CHAPTER III

LEGAL EDUCATION — A BRIEF GLANCE AT SOME RECURRING ISSUES

The quality of legal education, its teaching and its learning has long been a vital concern of the authorities, academics, members of the profession and the general public. And rightly so. However, it is not appropriate here to provide a history of the perceived strengths and weaknesses of legal education over the ages but merely to indicate a few features which will help put Huber’s *Dialogus de ratione docendi et discendi juris* into a historical perspective.1

1. LEGAL EDUCATION IN THE NORTHERN NETHERLANDS IN THE 17TH CENTURY

To appreciate the stresses which were underlying Dutch legal education in the late 17th century, although they are only lightly touched on in the *Dialogus*, it is desirable to mention briefly certain social and political issues which arose during the previous century. The links which bind society and law, and hence society and the teaching and learning of law are among the most significant aspects of the individual and the state. As a rough generalisation, it is possible to say that the Northern Renaissance was more earnest and intellectually pragmatic than that of the aesthetic Italians, in fact it was the beginning of the Reformation. Scholars such as Agricola2 and Erasmus3 are significant names. For our purposes Erasmus is to be noted as one who regarded humanism as an effectual weapon against the prevailing ignorance — especially that of the clergy. He was himself a keen student of the classical world and strove to apply its morals to his day. Likewise, he wanted all men to know the Bible and what it meant. The focus on biblical studies rather than the classics was one of the hallmarks of Dutch humanism. The impact of the Protestant Reformation (1519) and the Revolt of the Northern Provinces (1572) had “produced an uneasy blend of Protestant–Catholic confrontation, humanist-confessional antagonism and Protestant–anti-Calvinist dissent which fragmented thought and education, . . . posing questions about the nature of political and ecclesiastical authority, the status of Scripture, the rights and wrongs of revolt, toleration and freedom of conscience and, not least, the problem of how to reverse the perceived collapse of discipline and morality”.4

In the late 16th and 17th centuries an important factor to consider is the development of universities in the Northern Provinces, (where the Protestant Reformed Church had a privileged position) and their impact on the teaching and practice of law. The University of Leiden (Holland) was established in 1575,5 the University of Franeker (Friesland) in 1585, the University of Groningen in 1614 and the University of Utrecht in 1636, followed by the university at Harderwijk

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1 Huber’s concern with legal education was not unique. See Lipenius *Bibliotheca* vol. 2, pp 35–40 for a listing of various works on the topic.
2 Rudolf Agricola (Huysman) (1444–1485) was born in or near Groningen. Later in life he travelled to Germany. His interests were theological.
3 Desiderius Erasmus (1466–1536) was born in Rotterdam, schooled at Deventer and taken to Italy by Agricola, one of his early preceptors. He was a man of high ideals, brilliant scholarship and effectively propagated the humanist scholarship.
4 Israel *The Dutch Republic*, p 565.
5 See Feenstra and Waal *Leyden law professors* pp 15–18 for a brief but perceptive analysis of law teaching from the 12th century to the rise of the Dutch universities, passim. For the history of law teaching at Leiden University in the 17th century see Ahmann *Collegia et Colleges*. 
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(Gelderland) in 1648. The Athenaeum Illustre in Amsterdam was founded in 1632 but only became a university in 1877. A university was legally entitled to confer a degree, the Illustrious Schools or Athenaeum could only provide legal education. Of these the Athenaeum or Illustrious School of Amsterdam, founded in 1632, became the most renowned. This was partly because the school attracted outstanding professors such as Gerard Vossius,6 the first rector, and Caspar Barlaeus,7 and not least by the generous stipends offered. Thus, in addition to the universities there were various Athenaeum, Latin Schools and individuals providing legal education but not legal qualifications.

1.1 The University of Leiden and the Faculty of Law

In general, Huber’s didactic orations and writings do not attach to any Dutch university other than Franeker, but in the Dialogus, the association with Leiden is marked. Böckelmann, Crusius and Rusius all taught there. Wijngaerden appears to have moved from Franeker to Leiden some time after 1670 and was teaching privately. On 31 March 1674 he defended his disputation pro gradu on De vectigalibus. It is only Huber himself who has no direct links. The setting is clearly Leiden and the discussion relates to its teaching practice. Let us therefore consider that great education centre more closely.

The University of Leiden was established in 1575 shortly after the Revolt of the Province of Holland. Its purpose was to educate the sons of the regents and nobility and train office-bearers and professionals. Theology was also to be taught but the Staten of Holland did not consider this their primary purpose and refused to hand over control of the university to the South Holland Synod.8 Strict Calvinists considered Leiden too liberal in its policies and preferred Geneva or Heidelberg. Thus its strength was its tolerance of varying confessions. After a slow start Leiden established itself, with its library, the Hortus Academicus and its generally outstanding staff as the leading Dutch Protestant university.9

As with most universities, the senior faculties of Theology, Law and Medicine were regarded as the true faculties. The Arts subjects were regarded as preparatory and, in the eyes of the Law faculty, as a means to bring students up to the required competence in Latin and Greek Philology and Literature, Ancient History, Philosphy and Rhetoric. It is doubtful whether students were required to pass exams in these subjects and, certainly students from other universities, and other countries could register for the Doctorate without proof of their earlier studies. At Leiden which attracted first rate philologists and classicists, such as Lipsius,10

6 Vossius, Gerard (1577-1649). Professor at Leiden and the Athenaeum, a pre-eminent humanist and member of the Republic of Letters.
7 Barlaeus (van Baerle), Caspar (1584-1648), Professor of Philosophy and Economics, chiefly lectured on ethics. Vice regent of the Staten College.
8 The Staten College, founded in 1591, was exclusively for theology students.
9 By contrast, the University of Franeker (1585) also got off to a slow start but, even in its heyday, its numbers did not rival Leiden. Many of its foreign students were German. Unfortunately for the Frisian university the attractions of Leiden were such as to draw the best of their staff south. Huber was one of the very few who resisted calls to Leiden.
10 Lipsius, Justus (1547-1606) Professor of History and Law from 1578-1591.
Scaliger,11 Salmasius,12 and the Gronovii,13 the study of the humanities proved successful and it is not surprising that Huber14 recommended that potential law students should not get too involved with the classical world at the risk of finding law dull and dry.

In the late 17th century it was customary for students to take a doctorate in the law faculty as a step towards a career in the profession, in business or in state administration. Academic research for its own sake, including legal humanism, only came into its own in the early years of the 18th century. It was an ideal goal to enter into the temple of Themis but not the immediate purpose of the degree.

1.2 Didactic policies
In general, the didactic policy was approximately as follows: public lectures (lectiones or praelectiones) were given by professors appointed for a particular subject, eg Justinian’s Digest. These lectures were listed in the series lectionum of the university, giving time and place. They were usually at an academically sophisticated level, were free, directed not only at students but could be, and were, attended by practitioners and interested members of the public. The audience was expected to be familiar with the basics of the subject and there was little or no place for discussion. The professors not infrequently failed to give lectures or shortened their duration. As time went on these public lectures lost favour and in many cases, although listed annually, were not necessarily given.15

Privatissima (private lectures) and collegia domestica16 were closer to our present day tutorials or seminars. The privatissima could take place at the University. The collegia domestica, which could number 10–20 students, met usually in the greater comfort and warmth of a professor’s house and there was considerable freedom of choice of subject. Such collegia were popular both with students and professors — with the students because the collegium more closely addressed their needs than the public lectures, and with the professors because, among other things it was customary for students to pay extra for private lectures and, as most professors claim to be hard-up, the temptations and the rewards were self-evident. It was in the collegia, and privatissima rather than in the lectures, that the real teaching of law occurred. The method of teaching varied somewhat depending on the requirements of the students and the fancies of the professors.

11 Scaliger (de les Calle, de l’Escale) Josephus Justus (1540–1609) — an eminent humanist scholar noted for his knowledge of Latin, Antiquities and History. He was not appointed a professor but was called in 1593 to add lustre to the University and to teach as he saw fit.
12 Salmasius (de Saumaise). Claude (1588–1653) a humanist scholar. He was not appointed as professor but was called to Leiden in 1632 to teach as he saw fit and add lustre to the name of the university.
13 Gronovius (Gronow) Johannes Fredericus (1611–1671) a German humanist, professor and librarian for Greek language and history (1658–71). Gronovius (Gronow) Jacobus (1645–1716). — Professor of Greek language and history (1679–1716).
14 See Dialogus, p 51.
15 See, for example, van Strien and Ahsmann Scottish Law Students, p 289; Molhuysen Bronnen III, pp 242–246, IV pp 48–51.
16 On the position of public lectures and private Collegia at Leiden see Ahsmann Collegia en Colleges (for the period 1575–1630), passim but especially Chap. III and Chap. V; for the late 18th century van der Keessel Dictata ad Institutiones Vol. I, pp xv–xvi and p xviii, ff 42.
1.3 Disputations

Further features of teaching in collegia were disputations.\(^{17}\) Although these are merely touched on in the *Dialogus*, they were a fundamental aspect of legal training. Their roots were deep in antiquity and the Middle Ages where the question and answer teaching was obligatory in a world largely devoid of written texts. By the 17th century, printing and its concomitant skill reading, were steadily supereceding memory and rhetoric although an ability to think on his feet was still essential for the practitioner and disputing was excellent training.

Disputations were of various types — first practice disputations where the theses were usually drawn up by the professor (*praeses*) and then defended by the student (*respondens*). In the course of a year a sizeable portion of the important texts would be covered as each student was required to dispute several times a year. The *disputatio pro gradu* was the final and qualifying disputation. It was sometimes written by the student himself, in which case he appeared on the printed title page as *auctor*. This *disputatio* was usually held in public and after successful completion culminated in an uproarious and expensive party. This method of teaching was introduced to Leiden by Maestertius\(^{18}\) in the 1630's. Although it was disliked by certain professors, disputations became a popular, and satisfactory method of revising and of testing the disputing skills of future legal practitioners.\(^{19}\)

Many collections of disputations were printed — partly for the use of students in future years and also as a framework for a future publication by the professor. Among such from Franeker we note the works of Johannes Wissenbach,\(^{20}\) Willem Cup\(^{21}\) and finally Ulric Huber. Most, obviously, concerned the law and its application — but there are a handful in Antonius Matthaeus I’s\(^{22}\) *Collegia Iuris Sex*, 1637, which concern the actual business of teaching law. These embody many of Matthaeus’ own views on mastering the material and it is of interest to consider a collection of 72 theses which comprise *Disputatio I, De studio juris recte instituendo*. The theses state that some people dare to deviate greatly from the order established by Justinian,\(^{23}\) others defend it tooth and nail (IV). It is better to abide by Justinian’s order and numbering which is fixed for all (VII). Some writers produce commentaries which was forbidden by Justinian, others do not (V). Legal studies consist of two aspects — learning the law and learning how to apply it (XI). If a student can manage *proprio Marte* (on his own), well and good, if not, interpreters are available to help. The help can come ether from men of learning or from books (XVIII). Both are desirable but

\(^{17}\) For a comprehensive discussion of disputations see Alsmann *Collegia en Colleges*, pp 274-323, Veen *Exeuntia*, pp 127-161. Feenstra *De Franeker juridische faculteit*, p 296. It is worthy of note that the lists of disputations with the candidates’ name and place of origin give an excellent perspective on the *patriae* of the students.

\(^{18}\) See Feenstra *Maestertius*, passim, with reference to Maestertius’ work *De imminendo labore studii iuridici* § 4.

\(^{19}\) For Huber and Disputations see Chapter IV.2.2., and Veen *Exeuntia*, passim.

\(^{20}\) Wissenbach, Johannes Jacobus (1607-1665) Professor at Franeker (1640-1665).

\(^{21}\) Cup, Willem (1604-1667) Professor at Franeker 1647-1667.

\(^{22}\) Matthaeus I, Antonius (1564-1637) Professor at Groningen (1625-1637). See Hempenius — van Dijk *Matthaeus I*, passim. Matthaeus was of German origin, he taught law at Herborn and Marburg before moving to Groningen where he introduced some German teaching methods.

\(^{23}\) The traditional *Digest* order, based largely on the Praetor’s Edict, was, especially by the Humanists, considered illogical and unsystematic. The *Institutes* alone had a basic structure (persons, things, actions). Thus there was a movement to arrange the *Digest* information more systematically. The leading minds were Duarenus (1509-1559), Donellus (1527-1591) and Hotman (1524-1590).
one or the other will suffice (XIX). There are many advantages in self-study, ie being an ὀικοδόμος (self taught). Those who study independently can progress as fast, if not faster, than those who attend classes and besides there are financial advantages in living at home.24 But if a student cannot cope alone, there are other aids. Next, the theses concern the weaknesses (vices) of professors. The usual criticisms are levelled — Negligentia (indifference), Imperitia (lack of experience), Obscuritas (lack of clarity) and Prolixitas (excessive verbiage) (XXIII). Some professors think more of their own glorification and reputation than of the interests of the students and spend more time on a single lex than the Greeks spent before Troy. Such professors put the students off serious interest in legal studies. At thesis XXVI Matthaeus raises the question of preparing for lectures by reading the texts and the commentaries. If the student and the professor hold different views, the student must not surrender but examine both sides of the question and decide which is the more valid (XXVIII). When in doubt private tutors can be helpful (XXIX) and naturally disputations are too (XXX) but here Matthaeus makes a sound proviso: “Make sure you choose a praeses who knows his law otherwise caecus caecum ducit! (The blind leads the blind.)” (XXXI) Next, starting with the Institutes, Matthaeus lists useful commentators. He then proceeds to do the same with regard to the Pandects and the Codex. There follows an evaluation of mediaeval and more recent writers, the glossators, as usual, being damned for false interpretations and barbaric Latin. The latter theses are concerned with the contemporary writers and with practice. Interestingly, there are no comments on textual criticism. Here in 1637 we have, albeit in a different form, many of the issues raised by Huber and his contemporaries in later decades, in orations, particularly inaugural orations.

1.4 A Scottish student’s-eye view of Leiden 1694-169725

Because the University of Leiden and members of its law faculty provide the setting for the Dialogus, a brief excursus on the Scottish students at Leiden is justified. The University of Utrecht, also attracted foreigners, chiefly Germans, but a fair number of Scots. At Franeker, however, Huber had virtually no contract with Scottish visitors and it is not surprising that no mention of these is made in the Dialogus or in his didactic orations. The following section, however, is relevant in that it shows a student’s impression of the prevailing teaching policy at Leiden during the late 17th century.

This rare perspective on law teaching at Leiden in the last decade of the 17th century is provided by a fascinating set of letters written by a Scottish student, John Clerk (1676-1755) to his father, also John Clerk, of Penicuik (1649-1722) during the period November 1694 — May 1697 when John junior was studying and travelling in the Netherlands.26

24 Pliny the Younger noted this several centuries earlier when recommending that the boys of Como be taught at home and not sent to Milan. See Pliny’s Letters, 4.13.
25 On the topic of Scottish-Dutch legal relations in the 17th and 18th centuries, much has been written by eminent scholars, but for our purposes here adequate background may be gathered from Feenstra Scottish-Dutch legal relations, p 128 ff.; Feenstra-Waal Leyden Law Professors pp 83-88; Van Strien and Ahsmann, Scottish Law Students; and Cairns Cunningham; idem Dalrymple.
26 On the question of Scottish enrollment at Leiden and Utrecht see Feenstra Leyden Law Professors, pp 82-83; Van Strien and Ahsmann, Scottish Law Students, pp 279-282; Cairns Dalrymple, pp 38-40.
Several of the issues raised in these letters are echoes of those raised by Huber, a mere ten years previously. Clerk comments freely on the relative usefulness of public lectures (lectiones or praelectiones), collegia and privatissima. The public lecture professors he heard were Noodt, Matthaeus III and Johannes Voet, but he did not find their public lectures satisfactory nor the collegia and would much prefer the more expensive but smaller and, to him, more satisfactory privatissima. We note that here he is critical of professors who lectured too closely to their compendia — which he felt were for private study, not a basis for public lectures. Clerk himself was very keen to have privatissima with Philippus Reinhardus Vitriarius27 of whom he had the highest opinion — “he is commonly reputed the learnedest man in Europe for the civil law and he is one of the most honest bodies I ever knew and refuses ordinarily to take any man’s money except he knows they (sic) have done some good”.28 This comment about the cost and value of collegia and privatissima is a constant theme in Clerk’s letters. Clerk senior was exceedingly careful of his son’s expenses, wanted value for money and furthermore had a very low opinion of Vitriarius. He argued that Vitriarius was pressing his son to join the privatissimum for his own (Vitriarius’) advantage,29 he is a “poor, wanton, complaisant fellow and loves the Scots because they pay well”.30 It was Clerk senior’s advice, based on reports from others who knew Vitriarius, that his son should attend Noodt’s collegia on the Institutes or alternatively hear Johannes Voet. Furthermore, Clerk suspected that “professors have secret methods which they only impart to those who pay up”,31 also that the question of completing his studies in one year was not possible unless he were allowed to take privatissima.32 Undoubtedly Vitriarius’ colleagues Johannes Voet (1647–1713) and Matthaeus III were more substantial scholars and jurists than Vitriarius but it would seem that, among Clerk’s Scottish compatriots at least, Vitriarius carried the palm for teaching.33

John Clerk’s correspondence with his father gives a vivid picture of the relationship between parent and son based on the father’s strongly Protestant convictions and his desire that his son should make a success of his studies abroad as a step to a prosperous and God-fearing career in Scotland. The son’s letters reflect his impressions of life and study in a new but not entirely strange setting and show him to have been generally dutiful but, duty notwithstanding, determined to see something more of the world than lay between the covers of his law books.

28 Van Strien and Ahsmann Scottish Law Students, p 324.
30 Van Strien and Ahsmann Scottish Law Students, p 5.
31 Cf. Dialogus, p 50; Onatio IV, p 88.
33 See Van Strien and Ahsmann Scottish Law Students, p 8 and p 297.
2. HUMANISM AND LEGAL EDUCATION

The interaction between the humanists and the jurists is a controversial field. Humanist thinking with its emphasis on the value of each human being and its rediscovery of the classical world with its rich tradition of literature, history and rhetoric certainly made an impact on legal thinking. However, there is no final definition of legal humanism nor of the parameters of the Dutch Elegant School. The issue seems to be a matter of priorities and which of a number of aspects was most significant to a particular humanist. A summary of the legal Humanist’s goals is provided by van den Bergh. The first step was “back to the sources”, preferably to pre-Justinianic texts. Next, Greek was central to humanistic studies. Away with *Graeca non leguntur*. The mediaeval urge to harmonise conflicting texts was scorned. The texts must be understood in the context of their times. All this, led to repercussions in legal education.

Ideally, the young student coming to the study of the law had a solid classical education behind him from his Latin school. Ideally he was expected to be familiar with the major Roman writers, poets, historians and rhetoricians, and to be able to express himself clearly and reasonably fluently in Latin — the Latin of Cicero not the Latin of the barbaric Mediaevalists. His proficiency, if any, in Greek was of a much lower standard and was generally not regarded as important for law studies. A product of the better Latin schools could well have been introduced to the new humanist thinking, but undoubtedly there were bad schools as well as good ones and the standard of education in many was a matter for concern.

Once in the law school, the would-be lawyer might well encounter legal humanism, in other words humanism as applied to the Corpus Iuris. The legal humanists were concerned to restore the purity of the classical Roman law and cleanse it of Justinianic alterations and accretions. The tools they used were ancient history, philosophy and rhetoric, constituting a vast range of ancilliary learning. Sometimes it has been claimed, especially by the lawyers, that the law was lost in the wonderful treasure house of ancient civilisation and the intellectual satisfaction of philological emendations. The new emphasis was on understanding the legal text in its contexts, historical, linguistic and social, but some professors, with a love of history and philology, found their greatest intellectual satisfaction in textual emendations. The hunt for interpolations, the palingenesis of the classical legal text, emendations of suspect texts and other abstruse problems were in themselves all in all. Naturally, these pundits were not at one on all emendations and there were intense debates between the protagonists of different views. This not seldom added a polemical element to academic relations. Often the practical application of their enquiries and its relevance for legal practitioners was of incidental, if any, interest.

The humanistic contribution was seen as idealistic, elitist and unrelated to the everyday world. Theory and practice stood apart and the average student, at the

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34 The term Dutch Elegant School is traditionally given to the Roman-Dutch jurisprudence which flourished in the 17th and 18th Centuries. See i.a. Van den Bergh *Geleerd recht*, pp 45-61; Van den Bergh *Hollandische Elegante Schule*, passim with Veen’s review in *Pro Memorie* (2003), pp 201-205; Stolte *Breukman*, p 2 ff. A significant contribution to this study is Cairns Cunningham which discusses the life and opinions of Alexander Cunningham (1650-1730?), a Scots scholar who spent much time in the Netherlands and was certainly part of the Dutch Elegant School. This article is much more than a discussion of Cunningham’s work on the Corpus Iuris Civilis and provides, i.a., a perceptive view of Dutch humanistic scholarship.

35 Van den Bergh *Geleerd recht*, p 50.

36 Cf *Dialogus*, pp 51-52.
university in preparation for a career in law, could be the sufferer. Among the legal academics were those who felt that emendations could go too far. Huber, as we have seen, believed in rejecting any emendation which overturned the received reading, unless there was good reason for so doing. Further, there were jurists, such as Johannes Voet, who, being neither wholeheartedly for or against the humanists, cited a limited number of humanist writers, but by contrast writers on practice from the Netherlands and neighbouring countries, were more generously cited. At the other end of the scale were the ‘old-fashioned’ professors who taught the essentials of the law, especially to their first-year students, without any concern for these minutiae.

3. SOME CRITICISMS OF LAW TEACHING

In the late 17th century, legal education was under scrutiny, particularly by the law teachers themselves. Roman law was no longer the sole purpose of a university legal curriculum. Training lawyers for their careers in government, administration, business and the law itself, was the focus of many professors and law schools. It was undesirable that students, when thrown into the hurly-burly of everyday life should feel they had been dropped into a foreign land. It was said that 17th century universities did not produce the great jurists and creative juristic writings of the past. Rather, these decades were a period for consolidating, analysing and digesting and an important element in this process was reviewing the law courses. On the one hand the curricula were being examined and expanded to include a little Canon Law and Public Law, Procedure and the Ius Hodiernum. On the other the behaviour and attitudes of students and professors came under scrutiny.

3.1 Where does the blame lie?

There were, declared the Leiden Law Faculty (in 1692), various reasons for the decline of legal education — over-indulgent parents, premature promotion from the Latin schools to university courses, the students’ inadequacies in Latin. Further, in their haste to qualify and leap into the world of careers and salaries, the young men skipped the propaedeutic courses in the humanities — still regarded by many as a necessary foundation for a knowledge of law. Finally students favoured professors who promised speed at the cost of true understanding. It was suggested that the Latin schools should be forbidden to pass students who were unable to communicate in Latin and were ignorant of Greek. If it were the students who were to blame, the authorities, supported by the Reformed Church, always saw a solution in greater control over those whose riotous and dissolute behaviour often defeated the purpose of their studies and brought the universities into disrepute. This was nothing new. As early as 370 A.D. the emperors Valentinianus, Valens and Gratian had given instructions to the urban censors that those who came to the cities to study but wasted their time at the games and in intemperate partying should be flogged and sent home in disgrace. A century and a half later Justinian, faced with a similar problem, strongly condemned irresponsible and even criminal behaviour by students,

37 Cf Dialogus, p 41.
38 Johannes Voet (1647–1713) Ad Pandectas, passim; see Feenstra–Waal Leiden Law Professors, especially pp 35–44.
39 See Stolte Breukman, p 8, Molhuysen Bonnen IV, pp 104, 105, 32*–33*.
40 For a detailed discussion of earlier educational reform of the Latin schools and of the constructive role played by G.J. Vossius see Rademaker Vossius, pp 188–199. Unfortunately, little was achieved.
41 See CTh.14.9.1 concerning “the pursuit of the liberal studies in the cities of Rome and Constantinople”. This constitution was dated 12th March, 370 and by it the emperors Valentinus, Valens and Gratian gave instructions to the censors that those who came to these cities in order to study should “not attend the games too frequently nor have a great appetite for intemperate partying” (neve spectacula frequentius adeant aut adpetant vulgo intempestiva convivia).
especially that mockingly directed at professors or other students. Those were early attempts to control students but were by no means the last and in the 17th century this was a recurring theme in inaugural orations and other diatribes directed at students. They were, or so said the professors, ill-prepared, ignorant of classical literature, concerned only to get the qualification which would provide them with entrée to the rewarding world of government or business, and meanwhile they amused themselves with wine, women and song. Furthermore, the Reformed Church was trying, sometimes successfully, sometimes not, to enforce strict morality not only on students, but also on communities in general.

What, however, if the professors and the curriculum were at fault? The father of curriculum reform was Justinian himself and his Institutes has remained a useful and practical introduction to Roman Law to this day. Certainly, Huber and his colleagues reckoned that part of the blame lay with inappropriate teaching policies which ignored the limited pre-academic education in the Latin schools and the practical aims of both students and their parents. The legal humanists with their love of philology and its offspring, textual emendation, were to be admired but not encouraged to foist this discipline on young and ignorant students. The answer to many of the students’ nightmares lay in the intelligent use of compendia and other learning aids as was argued by more than one professor and a multiplicity of students. The next section will consider Compendia.

4. THE METHODUS COMPELLIARIA

The teaching of a vast body of largely disorganised legal material to beginners had posed problems from the earliest times. Gaius noster in the 2nd Century produced his Institutes which appears to have addressed the problem. By the 6th century AD Justinian was aware that the scope of material to be covered in the law schools was vast, badly organised and often outdated. The teaching was inevitably eclectic and unsatisfactory. His solution to the problem was the imperial Institutes, a practical manual for the Justiniani Novi (first year students). It was only after the basic foundation had been laid that the Digest and Codex were introduced.

The problem facing the Dutch in the 17th century had similar elements. The scope of material was even greater, quite as badly organised and often outdated. It included not only the Corpus Iuris Civilis but also a little of the Corpus Iuris Canonici, the old law of the pre-Roman reception, the statutes, keuren, placaten of later times and the great mass of learned writing thereon. Where did the raw student go to find some guide through the maze? One answer lay in the Methodus Compendiaria, the use of summaries, epitomes, compendia, manuals — call them what you will, but the material was selected, abridged, analysed and presented in a manageable form which it was comparatively easy to remember. Once the student had mastered the basic principles and definitions with nothing which is unnecessary or erroneous and had thus gained confidence in himself, he could move on to the details and to the law in action.

42 See Constitutio Omnem § 9.
43 It is to be noted that the paragraph attributed to Böckelmann in the 1684 edition where he criticises student attitudes is removed from the 1688 edition, leaving a comparatively emasculated version, but reintroduced in 1696.
44 See Böckelmann Compendium, Praefatio.
45 See Constitutio Tanta, Constitutio Omnem and C.11.19(18).
46 See Birks Institutes, p 7, where he remarks that “the Institutes remain essential reading for any lawyer who takes his subject seriously”.
47 On Gaius see Who is who, Appendix B.
48 See the Constitutio Omnem, where Justinian outlines the course of legal education. His remarks on the state of confusion prevailing in law schools could well mutandis mutatis, be applied to later times.
49 According to Böckelmann the existing system was sine ordine, sine modo et sine ratione. Compendium, Praefatio, pp [6-11].
50 Nihil inutile, nihil perperam positum (Constitutio Imperatoriam 3).
Many professors used a standard manual, designed to present the basic principles of the law in a simplified manner, and lectured on the basis of that summary. Apart from Huber's *Positiones* and its precursors which will be discussed below, J.B. Böckelmann's *Compendium*, J. Voet's *Compendium*, C. van Eck's *Principia* and J. Voorda's *Differentiae* are typical examples. Not only were they used by the compiling author himself but were adopted by others and used for future generations of students. For example, van der Keessel at Leiden based his lectures on books XLVII and XLVIII of the *Digest* on van Eck's *Principia* and both Bavius and Johannes Henricus Voorda used their father's *Differentiae*. The year 1679 saw the first edition of Böckelmann's *Compendium Institutionum*, a manual for students which, in several subsequent editions, would continue to be used until the early 19th century. Further, although many students and professors saw great merit in good compendia used intelligently, there was not, even after 1679, complete acceptance of the compendiary method.

4.1 Antonius Matthaeus I (1564–1637) — a significant predecessor

First we shall briefly consider one of Böckelmann's more significant predecessors. For 19 years Antonius Matthaeus I's (1564–1637) teaching in Marburg consisted solely in teaching and lecturing on the *Institutes*. It was only in 1625, when he was appointed as *Primarius* at the new university in Groningen that he became responsible for the *Digest* and the *Codex*. It is thus to be expected that, having so much experience in teaching the basics of legal studies in a German university he had developed *Notae et animadversiones in libros IV Institutiones iuris imp. Justiniani* which appeared in Herborn in 1600 and included a useful *Synopsis Institutionum iuris quae illae adhuc hodie sunt in usu* and also a letter from a well-known Marburg professor, Aegidius Mommerius, covering his (Mommerius') views on the method of reading and learning law. Briefly, Mommerius' letter is of interest in that he recommends that the student, especially one studying on his own, make notes and cross references in the margin — ie make his own compendium as he proceeds. This is a forerunner of a more practical and less time consuming Böckelmann-type compendium where a learned and dedicated teacher produces the necessary aid for his students.

4.2 Johannes Christenius (1600–1672) — Rusius’ successor

Johannes Christenius succeeded Albertus Rusius at the *Athenaeum Illustre*, Amsterdam in 1659. His inaugural oration *De Erroribus multorum Jurisprudentiam discentium et qua via sit eundum* was delivered on 13 November, 1659, about two months after his predecessor, Rusius, delivered his inaugural *De jejuna quorumdam et barbara iuris compendiariam* at Leiden (16 September, 1659).

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51 Böckelmann, *Compendium*. See Ahsmann-Feenstra BGNR Leiden, pp 62-64, nos 32-44.
54 Voorda J, *Differentiae iuris Romani et Belgii secundum ordinem Digestorum strictim expositae et auditorum causa evulgatae*, Utrecht 1745. See Voorda *Ad Ius Hodiernum*.
55 See on the life of Böckelmann Chapter V. 1.1. and 1.2..
57 (Notes and remarks on the four books of the Emperor Justinian’s *Institutes of Law.*) Amsterdam, 1657.
58 (A synopsis of the *Institutes* of law as far as they are still in use today.) pp 385-407.
60 (on the errors of many who learn jurisprudence and what route should be followed).
61 (on the barren and barbaric method of teaching law by certain persons).
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Christenius covered some of the same points as Rusius. Indeed, the same points recur in several inaugural addresses of this period. He laments the decline in law studies. This is attributable firstly to the misconception that Roman law has nothing to offer the modern Dutch lawyer, and equally that Latin is irrelevant. It is not appreciated that Latin is the bond (*vincula*) which binds the Christian world, as indeed is Roman law.\(^{62}\) Both constitute a monument more lasting than bronze.\(^{63}\) Secondly, the students themselves are ill-prepared (*illotis manibus*).\(^{64}\) Law cannot be learned separately from its background and without knowledge of classical history, rhetoric, Latin, etc. Further, students get bogged down in trying to reconcile all the apparent contradictions in the *Corpus Iuris* and hence it turns out that they do not know the essentials, since they have learnt the inessentials.\(^{65}\) The last error is that inadequately prepared students rush into disputations, in order to achieve their degree as soon as possible. First, a student must know what the law is, what is meant by ownership, obligation, contract, action and exceptions.\(^{66}\) He concludes by emphasising yet again the need for a sound classical foundation and familiarity with the *Digest* title *De verborum significatione* (D.50.16). The purpose of his law courses is to produce lawyers who will be able to play a responsible rôle in the Amsterdam world of business. He took little or no interest in legal humanism.

4.3 Cornelis van Eck (1662-1732)

Certainly, subsequent to Böckelmann’s *Compendium*, other, similar works, came into being and for our purposes the most significant is Cornelis van Eck’s\(^{67}\) *Principia Iuris Civilis* of 1689,\(^{68}\) not least because of van Eck’s links with Böckelmann, Huber and Noodoit.

Van Eck had registered at Leiden on March 2, 1680 and apparently was taught briefly by Böckelmann prior to the latter’s death on October 23, 1681, but he, like many others, may well have continued to use Böckelmann’s *Compendium* (1679) for his own studies and been inspired by it to write his own version for the Digest. Presumably, van Eck’s relations with Böckelmann were amicable for it was van Eck who saw to the posthumous publication of Böckelmann’s *De Differentiis Iuris Civilis, Canonici et Hodierni* in 1694. In his *Praefatio* to the *Differentiae* (p liv) van Eck speaks of Böckelmann with respect and affection.

In 1686 van Eck moved to Franeker. Relations with Huber were strained almost from the first. Huber, however, did recognise van Eck’s ability. According to van den Bergh\(^{69}\) it was van Eck of whom Huber wrote on p 457 of the *Eunomia Romana* “A man of greatest discretion and learning to whom jurisprudence owes much and has hope of owing more”,\(^{70}\) but the two men were destined to battle furiously over a number of issues, both academic and poetic.\(^{71}\) In his inaugural oration at Utrecht, 1693, van Eck [p 17], extending the olive branch, said: “before I left Frisia . . . I laid

\(^{62}\) Christenius *De Erminibus*, pp 7-9.


\(^{64}\) Christenius *De Erminibus*, pp 12-13. See also Voet *Ad Pandectas*, *De Statutis* 1.1.1.

\(^{65}\) *Evenit ut necessaria ignorant, cum non necessaria didicerint*. Christenius *De Erminibus*, p 13.

\(^{66}\) Christenius *De Erminibus*, p 14.

\(^{67}\) Cornelis van Eck, 1662-1732. See van den Bergh *Van Eck*, pp 37-54.

\(^{68}\) *Principia juris civilis secundum ordinem Digestorum in usum domesticarum scholarum seu collegiorum, quae recent, vulgata et in duas partes divisa 1689*. See Alumnani BGNR Utrecht, pp 73-74, nos 79-85.

\(^{69}\) Van den Bergh *Van Eck*, p 41 and ft. 55.

\(^{70}\) Summi vir judicii et doctrinae, cui jurisprudentia multum debet et debendi spem habet.

\(^{71}\) It is probably coincidence that the title of van Eck’s speech at the termination of his Franeker rectorate of 1692-1693 was entitled *De studio poeticoe conjungendo cum studio juris Romani*. Cf. Huber’s inaugural address Franeker, 1665 . . . *literas humaniores cum jurisprudentia esse conjungendas*, Huber also wrote poetry, eg for Crusius’ inaugural disputation. Maybe the two men had more in common than they would admit.
aside those hostile weapons and those darts threatening other darts, which the mind shudders to remember.\footnote{Antequam Frisiam relinquerem . . . deposui illa infesta arma et tela minantia telis quorum animus meminisse horret.}

On the other hand, van Eck and Noodt were friends, and it was Noodt who had occupied the place left vacant on Huber’s departure for the Hof van Friesland. Van Eck wrote a laudatory verse for Noodt’s provocative inaugural oration of 12th February 1684, so that there could be little doubt that Huber regarded van Eck as an ally of Noodt’s. Van Eck’s reputation was almost entirely based on his Principia Juris Civilis. The work was not officially labelled a Compendium and indeed it has several minor aspects which are not commonly to be expected in a compendium but nevertheless it was certainly regarded as and referred to as a compendium.\footnote{E.g. when van Muijden thanked van Eck for a copy, he referred to it as a compendium. See further van den Bergh \textit{Van Eck}, p 51, ft. 60.}

In his \textit{Oratio (inauguralis) de ratione studii juris recte instituendi} of 1693 given at Utrecht on the 11th September\footnote{See Ahsmann \textit{BGNR Utrecht}, p 74, no 89.} van Eck has something to say about compendia. On the one hand he advises his students that in order to reach the harbour safely and to avoid shoals lurking in the vast sea of Roman Law they should steer a middle course between two extremes. They will never reach the peak of jurisprudence by neglecting their classical studies and by clinging to the sterile, barren and limited compendiary road.\footnote{See van Eck \textit{De Ratione Studii Juris}, p 20. \textit{[viom]} Sterilem et jejuna atque angustum Compendiarium. Cf. Rusius’ description of \textit{jejuna . . . et barbara . . . compendiaria} (1659).} On the other hand, to avoid using good and lawful compendia and to strive immediately to enter the inner and most difficult shrines of jurisprudence while the mind is still ignorant and uncultivated, is to court shipwreck. The middle way is to use good compendia which lead to the clear sources of law and not to the turgid streams of the interpreters which do not help but lay traps for the uninitiated. Led by Justinian and his compendium they will follow the royal road and will then come to a full understanding of the law and achieve their goals. The metaphor which van Eck uses to underline his use of compendia is that of an artist who first sketches in the outlines and then adds the details and colour (p 21).

5. CONCLUSION

As stated in the opening paragraph, this chapter is a selection of aspects of legal education which have a direct bearing on Huber’s \textit{Dialogus} and the issues addressed therein. It makes no attempt to present a history or discussion of the international background to these issues and if further information is desired, there are a number of works by eminent scholars which may be consulted. Some are listed in the Bibliography III.