffidentia maturius perducipotuisset.*”

method of Jacques Cujas (1522-1590), *Cujacii more*.<sup>109</sup> Those who wished to obtain a degree *in utroque iure*, were also expected to take the introductory course in canon law. In all these classes, students should first get a basic overview, a so-called introduction or *interpretatio universalis*, which in truth did not consist of more than a mere enumeration of the titles, an explanation of some difficult terms and a very brief introduction into the main legal concepts. In a second step – still to be completed in this first year of study – students should be given a somewhat more articulated picture of each chapter according to the *Paratitla*-method. Tuldenus refers to this second step as the *interpretatio generalis*.<sup>110</sup>

Tuldenus warned the first-year students that studying required a lot of self-discipline and efforts, and reminded them also that they were not expected to be mere passive listeners to his lectures. In preparation of each lecture, the students must at least have read the primary sources that would be studied during that lecture. For the *Paratitla* course, students were encouraged to also read the relevant passages in Cujacius' *Paratitla*. During the classes, students had to be attentive and to make notes. After class, students should re-read the passages and confront their reading with the notes they had taken. Tuldenus also provided his first-year students with a literature list, which consisted of a few summaries of Justinian's Institutes, some commentaries on the Digest's titles *De verborum significatione* (Dig. 50,16) and *De regulis iuris* (Dig. 50,17), and a few legal dictionaries.<sup>111</sup>

The high esteem of Leuven professors for the educational value of the Institutes of course predates the Visitation Ordinance of 1617. The *Institutiones* had been part of the Leuven curriculum as of its erection in 1425, as it is evidenced for instance by the manuscript course notes by Henricus de Piro (d.

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<sup>109</sup> Archdukes Albert and Isabella, *La Visite ou règlement élaboré pour l'Université de Louvain*, 5 September 1617, artt. LXXXV-LXXXVII. The *regii professores* switched courses each year, so that both of them could alternate in teaching the Institutes and the *Paratitla*. That this rule was also applied in practice, is apparent from: D. Tuldenus, *Initiamenta jurisprudentiae*, Leuven 1702, *oratio auspicalis* V *de consultissima ad jurisprudentiam via*, p. 24.

<sup>110</sup> D. Tuldenus, *De causis corruptorum iudiciorum et remediis*, Cologne 1624, lib. 1, cap. 14.

<sup>111</sup> D. Tuldenus, *Initiamenta jurisprudentiae*, Leuven 1702, *oratio auspicalis* V *de consultissima ad jurisprudentiam via*, pp. 31-32. For more on this literature list, see the following subsection (Ch. 3.2).

1473)<sup>112</sup> or the posthumously printed textbook by Nicolaus Heems<sup>113</sup>. Nonetheless, the way of presenting those Institutes profoundly changed. Where de Piro still chose for a close reading of the different fragments of the Institutes, often with a sentence-by-sentence commentary in the Bartolist method, from the second half of the sixteenth century onwards a different teaching style would be promoted. The Leuven law professor Joannes Ramus (1535-1578) argued that Justinian's Institutes actually did not need many additional clarifications or explanations and should be taught "moderately, in a simple way", at best *viva voce*, without dictation.<sup>114</sup> It was, however, one of Tuldenus' more recent predecessors, namely Gerardus Corselius (1568-1636), who eventually

<sup>112</sup> Cfr. Henricus de Piro, *Lectura in Institutionibus*, KU Leuven ms. 1346. De Piro joined the Leuven law faculty in October 1428 as the second *ordinarius* (after Jan van Groesbeek), responsible for the teaching of the Institutes. He left Leuven in March 1431 already to become professor at the university of Cologne (*ordinarius de mane*). De Piro participated at the council of Basel, but afterwards retired from public life and became a Carthusian monk in 1435. On Henricus de Piro, see: R. Feenstra, *Henricus Brunonis de Piro (+ 1473). Professeur de droit civil et Chartreux*, in «Tijdschrift voor Rechtsgeschiedenis», LXIV (1996), pp. 3-46; G. van Dievoet, D. van den Auweele and M. Oosterbosch, *Henricus de Piro en de Leuvense Universiteit (1428-1431)*, in «Ex officina. Bulletin van de Vrienden van de Leuvense Universiteitsbibliotheek», VI (1989), pp. 139-168. See also: R. Feenstra, *Teaching the Civil Law at Louvain as Reported by Scottish Students in the 1430s (mss. Aberdeen 195-197) with addenda on Henricus de Piro (and Johannes Andreae)*, in «Tijdschrift voor Rechtsgeschiedenis» LXV (1997), pp. 276-279.

<sup>113</sup> The lecture notes on the Institutes of Justinian by the Leuven law professor Nicolaus Heems (also known as Nicolaus de Capella or Nicolaus de Bruxella), have been published as: Nicolaus de Bruxella, *Compendium in quatuor Institutionum imperialium libros*, Leuven 1513. Nicolaus Heems was *ordinarius* for the Institutes from 1506 till 1520, when he became *ordinarius de mane*. On this *Compendium*, see: Alphonse Rivier, *Le Compendium Institutionum de Nicolas de Bruxelles*, in «Bulletin de l'Académie royale de Belgique. 2ième série» XXXVIII (1874), pp. 619-37.

<sup>114</sup> Joannes Ramus, *Ad Epistolas Pandectis praemissas (...)*, Schweinfurt 1607, *ad Epistolam III*, § *Itaque dubio procul*, pp. 20-21, where he argued that the Institutes had to be taught "*mediocriter, levi ac simplici via, ne scilicet rerum multitudine et mole praegravetur auditor, et in desperationem inducatur.*" He added: "*Mallem ergo sine ullis commentariis institutiones Imperiales doceri, et magna certe est eorum inelegantia et praepostera diligentia, qui contra faciunt.*" Joannes Ramus was born in Goes in 1535 in Zeeland and first studied classical philology. At the age of 20, he already taught rhetoric and Greek at the university of Vienna. By 1557, he returned to Leuven to obtain a doctorate in both civil and canon law (*utriusque iuris*), with the famous humanist scholar Gabriel Mudaeus (1500-60) as his supervisor. After a brief period as professor of law in Douai (1562-1565), he returned to Leuven as a professor from 1565 till 1578. He had planned to move to the university of Dôle, but died early in 1578, at the age of 43. On Joannes Ramus, see: B. Verheye, *Jan Tacks Oikonomia. Princeps legibus solutus est, sed in Dei potestate*, in «Jura Falconis», L (2013), pp. 977-1002 and V. Brants, *Faculté de droit*, cit., pp. 38-39.

decided to radically alter the course of the Institutes at Leuven university.<sup>115</sup> Rather than time and again repeating his traditional *dictata* to the different titles of the Institutes, Corselius decided in 1602, in his sixth year as a *regius professor*, to use the first hour of each lecture to speak freely without dictation (*perpetua oratione*), leaving it to the students to copy – if they wished – the manuscript course notes of the previous years. Only in the second hour of the course, Corselius still dictated, yet not in the form of a mere commentary but rather a discussion of several specific *quaestiones* according to the order of the Institutes. His choice for a dictation method in that second part of the lecture was mainly meant to ensure that his students would have a certain proof of attendance of the lectures (in case their parents requested such).<sup>116</sup> Corselius' discussion of these *quaestiones* has been preserved in several manuscript copies, entitled *Auctarium*, but was never printed. It is full of references to humanist authors like Jacques Cujas and François Hotman (1524-1590).<sup>117</sup>

When Corselius was promoted to the position of *primarius professor* of civil law at the Leuven university in 1606, the course on the Institutes was taken over by Henricus Zoesius (1571-1627), who, at least in terms of style, had chosen for a more traditional teaching method, dictating his interpretation of Justinian's Institutes to the first-year law students. Tuldenus was a student of Corselius, who had been the *primarius professor* at the time he studied in Leuven, and greatly admired his teaching style. A few years into his own career as a *regius professor* in succession of Zoesius, Tuldenus chose to follow Corselius' example, and thus to re-introduce a *viva voce* teaching method, which had fallen into disuse.<sup>118</sup> What is more, in facilitating this process, Tuldenus even went a step

<sup>115</sup> On Corselius, see: R. Feenstra, *Jacobus Maestertius 1610-1658. Zijn juridisch onderwijs in Leiden en het Leuvense disputatiesysteem van Gerardus Corselius*, in «Tijdschrift voor Rechtsgeschiedenis», L (1982), pp. 297-335.

<sup>116</sup> Gerardus Corselius, *Ad Institutiones Iustiniani auctarium*, Royal Library of Belgium (KBR) ms. 4086, f. 1: “*Sextum iam Iustiniani Institutiones praelecturi, vitandi taedii causa praelectionis rationem mutabimus: superioribus enim annis dictata dedimus, quae visa sunt ad eius libri expositionem necessaria: quae iterum repetere, mihi taedio sum, nec vobis necessarium est cum in multorum iam manibus versentur, a quibus exscribenda accipere potestis. Itaque hoc anno perpetua oratio, ipsas Institutiones explicabo: at ne vacuus quis sibi domum redire absque dictatis videatur, partiar horam, eiusque parte altera dictabo quarundam quaestionum iuris controversarum quae ad Institutionum loca aliqua pertinere possunt, brevem disquisitionem, idque erit vobis superiorum expositionum auctarium.*”

<sup>117</sup> For a recent discussion of a *quaestio* from Corselius' *Auctarium*, see: W. Druwé, *Qualitative Liability in the Early Modern Low Countries (ca. 1425-1650)*, in «Grotiana», XLII (2021), pp. 37-39.

<sup>118</sup> D. Tuldenus, *Initiamenta jurisprudentiae*, Leuven 1702, *oratio auspicalis XI: In explicationem Codicis praefatio*, pp. 54-55. In this *oratio XI*, Tuldenus explains how this *viva voce* teaching method had been introduced by Viglius ab Aytta (1507-1577). Tuldenus refers here to Viglius' role as privy councillor. In that capacity, he had been one of the driving forces behind

further than Corselius. Rather than giving his students the option of copying the course notes of last year (as Corselius had done), he decided to publish his (reworked) notes, so that students would be able to buy the coursebook prior to the start of the academic year<sup>119</sup>, and at a reasonable price<sup>120</sup>. In his preface of this handbook on the Institutes, he expresses his praise for his example Corselius, worthy of the title of ‘genius of doctrine and equity’ (*immortalem Ingenii Doctrinae atque Aequitatis laudem promeretur*), who set the standard for teaching and inspired Tuldenus to write his coursebook.<sup>121</sup> He reiterates the significance of (the course of) the Institutes as valuable educational tool and laments the use in other universities of lumping together the chapters of the Institutes with their counterparts in the Digest and Code, where they are explained more in depth. The sense of an introductory handbook is to introduce students to the elementary principles of the science and to teach them how to reason starting from this set of first principles, acquainting students from the very beginning with the method of legal interpretation.<sup>122</sup>

It is hence clear that Tuldenus’ decision to publish a coursebook was motivated by his views on legal education and the role of a university professor. For Tuldenus, a professor of law was not only an intermediary and an interpreter, but also a captain who had to lead his students through the immense sea of jurisprudence (*per immensum Iurisprudentiae pelagus*).<sup>123</sup> In one of his *orationes auspicales*, Tuldenus explains how professors should try to flatten the steep roads to jurisprudence, the *magistra omnium artium*. God has wanted that all important goals cannot be reached without effort, but a law professor should significantly alleviate the students’ tasks. According to Tuldenus, the publication of a coursebook prior to the academic year was a way to do so. Thus, students did no longer have to copy the words the professor dictated. Instead, as students should have read the relevant chapters upfront<sup>124</sup>, the professor could now truly focus on explaining, *viva voce*, the more difficult passages. He could give

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the erection of two chairs for *regii professores* at the faculty of civil law. Cf. V. Brants, *Faculté de droit*, cit., p. 28.

<sup>119</sup> D. Tuldenus, *Initiamenta jurisprudentiae*, Leuven 1702, *oratio auspicalis X: Exhortatio ad Institutionum Juris Civilis Praelectiones*, pp. 51-52.

<sup>120</sup> D. Tuldenus, *Initiamenta jurisprudentiae*, Leuven 1702, *oratio auspicalis XI: In explicationem Codicis praefatio*, p. 55.

<sup>121</sup> D. Tuldenus, *Commentarius in IV. libros Institutionum*, Leuven 1702, *Prooemium Auctoris*, p. i.

<sup>122</sup> D. Tuldenus, *Commentarius in IV. libros Institutionum*, Leuven 1702, *Prooemium Auctoris*, pp. ii-iii.

<sup>123</sup> D. Tuldenus, *De causis corruptorum iudiciorum et remediis*, Cologne 1624, lib. 1, cap. 13.

<sup>124</sup> D. Tuldenus, *Initiamenta jurisprudentiae*, Leuven 1702, *oratio auspicalis XI: In explicationem Codicis praefatio*, p. 54.

examples, and include cross-references (knowing that students would be able to read ahead if they wanted to). Students would be able to build on what they had read before and think productively on the subject matter, as their attention would be directed towards the most complex points. Tuldenus expected to be able to treat at least twice the amount of content when compared to previous years, whilst still talking sufficiently slowly and clearly and by taking the time to repeat certain explanations in a different way. Tuldenus was convinced that the added value of *viva voce* explanations over a mere reading of books without oral explanation or over a mere dictating of sentences to be copied, could not be underestimated. He also explained that his coursebook – which the author also intended to serve future generations – certainly contains less errors than a student's own notes, again increasing the quality of the education.<sup>125</sup>

### 3.2. *Tuldenus' method and the legal humanist school*<sup>126</sup>

Tuldenus' teaching style and method were not only a sign of his respect for Corselius, but also a consequence of his profound adherence to legal humanist ideas. There are plenty of indications thereof. The most explicit one is undoubtedly his choice of authors for his literature list, which was made up of the most important representatives of the *mos gallicus*. Thus, Tuldenus suggested his students to read the commentary on the *regulae iuris* by the aforementioned Le Douaren. The recommendations of the legal dictionaries by François Hotman and Barnabé Brisson (1531-1591) – and the requirement that students read the *paratitla* by Jacques Cujas – are evidence of the important place the French humanists played in his thought.<sup>127</sup>

These French humanists – many of whom had written brief essays on studying and teaching law (*de ratione docendi discendique iuris*) – had clearly influenced the pedagogical ideas which Tuldenus proposed in his own *orationes auspicales*. A few examples can illustrate this. In a published letter to a certain André Guillard, Le Douaren had deplored the failures of the educational system at law faculties, which was marked by a neglect of Latin and Greek philology, the unsystematic approach of the classes on the *ius commune*, full of irrelevant digressions, and all kinds of vain sophistries and useless discussions on minor points. Instead, Le

<sup>125</sup> D. Tuldenus, *Initiamenta jurisprudentiae*, Leuven 1702, *oratio auspicalis XI: In explicationem Codicis praefatio*, p. 53. Cf. V. Brants, *Faculté de droit*, cit., pp. 39-40.

<sup>126</sup> On the legal humanist school, see for instance P.J. Du Plessis and J.W. Cairns (eds.), *Reassessing Legal Humanism and its Claims: Petere Fontes?*, Edinburgh 2015, 402 p.

<sup>127</sup> D. Tuldenus, *Initiamenta jurisprudentiae*, Leuven 1702, *oratio auspicalis V de consultissima ad jurisprudentiam via*, pp. 31-32.

Douaren had suggested that, before entering law school, students should be trained in both Latin and Greek. In law school, then, the first few months should be devoted to the Institutes, which had to be read and re-read over and over again. The *viva voce* explanation by a professor of the Institutes was very helpful, a point of view that the Leuven law professor Joannes Ramus would later quote and which thereafter clearly inspired Tuldenus in his own teaching. Le Douaren stressed, however, that the oral discussion by the professor should be limited at this early stage to a mere introduction to some basic juridical terminology, as well as to a very simple explanation of a few more difficult terms.<sup>128</sup> These first months of the law studies were not yet the time to delve into all kinds of detailed discussions. Once the students had memorized the Institutes (especially the order of the subjects and their key components), they could turn to the Pandects. Rather than proposing a fragment-by-fragment approach, Le Douaren argued that it was the task of the professor to summarize the most important content of each individual title, as well as to remind students of the importance of the praetorian edict for the understanding of the Digest's fragments and its order. This approach was based on what can undoubtedly be called the most fundamental pedagogical idea of the humanists, which Le Douaren formulated as follows: "*Nam eruditorum consensu receptum est, in docendis artibus ab iis quae universalis et nobis notiora sunt, ad singularia procedendum esse.*" Tuldenus' methodological choice to first introduce students to the general principles before going into a whole lot of practical cases was clearly in line with that statement too.<sup>129</sup>

Our Leuven law professor's interest for the legal humanist school was, however, not limited to its French branch. In fact, his ideas were also very consistent with those of two Reformed authors who had worked at German universities and who featured on his literature list for the first-year students as well, namely Matthias van Wesenbeke (1531-1586) and Giulio Pace (1550-1635). Indeed, Tuldenus counselled his students to consult the *Paratitla* by the Antwerp-born jurist Wesenbecius, who had been a student of Gabriël Madaeus (1500-1560) at the university of Leuven, but had later converted to Lutheranism and moved

<sup>128</sup> F. Duarenus, *Ad Andream Guillartum, clarissimi viri Andree Guillarti, libellorum in Regia magistri, filium, De ratione docendi, discendique iuris conscripta Epistola*, in: C. Lagus, *Iuris utriusque traditio methodica (...) Adiecta sunt doctorum aliquot virorum opuscula, De ratione docendi, discendique Iuris civilis*, Basel 1553, pp. 1008-1023; J. Ramus, *Ad epistolam III Pandectis praemissam*, Schweinfurt 1607, p. 22: "(...) ubi [Franciscus Duarenus] simul tradit Institutiones debere viva praeceptoris voce explanari, cum libri non sicut praeceptor dubitantibus nobis satis commode respondeant."

<sup>129</sup> F. Duarenus, *Ibidem*, p. 1017. See also: X. Prévost, *Mos gallicus jura docendi. La réforme humaniste de la formation des juristes*, «Revue historique de droit français et étranger», LXXXIX (2011), pp. 500-502; V. Piano Mortarí, *Considerazioni sugli scritti programmatici dei giuristi del secolo XVI*, in «Studia et documenta historiae et iuris», XX (1954), p. 290.

to Jena and Wittenberg, where he was appointed professor of law in 1569. In his *Prolegomena de studio iuris recte instituendo*, Wesenbecius expressed his high esteem for the *ratio docendi* by Le Douaren. Like his French colleague, he stressed the importance of good preparation for legal studies, which for Wesenbecius should not be limited to classical philology as such, but should also include Roman history and the essentials of the liberal arts. Wesenbecius made another interesting addition to the proposal by Le Douaren, in that he did not only propose a reading of the Institutes and then immediately a *paratitla* of the complete Digest, but especially counselled the students to focus first on the two final titles of the Digest, namely *De verborum significatione* and *De regulis iuris*, before reading the other titles.<sup>130</sup> This approach of Wesenbecius probably motivated Tuldenus to include commentaries on those titles in his literature list for freshman law students, as was mentioned above. In addition to this, Tuldenus also added the short *Isagoge* of the Institutes by Pacius to his literature list for the first-years.<sup>131</sup> Pace was professor of law at the university of Heidelberg in the late sixteenth century. In his inaugural lecture at the Heidelberg university in September 1585 *de iuris civilis difficultate et docendi methodo*, Pacius pleaded for a middle way in the debates on the teaching of law, a position that Tuldenus fully supported. Pacius argued that, on the one hand, some, especially in Italian universities, still subscribed to the Bartolist method, and, on the other hand, others in several French universities – the so-called *polymatheis* – considered the study of law as a part of the study of Antiquity and therefore paid almost no attention to contemporary legal practice.<sup>132</sup> For Pacius, both the philological-historical

<sup>130</sup> M. Wesenbecius, *Paratitla in Pandectas iuris civilis. Accesserunt praeterea priori aeditioni Prolegomena De finibus studiorum Iurisprudentiae, De studio iuris recte instituendo (...)*, Basel 1568, pp. 25-40.

<sup>131</sup> Julius Pacius a Beriga wrote an *Isagoge* to Justinian's Institutes, but also to the Digest, the Code of Justinian and the *Liber Extra*. These *Isagogicorum libri* had been published in 1606 in Lyon. It is, however, not unlikely that Tuldenus' students used the 1622 edition of Pacius' *Titulorum Institutionum synopsis et methodus* (i.e. under a slightly different name) by the Antwerp printer Joannes Keerbergius (USTC fingerprint: 162212 - a1 q2 reb : a2 2q6 t,\$c - 1b1 A m : 1b2 X6 \$se - 2b1 2A2 nes\$ : 2b2 2S6 ncussi). In that edition, Pacius' synopsis of the Institutes functioned as an appendix to the main text of Justinian's Institutes themselves. Next to his *Isagoge* to the Institutes, Pace had also written a short and very helpful schematic *Synopsis iuris civilis* (first published in Lyon in 1588).

<sup>132</sup> Probably, Pacius was referring here to the two different methodological approaches of the legal humanists, some (like Le Douaren and Hugues Doneau) opting for the systematic method, with an eye to contemporary legal practice, and others choosing for a mere historical approach (like François Beaudoin or Jacques Cujas). See, on this distinction: X. Prévost, *Mos gallicus jure docendi. La réforme humaniste de la formation des juristes*, «Revue historique de droit français et étranger», LXXXIX (2011), pp. 493-494.



approach and the practical application of the learned law were important and had to be combined.<sup>133</sup> This combination was definitely to Tuldenus' liking.

Of course, Tuldenus did not forget his Leuven predecessors either. In the years before he had published his own coursebook, Tuldenus as a *regius* professor self-evidently proposed to his first-year students the commentary on the Institutes by the *regius professor* Antonius Perezius, his direct colleague at the university of Leuven.<sup>134</sup> Tuldenus' inclusion of Leuven authors, however, primarily shows his high esteem for two of the most innovative Leuven law professors of the mid-sixteenth century, Joachim Hopperus (1523-1576) and Joannes Ramus (1535-1578). Like the humanist authors of the French school, Hopperus and Ramus had stressed the importance when studying law of starting from general principles rather than from a whole list of cases, an approach Tuldenus liked and used himself.<sup>135</sup> Both Hopperus and Ramus had also developed systematic introductions to law, another key concern of the legal humanist school. In his *Oikonomia seu dispositio regularum utriusque iuris in locos communes*, first published in 1557 (when he was only twenty-two years old), Ramus distinguished 251 *axiomata*, 54 on law in general and 187 on the law of persons, the law of goods and the law of procedure (following the structure of Justinian's Institutes).<sup>136</sup> All *axiomata* consisted of references to the titles on *regulae iuris* in the Digest of Justinian and the *Liber Sextus* by Boniface VIII. Four years earlier, in 1553, Hopperus had published his coursebook *De iuris arte libri tres*, an introduction to the 'art of law', a clear indication of Hopperus' humanist sympathies; "*ius in artem redigere*" was after all one of the key goals of the humanist authors.<sup>137</sup> In Tuldenus' literature list, however, Hopperus' books on the art of law were not included, but rather his *Paratitla*, posthumously published as the first part of his *Isagoge in veram jurisprudentiam libros VIII*.

<sup>133</sup> See: Julius Pacius, *De iuris civilis difficultate, ac docendi Methodo*, inaugural lecture at the university of Heidelberg, September 1585.

<sup>134</sup> A. Perezius, *Institutionum Imperialium Erotemata*, Leuven 1626. We have not found any copy of this first edition, but the *approbatio* on the third corrected edition, printed in 1639 by the Leuven printers Everardus de Witte and Joannes Vryenborch, clearly indicates that the first edition had appeared in 1626.

<sup>135</sup> Cfr.: J. Hopperus, *De iuris arte libri tres*, Cologne 1553, p. 2: "*Certe non potest ullo modo fieri, ut de singulis rerum speciebus apte ac conuenienter iudicemus, nisi ab ipsis generibus, et summis capitibus proficiscamur.*"

<sup>136</sup> J. Ramus, *Oikonomia seu dispositio regularum utriusque iuris in locos communes*, Cologne 1576, praefatio.

<sup>137</sup> J.-L. Thireau, *L'enseignement du droit et ses méthodes au XVIe siècle. Continuité ou rupture?*, in «Annales d'histoire des facultés de droit et de la science juridique», II (1985), pp. 27-36.

#### 4. *The program for advanced students*

In the three final years of the program, students should – according to Tuldenus – be trained in the so-called *interpretatio specialis*, which required an in-depth study of the different passages of the *Corpus iuris civilis* from a variety of perspectives. When dealing with an individual *lex*, the professor first had to summarize the fragment and provide the students with the necessary historical background in order to understand the passage (*interpretatio historica*). The professor also had to enlighten the *ratio legis* of the rule (*interpretatio aetiologica*). In case of contradictory fragments, the analogical method of interpretation (*interpretatio analogica*) could help to find a solution, e.g. by distinguishing between different *rationes legis*, between an interpretation *e bona fide* and *stricti iuris*, or between a rule of *ius commune* and one of *ius singulare*. Tuldenus emphasizes, however, that a reconciliation of all passages in the *Corpus iuris civilis* was not possible, as some are truly contradictory, because they stem from different schools of law (like the Sabinians and the Proculians) or because they are the consequence of sloppiness (e.g. as the compilers forgot to remove some abrogated laws from the compilation). Students also had to be introduced to the pragmatic and forensic methods of interpretation (*interpretatio pragmatica – interpretatio forensis*), which help them apply the Roman legal principles on specific cases, including contemporary ones, a key concern for Tuldenus.<sup>138</sup>

In the advanced years of the legal studies, students should still visit the classes, of course, but should additionally engage in disputation exercises, which would help them to reflect and reason individually, based on a wise weighing (and not merely a blind listing) of arguments. Organizing such exercises in the first year of the program would be counterproductive; students wouldn't have the necessary grasp on the essentials of the art of jurisprudence yet. In a similar way, the literature students should read in these final years, was of a more advanced level too. The more experienced students were expected to read *communes opinioniones*, annotated *consuetudines*, collections of *decisiones* and *consilia*.<sup>139</sup> Evident from this list is the absence of references to the traditional commentary literature, which had already been called useless for law students by legal humanist authors before, such as for instance Le Douaren or Wesenbecius.<sup>140</sup> The

<sup>138</sup> D. Tuldenus, *De causis corruptorum iudiciorum et remediis*, Cologne 1624, lib. 1, cap. 14.

<sup>139</sup> D. Tuldenus, *Initiamenta jurisprudentiae*, Leuven 1702, *oratio auspicalis* V *de consultissima ad jurisprudentiam via*, p. 34. For an overview of the available *consilia* literature from the legal practice of the Low Countries, see: W. Druwé, *Loans and credit in consilia and decisiones in the Low Countries*, Leiden 2020, pp. 76-118.

<sup>140</sup> It is important to note that Tuldenus' critique against the value of commentary literature was not a personal criticism of the famous postglossators like Bartolus or Baldus, but rather of those sixteenth-century jurists who were still using that so-called *mos italicus* and had not

legal humanists set out that the efforts to study such detailed discussions on often rather irrelevant subjects left almost no time for furthering the true goal of law studies. Rather than reading detailed commentaries in the Bartolist style, students should therefore read explicitly practice-oriented literature in order to stimulate their own reflection on the application of the learned law in their own age.

Given the growing independence of later-year students, Tuldenus decided, after his appointment as ordinary professor of the Digest, that it was not necessary that he publish a coursebook on the Pandects, as he had done for the Institutes and *Paratitla* of the Code. He argued that most definitions of the terms mentioned in the Digest, could be found in his introductory coursebooks and that for other matters he could mostly refer to the relevant chapters in other printed works which the students were able to consult themselves. That allowed him to largely speak freely in his Digest classes as well. Only where Tuldenus' approach was fundamentally different from that of other authors or when he thought it really necessary to formulate a few essentials in a way that made it easier to remember, would he still use the classical dictating method.<sup>141</sup> His notes on the Digest were, therefore, not published during his lifetime. A manuscript version must have served as the basis for its first and posthumous publication in the *Opera omnia*, in 1702, as is additionally demonstrated by the selective treatment of chapters, treating some very specific points at great length and with creativity, others in a more elementary fashion. Under some chapters, he refers extensively to other authors, at times going so far as to lift entire paragraphs from the cited works.

## 5. Conclusion

Tuldenus as a legal author and professor was not lacking in high ideals. His mission was clear – safeguard the state of jurisprudence, the legal science and the legal profession as a whole. His enemy was an ancient one – the Sophism that had so vexed the Socratic philosophers, which was as a blight upon the true jurisprudence and sapped it of its strength and lustre. It was responsible

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profited from the evolutions in legal science. The older commentators themselves could not be blamed, as they lived in difficult times. Cfr.: D. Tuldenus, *De causis corruptorum iudiciorum et remediis*, Cologne 1624, lib. 1, cap. 9: “(...) adeoque quod in illis desiderant, omnes imputant rudiori genio infelicis seculi, quo flos ille liberalis doctrinae exaruerat pene universus.”

<sup>141</sup> D. Tuldenus, *Initiamenta jurisprudentiae*, Leuven 1702, *oratio auspicalis XIII de officio Antecessoris Jurisprudentiae*, pp. 59-62.

for corruption in judges, litigiousness and civil unrest, and was fed principally by the deficient education of aspirants to the legal profession.

Our author however did not merely decry these trends; his concern for the education of law students was put into practice through his works and teaching. In forming his own pedagogical ideas, he was influenced profoundly by the French and German humanist schools, as well as his own Leuven predecessors such as Hopperus, Ramus or Corselius – who in their own time were educational pioneers. From these he distilled his own notions on education and the role it could play in furthering the true jurisprudence.

A legal education was not for everyone – only those of sufficient maturity and who stood above pecuniary concerns due to their background could be trusted with the two-edged sword of jurisprudence, and moral character remained an important part of the formation, and even a condition for graduating. From authors such as Duarenus, he and his colleague Perezius understood that the novel field of public law was an essential instrument to attract the future governing elite, though regrettably their efforts failed to outlive them.

Training an adolescent mind in the art of jurisprudence required starting from general principles, gradually training a student to apply these first principles to ever-more complex and specific cases. To this end, the Institutes of the *Corpus Iuris* were very suited. In the later years, once students had a grip on the first principles of the legal science, they should learn how to weigh various arguments and how to argue their point. From the humanists (and his mentor Puteanus in particular) Tuldenus understood the importance of a preparatory study of the arts, including a thorough mastery of Latin and Greek, alongside Roman history. Yet this emphasis on philology and history was to go hand in hand with the application of the learned law in practice – the innovations of the humanist school were to be used to their full advantage, but training a jurist in the search for solutions for his own time remained an indispensable part of the formation of aspirant-jurists.

For the first years, the form of teaching that Tuldenus introduced in Leuven was nothing short of ground-breaking. Building on the ideas and practices of his predecessors Ramus and his direct example and teacher Corselius, Tuldenus introduced a *viva voce* teaching method, accompanied by a published coursebook that he provided for his students at a reasonable price. This allowed for a much more thorough, reliable and quick way to transmit the fundamentals of the legal science to his students. What is more, Tuldenus urged his students to come prepared to his classes, having read the necessary materials in advance; they were expected to be active and engaged listeners. With some sense of grandeur (and without losing sight of the contributions of Tuldenus' predecessors and

sources of inspiration), we might even dub it the first instance of modern teaching at the Leuven law faculty.

For all that Tuldenus developed his own and innovative style of teaching, he didn't feel the need to reinvent the wheel, and handily made use of the works of his predecessors, adding the works of authors such as Pacius, Wesenbecius, Hotman and the perennial Cujas to the reader for his first-year students.

Of the more advanced students in the course of the Pandects, Tuldenus expected a greater degree of autonomy. Tuldenus would still mostly speak freely; it would be up to students to look up the course matter in the available handbooks on the subject. The most experienced students would be ready for the practical literature such as *decisiones* and *consilia*, a necessity to round off the jurist's education and prepare him for the role of legal practitioner and problem-solver.

Through Tuldenus' prodigious output related to legal education and pedagogy, we can clearly see that this concern is at the forefront of his mind. In this sense, Tuldenus is not merely an academic writer with a passing interest in the formation of young jurists, but rather is deeply motivated to bring about a change for the better in the legal profession as a whole. This piece, in so far as it shed light on the figure of Tuldenus as a teacher and educational thinker, then not merely serves to chart a particular moment in the history of legal education, but is rather a fundamental view into what precisely defines this Leuven professor – being an educator.