Ulric Huber (1636-1694) : 'De ratione juris docendi & discendi diatribe per modum dialogi : nonnullis aucta paralipomenois' : with a translation and commentary
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CHAPTER IV

THE AUTHOR — ULRIC HUBER (1636-1694)

Ulric Huber,¹ the author of this Dialogue on the methods of teaching and learning law, and himself a participant in the discussion, was one of the leading legal luminaries of the last half of the 17th century. Although in this discussion the primary emphasis rests on Huber as Professor and teacher of Law, it is necessary to set this aspect of his life in the broader scene of his career.²

1. HIS LIFE AND CAREER

Huber was born at Dokkum in the Gasthuisstraat, on the 13th March 1636 (OS)³ and died on the 8th November 1694 (OS) in Franeker. Dokkum was, and still is, a small town in the North of Friesland where his father, Zacharias, was the local notary and secretary to the grítenij (rural municipality) of Westdonderadeel. Zacharias (ca. 1601-1678) had married Sjoukje Jensma (ca. 1503-1644), daughter of Meile Jensma, one of the old Frisian families (eigenerfden, proprietors in their own right) in the church at Dokkum on 18/28 June 1626⁴ and Ulric was their sixth child. He was baptised in the church at Dokkum and named after his paternal great-grandfather.⁵ His father’s family was of Swiss origin, his grandfather, Heinrich Huber (ca. 1557-1641) was born in the canton of Zürich⁶ but later settled in the Netherlands after serving as a mercenary in the forces of Henricus Julius, Duke of Brunswick.

¹ The name Ulric appears in various forms. He was baptised Ulrick (16 March 1636), named after his Swiss great-grandfather, Ulrich. In Feenstra, BGNR Franeker, he appears as Ulrik. Veen likewise uses Ulrik whether he is writing in Dutch or English. Publications in English usually follow the German spelling, Ulrich, and this is the form adopted by A.A. Roberts in The South African Legal Biography. The Latin version of his name, which appears in his printed works, is Ulricus, hence the spelling Ulric in this work.

² For many of the details of Ulric’s early life I am indebted to Veen’s Recht en Nut which includes as Bijlage I, p 247, the Dutch version of Huber's Historia vitae meae vernacule scripta ob certam rationem, a short sketch of his life written on his death-bed; also a fragment from the Latin version. Veen’s commentary is thorough, competent and illuminating. See also Veen Observations, pp 147-150, and his entry in the Dictionary of Seventeenth and Eighteenth Century Dutch Philosophers; see Veen Huber (Dictionary), pp 457-460. See also Feenstra BGNR Franeker, p 98, no. 290. For the later years, I had recourse i.a. to the NNBV; to Veen’s article on Ulrik Huber (1636-1694) in Zestig Juristen, see Veen Ulrik Huber, pp 120-129; van den Bergh’s The Life and Work of Gerard Noodt (1647-1725) but most reliance can be placed on Veen’s introduction to Ulrici Huberi Oratio III; see Veen Oratio III, pp 1-15.

³ Until 23 March 1700, Friesland used the Julian calendar. Thereafter the Gregorian calendar was adopted. There was a 10-day discrepancy, hence 13 March (Old Style) is 23 March (New Style) and 8 November (Old Style) is 18 November (New Style). Where applicable, dates in Friesland will be indicated as eg 13/23 March. Otherwise the date as given in Feenstra BGNR Franeker will be adopted. Where the date is given in the Latin form it refers to the Old Style.

⁴ Tresoar, Leeuwarden, Huber-archief (FG) part. IV no. 4. See plate II. Copia aantekeningen geschreven met de hand van Zacharias Huber, in leven Secretaris van Westdenderadeel. In nomine Domini nostri Jesus Christi. Den 18/28 Junij 1626 zijn wij Zacharias Huber en Siouck Jensma na voorgaande wettige proclamatien in den Echtenstaat voor de gemeente Godes bevestigt in de Kerk tot Doccum. After Siouck died in 1644 Zacharias married a second time in November 1651. His new wife was Maria van Voort, and she presented him with three daughters and two sons.

⁵ Tresoar, Leeuwarden, Huber-archief (FG) part. IV, no. 4. See Plate III. Den 13en Martij 1636 (wezend een sondach omtrent halff twaalffen in den nacht) heeft Godt d’heere ons gegeven onse seste kindt sijnde een soon welche s’woensdaeghs daraenvolgende den 16en dito bij mij selffs der dope is gehouden en genaempt Ulrick na mijn vaders vader: D’Heere zij met hem.

⁶ On the Huber family and its genealogy see Nederland’s Patriciaat, The Hague 1993, pp 309-314. Heinrich Huber was born in the village of Altkon, in the parish of Dinhard in the northern part of the canton of Zürich. His father was Ulrich Huber and his mother Elisabeth Suisatz. See too the Staatsarchiv, Zurich where the baptismal records of Dinhard are presently preserved. According to Vitringa (see Vitringa, Oratio Funebris Huberi, p 7), Aens autem illi fuit Heinricus Huber, gente Tigurinorum, occasione Belli Hispano-Belgici in has delatus erat, qui obitus duces militaris sub auspiciis Belgarum, virtutis utar
There he soon established himself and proceeded to rear his family. Ulric's father, Zacharias, steadily bettered the family position, becoming secretary to the grietenij of Westdongeradeel and then representative of the same municipality in the Staten of Friesland. Zacharias saw to it that his sons were well educated. Ulric first attended the Latin school at Dokkum, later that at Leeuwarden. On the 4/14 July 1651 he registered as a student at Franeker where, in the first year, he studied in the Faculty of Arts, concentrating on the propaedeutic subjects, Greek, Philosophy, History and Rhetoric. He claims to have had a fair knowledge of Hebrew. In his second year he began to study law under Johannes Jacobus Wissenbach (1607-1665) but continued simultaneously with his History and language studies. Wissenbach exerted a formidable influence over Huber who respected him as a person and an academic, although Huber later discarded Wissenbach's humanistic and antiquarian policy on teaching law. July of 1654, however, saw Huber move to Utrecht to join the collegium of the noted Antonius Matthaeus II (1601-1654) on the Pandects. He registered in August but this enterprise was doomed by the unexpected death of Matthaeus in December of that year. Ulric joined the group attending Cyriacus Regnerus ab Oosterga's (1614-1687) collegium on the Pandects but found it in several ways unsatisfactory; his studies were not worth the costs and so he decided to return to Friesland for further studies with Wissenbach (1655-1656). A year later, he and a group of friends set out for a student tour of Germany. Marburg did not detain him longer than three months (June to September 1656). Heidelberg was next. It was there that, having enrolled on the 18 September 1656, he defended his thesis De Iure Accrescendi (9 April 1657) and on the 14 May was promoted Iuris Utriusque Doctor. He was just 21 years old.

While Huber was preparing to defend his thesis, his father, Wissenbach and other well-wishers were, unbeknown to him, manoeuvring to acquire a chair for him at Franeker. There was no vacancy in the law faculty but the chair in eloquentia, historia...
et politica was vacant and it was to this that he was appointed. Huber had hoped for an academic appointment but this one did not entirely delight him as he would have preferred law. Besides, although he always enjoyed the Humanities he felt somewhat unsure of his ability to teach Rhetoric and History. But the die was cast and after spending four months (June — September 1657) in Straatsburg with Professor J.H. Böckler preparing for his new responsibilities, on 30 November 1657 he assumed his new position with an inaugural oration De bona mente sive de sincero genuinae eruditionis amore. Unfortunately, this oration has not survived. It would be fascinating to learn his perceptions on genuine learning as early as 1657. But the speaker’s subsequent career certainly exemplified his sincere love of true learning.

Two years later he married Agneta Althusia (4/14 December 1659). By her he had two children of whom the one surviving son, Hermanus (1663-1680), followed the legal profession and held various public offices. After the death of his first wife in 1663 Huber married Judith van der Leij on 4/14 October 1668. During the next 20 years Judith gave birth to nine children. Their eldest son Zacharias (1669-1732) became professor at Franeker like his father and also councillor at the Hof van Friesland.

The appointment to the Faculty of Arts was only a stepping stone to higher things. As early as 1660-1661 Huber was Rector Magnificus and later again in 1666-1668 and in 1677-1678. In 1662-1663, when Laurentius Banck, then Professor Extra-ordinarius of Law died, he was given the opportunity to move towards legal teaching. It was decided not to fill Banck’s post but to farm some of the deceased’s work out to Huber. Thus he busied himself with legal collegia and disputations. Three years later (1665) Wissenbach died, his colleague Willem Cup became Professor Primarius and Huber bade the Arts Faculty farewell. As Professor Ordinarius he was to lecture on the Institutes, a subject that remained basic to his future teaching of law. It was at this juncture that Huber delivered his inaugural oration on the links between classical literature and jurisprudence (19 September, 1665). Two years thereafter, on the death of Cup (1667) he obtained the chair of Professor Primarius with the responsibility for teaching the Digest. But undoubtedly the eight years that he spent teaching History and Rhetoric laid a sound foundation for his legal courses and one he deemed a necessary foundation for his law students. Following an abortive approach from Leiden in 1670, he extended his teaching programme to include the Ius publicum universale (general public law). This was breaking new ground and resulted in much of Huber’s most significant contribution to the legal thinking of his day.

Ambition still drove Huber and in 1679 he decided to abandon the university at Franeker for the Hof van Friesland in Leeuwarden and a position as Senator (councillor). This was a major step up the social ladder and established Huber as one
of the Frisian "patriciate", but nevertheless this move does not appear to have satisfied him. It did, however, provide material for his influential Heedensdaegse Rechtsgeleertheyt, of which the first edition appeared in 1686. This work, written in Dutch, not Latin, was directed towards those in practice and is enriched by reference to a number of decided cases — some of which were based on Huber’s own notes. It is important for our purposes to remember that in 1684 Huber had already produced Beginselen der rechtskunde gebruikelijk in Friesland, which served virtually as a compendium of his Heedensdaegse Rechtsgeleertheyt.

In 1681 Huber was again approached by the University of Leiden, again he refused the position but decided instead to return to his own alma mater. The Franeker University authorities were reluctant to lose him to Leiden or any other university and as usual he succeeded in driving a beneficial bargain. He now carried the honourable title of ex-senator (Out-Raetsheer); had the right to sit in the academic Senate (the college of ordinary professors), where he took precedence over all but the Rector Magnificus. He was not required to give public lectures but was free to teach students at home, on Roman Law, on General Public Law (ius publicum) and on Frisian Law. He was encouraged to publish on all these topics as indeed he did. Furthermore, to his basic but ‘princely’ salary of 2000 guilders per year he added the fees for his private tuition and with his reputation the students hammered a path to his door. This, understandably, did not endear him to his colleagues. The university authorities resented Huber’s practice of taking on as private students men who had not enrolled at the university; he moreover encouraged his students to question the jurisdiction of the university. He was seen by Noodt and others as one who boosted his own ego by denigrating his colleagues before students who were not in a position to judge for themselves but who certainly enjoyed academic scarring. There were also polemics based on religious and philosophic differences. Huber was strictly orthodox and convinced that Cartesian reasoning did not apply to law or law teaching. Noodt, for example, was less dogmatic and more open-minded.

Soon after his return to the university Huber, as was allowed to him, delivered four orations in his home. The first (7 April 1682) concerned the comparison of Frisian Law with Roman law, the second (27 April 1682) is directed only at his

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21 See Feenstra BGNR Franeker, pp 73-75, nos. 212-218.
22 It would appear from Huber Oratio II, p 63 that Huber was offered the title of Honorary Professor but making various, and possibly specious, excuses, he agreed to accept the title Ex-Senator and be placed in rank above the other professors and only below the Rector Magnificus. In Huber Oratio I, p 7 the speech he made on returning to academic life, before an impressive body of civic dignitaries, 7 April 1682, he remarked: There, indeed, have been elsewhere instances of Professors who have been promoted from a chair in Law to the Senatorial Court; but of those who returned from the Court to Academia, there has hitherto been found not one. (Extitere quidem et alias exempla Professorum, qui e cathedra Themidos in Senatorium Tribunal evecti fuere; qui vero e Senatu rursus ad Academiam se contulerit, adhuc repertus est nemo). Perizonius, in his book Errores XIII Ex centum et triginta (p 9), writes: (But you say “I am not a professor, not even an honorary professor, but far above your rank”), cited in Veen Oratio III, p 13, ft 70. (Sed ais non sum ego Professor, ne quidem Honorarius, sed longe supra vestrum Ordinem.)
23 On 24th February, 1682, three years after he was appointed as Senator to the Hof the States of Friesland decided that: niet considerate van desselfe hoogte geheertheijt ende andere seer balckweijt willen vooldoen desself vertenck nae andere universiteijten buiten de provincie . . . met sijne schriften, die hij genet heft en van tijt tot tijt genet sal maekten te illustreren het ics civile, mitzegders het ics publicum ende specijally het ics statutarium van dese Provintie, sal ookt aen de studerende jeugt dier faculteijt acce geven . . . invoegen als hij tot meeste nut der Studenten ende huisjer vande Academie sal befeinden te behoeven. See Veen Oratio III, p 14, ft 71.
24 See van den Bergh Noodt, p 56. “Noodt to van Eck, 3 October 1693.”
25 See Veen Observationes, p 148f; van Sluis Roell, p 60 ff.
students and concerns his plans for teaching the *ius civile*, the third (6 May 1682) justifies his approach to the *ius publicum*. Deriving from *Oratio II* is an undated *Oratio IV* which provides a defence against those who criticise, or may criticise, his plans as laid out in *Oratio II*.26

Thus, from 1682, when he assumed his favoured rôle at Franeker, till his death in late 1694, he wrote copiously, primarily texts for students, but also innovative works on politics and political philosophy, and a number of polemical articles and open letters on controversial topics. But it is the period 1682–1688 and Huber’s ideas on teaching law, which concern us most and which we shall investigate in a subsequent section.

On 8/18 November 1694, aged 58, Ulric Huber passed away. His funeral oration was delivered by his colleague Campegius Vitringa on 18/28 December.29

1.2. Vitringa’s *Oratio Funebris*

Campegius Vitringa senior (1659–1722) was a Reformed theologian, a prolific writer and, after 1681, Professor of Theology and Sacred History at the University of Franeker.30 It was he who was at Huber’s bedside when he died (8/18 November 1694) and he, rather than a member of the legal fraternity, who delivered the *Funeral Oration* (18/28 November 1694) in honour of his friend and colleague.

Although Vitringa was 20 years younger than Huber, they were linked by strong loyalty to Friesland31 and by mutual support in the hectic battles with Herman Alexander Röell (1636–1718),32 a German Cocceian, and with other theologians who applied Cartesian methods to the Scriptures. His funeral oration is of interest to us in as much as Vitringa interprets Huber’s life through Reformed spectacles rather than seeing him as a jurist, judge and teacher. Vitringa, although declaring that he himself knows less than nothing of law (“I confess I am as ignorant of this discipline as the most ignorant”),33 certainly acknowledges Huber’s excellence as a jurist but he is also a light in the church, which is a characteristic rarely found in a jurist (“... the greatest jurist of all the jurists of our day and also the light of the Church which is a rare [quality] to be proclaimed of a jurist”).34 When speaking of Heidelberg as a most delightful home of the Muses, Vitringa stresses that it was also the wet-nurse of their religion.35 Huber was a sincere follower of Calvin (says Vitringa) and could not accept the arguments of those interpreting scriptures in terms of reason.36 Throughout the emphasis is on Huber as a member of the church rather than a member of the legal world in which he played a most significant rôle. Certainly

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26 See Veen, *Oratio III*, translation and commentary, passim.
27 For details of the publishing of these and other orations see Feenstra BGNR Franeker, pp 64–66, nos 182–188; pp 95–97, nos 285–286.
29 The funeral oration is to be found in Huber’s posthumous *Eunomia Romana*. See Huber *Eunomia*, part 2, pp 3–24 and Feenstra BGNR Franeker, p 95, nos 283, 284.
30 See Postma and van Sluis *Auditorium Academiae Franekerensis*, p 246, also pp 213, 216, 228 etc.
31 Huber was born in Dokkum and Vitringa in Leeuwarden.
32 See van Sluis *Rotell*, passim.
33 See Vitringa *O.F. Huberi*, p 14 ... *sum disciplinarum me iuxta cum ignarissimis ignorantum profiter*
34 See Vitringa *O.F. Huberi*, p. 3 *Juniores ... nostris temporis omnium Judicio maximus. . . . ipsius quoque Ecclesiæ, quod non est de junio nostro prædicator, bimem. See also p 14.
35 See Vitringa *O.F. Huberi*, p 11 *Heidelberg... a moeris et nostrae Religionis nostre nutricem. For the study of theology, the universities of Heidelberg and Geneva were generally more popular with the strict Calvinists than the more tolerant Dutch universities. See Israel *The Dutch Republic*, p 570.
36 See Vitringa *O.F. Huberi*, p. 20 *persuasum si habebat nullo modo conciliae posse cum adversa illa, qua Divinitas Verbi Dei non nisi ex Ratione demonstrabilis fuit.*
Huber could be dour, lacking in humour, argumentatively inflexible and with a negative view of human nature, but there was another side to him especially in his relations with students. He appears to have been genuinely concerned with their careers and able to relate reasonably readily with them.

Much of this oration is a panegyric, phrased in more than Ciceronian superlatives, of the family Huber, of the State of Friesland, and of its noble rulers. In considering the early history of Friesland, which he derived partly from Tacitus’ Germania, Vitringa manoeuvres between the early Christianization of the area and the true religion, which came later. Regarding the Huber family and its marriages into the upper strata of Frisian society, Vitringa eulogizes the various branches and their offshoots. He likewise strews bouquets before all those who taught the young Huber and acknowledges their descendants, many of whom were present.

As is to be expected, even of a theologian, Vitringa’s text refers to classical writers, naturally of the more sober variety — Demosthenes, Livy and Cicero. He is surprisingly somewhat short on biblical citations. A recurrent feature of many 17th century Oraciones Funebres is a fairly explicit account of the last days of the deceased. Clearly this was of absorbing interest to his friends and colleagues. In Huber’s case Vitringa quotes Phillip Matthaeus sen., then Hon. Professor of Medicine at Franeker. I have attempted to transfer the account given by Vitringa and Matthaeus into modern terms as far as is possible. The first symptoms were apparently the quartan, or swinging, fever, which recurred every third or fourth day. It first made its appearance in the dog days, the full heat of summer. The attacks grew worse as an abscess developed in the lungs. This was accompanied by a harsh cough. When the abscess broke the fever intensified. There was overwhelming septicemia, showing itself even in purulent urine. His constant coughing was tinged with blood, there was diarrhoea. He lost consciousness but regained it just before the end which was met with truly Christian spirit. He eventually died of respiratory failure at about 8 o’clock in the morning of the 8/18 November, 1694.

2. HUBER’S STATEMENTS CONCERNING TEACHING AND LEARNING LAW AS PROPOUNDED IN HIS PUBLISHED WORKS

2.1 Sources considered

In order to put into perspective Huber’s statements about teaching and learning law as expressed in the 1684 and 1688 editions of the Dialogus, it is necessary to consider the views he expressed elsewhere and as far as possible to see what relevant information can be drawn from a selection of his printed works — firstly from printed versions of certain orations he gave on his teaching policies — secondly from a number of the books he published, especially in the addresses to the reader (Lectori) and the Introductions (Praefationes). 17th Century orations were essentially a once-off statement tailored to the requirements of a particular audience on a particular occasion, be it a funeral, a rectoral installation or a public lecture. These speeches might or might not be revised later and published and this is the form in which they have come down to us.

37 See Vitringa O.F.Huberi, p 18 parus illi risus, infrequens cahtinus ([he was] sparing of a smile and seldom laughed).
38 See Dialogus, pp 37-44, 50-58; Oratio II, Oratio IV passim.
39 See O.F. Huber p 56.
40 I was assisted in this by Dr. Robert Law, MB. ChB. MA. F.R.C.A., formerly of U.C.T. but presently in Shropshire, England. He commented that perhaps helped by modern antibiotics, Huber might well have lived.
41 For example Huber’s oration on De bona mente sive de sincero genuinae eruditionis amore delivered when he assumed the professorship in Rhetoric at Franeker (30 November 1657) seems to have sunk without a trace.
Here we are concerned with inaugural orations. It was usually a statement by a newly appointed professor of his didactic values and plans for teaching. Huber’s inaugural oration of 1665 is a classic example. Closely related to this oration are a number of addresses which he gave at his home after being re-appointed to the University of Franeker in 1682. Of these two, outlining his mature teaching policy, will be discussed below.

On the other hand the introductions to printed works — in this case mainly student aids — are directed to guiding the reader in his use of the manual. Although these introductions are attached to a particular text, they frequently merely reiterate Huber’s general policy and are transferred from one text or edition to another.

2.2. Huber’s general publishing strategy regarding student aids. It was not uncommon for a publication to develop out of the theses or propositions drawn up for disputations. Certainly, Huber considered disputing a major means to prepare students for practice, and collections of his disputations were published, sometimes with the names of the respondents, sometimes without. Later these could be added to, reprinted and ultimately developed into a more sophisticated and professional work. For example, the *Lectiones juris contractae* was first published anonymously in 1678, then revised after testing it in practice and published as the *Positiones sive lectiones juris contractae* (1682 and 1685) and the *Positiones juris secundum Institutiones et Pandectas* (1686). Finally, the *Axiomatium juris specimen ex Institutionibus* from pages 478 to 484 of the *Positiones* (1685) was transplanted to pp 755-759 part III of the *Praelectiones juris romani* of 1690.

Thus a short text could be revised and reprinted, or greatly enlarged, then reprinted several times, even under different titles. The *Praefatio* from the first edition could be used without alteration for a later revised edition. Paragraphs from earlier works were sometimes inserted verbatim without any indication of their original context. On several occasions, Huber comments that he started a piece of work, left it for some time, then revised it or added to it before publishing. For example in the *Praefatio* to the 1698 edition of *De iure civitatis*, Huber writes that he dared to put into print his first thoughts, just as they flowed into his hastening pen, to test them by the judgment and opinions of others and then to republish more carefully worked out editions.

3. HUBER’S ORATIONS ON TEACHING LAW

Huber delivered a number of orations regarding his teaching policies. The three which are particularly relevant to our discussion here are his inaugural oration of 9 September 1665, and the two which he delivered in 1682 in his home on his
return to the University of Franeker after his spell at the Hof van Franeker. The inaugural oration was apparently printed in 1665 by Johannes Wellens in Franeker, but the only known copy, at the Bayerische Staatsbibliothek, Munich, is incomplete. Several years later it was reprinted with a somewhat altered title as Oratio V, in the Auspicia domestica of 1682, and again in 1746 as part of the Opera minora, edited with notes by Abraham Wieling. The two orations of 1682 referred to above were first published in the Auspicia domestica (1682) as Oratio II and Oratio IV. The first is Huber’s statement of how he will use the otium (leisure from official duties) at the university. It was delivered on the 6 May, 1682, and outlines his teaching plans. The second to be discussed, Oratio IV, provides a refutation of the criticisms Huber expects for his plans as expressed in Oratio II. This oration is not dated but presumably followed shortly after Oratio II. Both were reprinted in the Opera minora of 1746. The above three, as well as the Dialogus of 1688, are reprinted in Christian Gottlieb Buder’s De ratione ac methodo studiosum iuris. There are slight discrepancies in the texts but nothing of great significance.

3.1 A summary of Huber’s inaugural oration of 19 September, 1665 (Oratio V)

Huber’s first official statement of his didactic thoughts is to be found in his inaugural oration which was delivered in Franeker on the 19th September, 1665. The occasion was his transferring formally from the Chair of Rhetoric and History to a Chair of Law with special responsibility for the Institutes. He had already had experience in teaching both disciplines and his exposition of classical rhetoric and antiquities as a base for legal studies was, as it seemed to him then, entirely appropriate and suitable for inclusion in the law courses he would be teaching.

51 The first (1665) edition was apparently entitled Oratio inauguralis habita Franekerae cum ex ordinaria Eloquentiae et Historianum cathedra sollemni in Juridicam deducetur, ex historia juris romanorum utiusque studii conjunctam exhibebat. See further on the various titles, Feenstra BGNR Franeker, p 50, nos 133-134.

52 The title of the oration in the 1746 edition of the Opera minora: Ulrici Huberi Oratio Inauguralis habita Franekerae cum ex ordinaria Eloquentiae et Historianum Cathedra sollemni in Juridicam deducetur; exhibens Historiam Juris Romani et ex eius argumento continuam probationem, litteras humaniores cum jurisprudentia esse conjungendam a d. xiii. Kal. viibr. MDCLXV. (The inaugural address of Ulric Huber, delivered in Franeker, 19th September 1665, when he was moved formally from the Ordinarius chair in Rhetoric and History to the Chair of Law. It treats of Roman Law and on that basis continued proof that Classical Literature ought to be joined to Jurisprudence.)

53 Auspicia domestica exicitionem quibus otium quod Illustres Frisiae Ordines ei apud Academiam suam fecerint occupare constituuit. Accedunt amoeniora quaedam alia, Franeker 1682.

54 Opera minora et ratione, juris publici et privati (Lesser and more rare works on public and private law) (1746). See Feenstra BGNR Franeker, p 96, no 286. It is the 1746 edition which was available to me.

55 Auspicia domestica exercitationem quibus otium quod Illustres Frisiae Ordines ei apud Academiam suam fecerint occupare constituuit. Accedunt amoeniora quaedam alia, Franeker 1682.

56 The first (1665) edition was apparently entitled Oratio inauguralis habita Franekerae cum ex ordinaria Eloquentiae et Historianum cathedra sollemni in Juridicam deducetur, ex historia juris romanorum utiusque studii conjunctam exhibebat. See further on the various titles, Feenstra BGNR Franeker, p 50, nos 133-134.

57 There are slight discrepancies in the texts but nothing of great significance.
Huber opens his speech, as was customary, by paying tribute to his former teacher and predecessor, Johannes Jacobus Wissenbach (1607–1665). Wissenbach, he says, will live forever in men’s memories and in the affections of all who knew him; he was the Sun of our University (Sol Academiae Nostrae). For our purposes we note that he attributes to Wissenbach’s wise and learned influence the policy that informed his own academic life thus far — a first-hand knowledge of Latin and Greek, of history, rhetoric and antiquities is desirable and useful before proceeding to the more serious, and maybe less pleasant, study of law. Nor should the delights (amoenitates) of the classical world be abandoned during legal studies. This advice he was passing on to his students for he was deeply persuaded of its value, as he hoped to show in his oration.

After this introduction, Huber says he will, in a few words (compendio), give an outline of the history of Roman Law from the time of the XII Tables. His description of the early period is largely, and inevitably, derived from classical sources and also from the first three titles of the Digest and well illustrates the need for familiarity with both legal and non-legal sources. For example, prior to the XII Tables the Roman people were “without definite law, without legal control . . . and everything was controlled solely by the hand of the kings”. Thus there was need, in Cicero’s words, for law which “cannot be bent by influence, broken by power nor corrupted by evil practices” (malis artibus). Consequently, the Decemviri, as well as they could, drew up X Tables of Law which they referred to the people for comment and these are the laws which, among the immense heap of laws (subsequently) accumulated, are the source of all public and private law.

As he moves from the Republic to the Principate and from the Principate to the Dominate, Huber focuses more on the rôle of rhetoric in national life. When the political life of the Republic was vital and popular participation active, the orator was an important leader in the community. Skill in public speaking was, and still is, the key to success in public life. Liberty was the father of good laws. The loss of liberty and consequently the deterioration in rhetoric is to be laid at the door of Constantine (274–337) wrongly surnamed the Great. Thereafter, Huber turns to Cicero, Quintilian and Tacitus for support and recommends them to his audience.

Moreover, there is one interesting passage in this oration where, drawing on Suetonius, he remarks that one of Julius Caesar’s great new schemes for the...
improvement of the city was to reduce the unnecessarily large mass of laws by selecting the most useful and compiling them into a few books. Huber laments Caesar’s untimely death and states that Caesar’s natural talents were superior to those of Justinian, and that Sulpicius was more learned than Tribonian. This statement is repeated almost verbatim in the Dialogus.

When it comes to later history, again the need for a classical foundation is emphasised. Who can approach Ulpian, Scaevola or Papinian, indeed Paulus, Gaius and Africanus, without a classical background? On the mediaevalists and later writers, Huber is here somewhat vague and non-specific. His views are more clearly developed in the Dialogus itself. In his inaugural oration Huber lays considerable stress on the need for Greek. He claims that the authors of the XII Tables could not have worked without knowledge of things Greek and even Cato, notoriously hostile to foreign influences, studied Greek literature in his old age. Furthermore, contemporary theologians and medical men need Greek. Another theme that recurs later is that those students, whose opportunities for continued study are restricted, especially by a shortage of parental financing, should put the knowledge acquired to good use and turn to practice. Serious research and textual criticism is not for beginners but for scholars who have the funds and the leisure.

The above is a comparatively selective consideration of Huber’s initial statement of his concept of the essential interface between the study of antiquity, especially its history and literature, and the great legal system rooted in Roman law and prevailing in the Netherlands. As the years passed and as he wrestled with the everyday problems of teaching, he realised that the policy he initially envisaged, although desirable, was impractical, especially in view of the constraints of time. In his later Orations, especially nos II and IV, he restates his ideas, but in a modified form. Let us now consider these.

3.2. The Oratio of 27 April (OS), 1682 (Oratio II)

This Oratio, delivered in Franeker on 27 April, 1682, is the first of two orations delivered in his own home to his students, shortly after his departure from the Hof van Friesland in Leeuwarden and his return to academic life in Franeker.

It is of interest to note the following: Ulric Huber’s Eunomia Romana was published posthumously in 1700 by his son, Zacharias (See Feenstra BGNB Franeker, pp 94 and 95, nos 279 and 283). In the notes to the reader, p 2ff, written by Zacharias, the first sentence of the Greek text of the constitution is cited to the effect that Justinian claimed that the idea of revising the old laws had never before been conceived by any ruler, followed by the Latin text (Constitutio Tanta) which reads: *quod nemo ante nostrum imperium umquam speravit neque humano ingenio possibile esse penitus existimavit* (a thing which no-one before our reign ever hoped for or seriously considered possible for human capacity).

Zacharias then notes that Suetonius seems to have been wrong when he attributed the plan of revising the laws to Julius Caesar! *Hoc quidem falsi arguere videtur Suetonius* (Suetonius seems indeed to argue this incorrectly).

*Quanto cultius Justiniano Caji Caesaris ingenium, quanto melior et doctior Tribonio Sulpicius* (How much more cultivated was the talent of Gaius Caesar than that of Justinian! How much superior and more learned was Sulpicius than Tribonian). In the Dialogus, p 16, Böckelmann/Huber, citing from the Oratio V, quotes the words of the text almost verbatim, the chief difference being the mention of Sulpicius in Oratio V, and Trebatius in the Dialogus. Possibly a lapsus memoriae on Huber’s part.

See Huber Oratio V, p 121.

See Diailogus, pp 39-41.

See Huber Oratio V, p 106 for Cato and Greek; p 114 on need for law students to have a knowledge of Greek (in footnote 13 of the Oratio V, Cicero’s Pro Archia is cited). cf Dialogus, pp 30-31, 56-57.

See Huber Oratio II, p 119.

Huber Oratio II, pp 62-74 *habita domi ipsius...qua exponit quibus rebus etiam sumum apud Academiam sit occupatum, a.d. et. Kal. Maj, MDCLXXVI. (Oratio II given at his home on 27 April 1682, in which he sets out the topics with which he will occupy his leisure at the university). See Feenstra BGNR Franeker, pp 64-66, nos 182-188; pp 95-97, nos 285-286.

The fine old house is still standing in the Breedeplaats and can be visited by arrangement with the present owners. See Plates V and VI.
As we have seen above, Huber was allowed by the Staten of Friesland not to give public lectures but to write and, gathering groups of private students around him, to teach the Civil Law, the Frisian Law and Public Law. In the first of these lectures to the students (Oratio II in Auspiciis Domesticis) he describes his plans for future sessions, in the second (Oratio IV in Auspiciis Domesticis) he counters the hostile criticisms levelled against his programme and methods. He declares that his purpose is to help students acquire the skills necessary for practice.

His oration of 27 April is a straightforward, businesslike statement of his proposed methods (let us call it the Methodus Huberiana). He opens it by stating that the purpose of these domestic collegia is to help his students to become competent jurists who will bring glory to the university because, in the world of practice, they will be able, in the words of Cicero \[\text{respondere, cavere, scribere}\] (to respond, to advise and to write). He defines these three skills in terms of the rôle they play in public life — ‘to respond’ when consulted about a legal controversy, and to explain what ought to be done or what not done; ‘to advise’ who, according to the nature of a particular case, can proceed, with suitable precautions against fraud and unforeseen damages; ‘to write’ refers to the former duty of a jurist to frame the formulae for actions to be used in court, but in Huber’s day it implied the drafting of any document. He knows full well that his critics will accuse him of producing legal technicians, not jurists imbued with understanding of jurisprudence, but his immediate goal is to cope with the demands of practice. Jurisprudential theory will come later. It is his sincere desire to help his students achieve this realistic goal by the public and royal road. He will speak from his own experience, gained both when studying and after many years of teaching and three years in the court. The approach must be by definitions, divisions, summaries. There are no secret entrances to legal knowledge, just hard work, revision, memorising and testing oneself by disputing. He does not recommend all compendia as such, but there are two exceptions — firstly, the compendium of Böckelmann (whom he does not name but whom Zacharias Huber in his footnote no. 5 to Oratio II clearly identifies) based on his already published Positiones, which should at this stage be studied comparatively superficially, omitting glosses and commentaries, especially those by modern writers. The students are merely approaching the threshold of the Temple of Themis. However, if anyone wishes to enter the inner sanctuaries of Themis, that will be stage II not to be achieved without much sweat (\textit{sine multo sudore}). However, time is valuable and the proper use of compendia is essential. He recommends his own compendium on the Institutes, Lectiones iuris contractae, which had been printed while he was with the Hof and comprised part I of his later Positiones. The section on the Pandects is still...
unpublished, but the contents will feature in the disputations he is planning.\textsuperscript{84} This will treat of topics not covered in the \textit{Institutes}. He does, however, remark that in his classes he will, where appropriate, refer the students back to the relevant passages in the \textit{Institutes}. This will reinforce the material covered there and serve as welcome breathing spaces. \textit{(loca \ldots in quibus respirare licet)}.

Further, Huber mentions various contemporary writers such as Treutler,\textsuperscript{85} Bachovius,\textsuperscript{86} Struvis,\textsuperscript{87} and Zoesius.\textsuperscript{88} Most, for one reason or another, are not suitable for students in the early stages of their studies. In fact, some of these works may be compendia of a sort but they are flawed. Some do not relate to the law of Friesland, others are prolix, or unacademic; many writers merely use the Pandects as a springboard for their own ideas. Of course, these are written by scholars of outstanding merit and glory but they are not suitable for his purposes. Reading widely, and often indiscriminately, will extend the course to unmanageable lengths, and the students will be lost in a morass of ideas. The \textit{Positiones} and the \textit{viva vox} of Huber himself will keep the students on the straight road to success.

3.3. The second \textit{Oratio} of 1682 (\textit{Oratio IV})

\textit{Oratio IV}, delivered soon afterwards, to refute critics, covers much the same ground as that outlined in \textit{Oratio II}, but with more emphasis on the arguments raised against the \textit{Methodus Huberiana}.

Many of the arguments were later included in the \textit{Dialogus} and therefore they will only be outlined briefly here. Students who expect that in his private classes\textsuperscript{89} he will show them a secret entrée to his methods are foolish. The only secret to success is hard work, thorough preparation, attention in class, revision and memorising so that the basic principles, as expressed in the words of the \textit{Corpus Juris}, not in those of a compendium, come readily to the tongue. Practice in disputing is essential.\textsuperscript{90}

Those who suggest that by using compendia all students can become doctors in a few months\textsuperscript{91} are promising the impossible. There is no need for unnecessary obstacles and delays but three or four years are the minimum. On the other hand, there is no sense in condemning all compendia. The accusation that the sterile style\textsuperscript{92} of compendia deprives the legal students of an appropriately florid style of speaking and writing is not necessarily valid if students have a rich background based on classical sources and continue to read the ‘delights’ (\textit{amoenitates}) of history and the

\textsuperscript{84} Huber valued disputations as an excellent method to help students master the material and have it on the tips of their tongues in arguments. He also used disputations as “dry runs” for his published works. See Veen \textit{Exercitia}, pp 127-160 passim.

\textsuperscript{85} Treutler, Hieronymus (1565-1607). Professor at Herborn; he wrote \textit{Selectae disputationes ad ius cive Justinianaeum}, Marburg 1596.

\textsuperscript{86} Bachovius Echtius, Reinardus (1575-c.1640). In \textit{Institutionum juris Justinianei libros quattuor commentarii theoretici et practici} Frankfurt (1628) and \textit{Notae in Treutleri Disputationes}, 3 vols, Heidelburg 1617-1619. A truly ponderous work!

\textsuperscript{87} Struvis, Georg Adam (1619-1692) Professor at Jena, 1646-1667 and 1674-1680. His \textit{Syntagma jurisprudentiae secundum ordinem Pandectarum concinnatum}, Jena 1658, contains 50 annotationes to Digest titles. These annotations are divided into theses and this is the book discarded by Huber. In 1670, he wrote a most successful, \textit{Jurisprudentia Romano-Germanico forensis Jena}.

\textsuperscript{88} Zoesius, Henricus (1571-1627). Born at Amersfoort in 1571, he studied at Louvain and later lectured there. He wrote a massive \textit{Commentarius ad Digestorum . . . libros 50}, Louvain, 1688 and a shorter commentary on the \textit{Institutes}, Venice 1757.

\textsuperscript{89} cf. \textit{Dialogus}, p 50.

\textsuperscript{90} cf. \textit{Dialogus}, p 54.

\textsuperscript{91} cf. \textit{Dialogus}, p 8.

\textsuperscript{92} cf. \textit{Dialogus}, p 23.
Ulric Huber (1636-1694) 91

humanities. Here, in contrast to his stance in his inaugural oration, Huber declares that regrettably there is no space in a law course for such *Digressiones*.

Students, it is alleged, under Huber’s system will learn the law, not from the clear fountains of the old law, but from bogs and marshes, but clearly, says Huber, the old law texts must be used in conjunction with his compendium. Further, if students think that they have memorised sections of compendia and the answers to a few trite questions they are qualified to act as jurists, this is not Huber’s intention at all. Further, his critics argue that if a compendium is necessary, then there is Justinian’s compendium — the *Institutes* — what more or what better can be wanted? Moreover, the critics will argue, Justinian forbade the writing of commentaries, but allowed only *indices* and *paratitla*. To this Huber replies, as in the *Dialogus*, that modern students need help even with the *Institutes* and definitely with the *Pandects*. Certainly, it is contempt of Justinian if rules other than those of the *Corpus Iuris* are taught, but on the other hand the law of 1682 is not the law of 533, and students must understand how to apply the principals to modern situations. The question of imparting a dry and inelegant style to students is raised and Huber repeats his policy of a sound classical foundation. In this *Oratio* Huber explains that he does not include material from antiquity because of pressure of time, but he does not deny that it is desirable and useful. Hence his *Digressiones* — again to be read in conjunction with the law. The supposed hostility to compendia is refuted with the observation that, in fact, they are generally used and not only in law, for no-one teaches medicine directly from Hippocrates or Galen, nor ethics from Aristotle. Even theology students do not drink directly from the Sacred Fountain.

The last part of the *Oratio* is largely a reiteration of points made earlier. The *Methodus Huberiana* dispels uncertainty, is logically structured and leads successfully to a career in jurisprudence. Those who argue otherwise are cheating the students, their parents and the state.

4. TWO OF HUBER’S BOOKS CONCERNING TEACHING LAW

4.1. The *Positiones* of 1682

The *Positiones*, is the fulfilling of the promises made in the *Lectiones iuris contractae*, 1678 and of the plans expounded in the *Oratones II and IV* as summarised above. In the *Praefatio* to part I (on the *Institutes*) of the 1685 edition of the *Positiones*, Huber states that he will not repeat here what has already been stated before. However, he wishes to make it clear that this is a text on theory not practice


94 See also *Praefatio* to the *Digressiones* (1688 ed.), p [1].

95 Böckelmann’s *Compendium* is formidably reinforced with marginal references and cross references to the *Corpus Iuris*. Huber’s *Positiones*, likewise, provides appropriate references and cross references in the text.


97 cf. *Dialogus*, p 12, p 25; *Doro atron*, § 21; *Doro atron*, § 12. *Indices*, as understood by Justinian, were concise résumés of legal texts. Likewise, *Paratitla* were probably commentaries on single titles of the *Digest* and collections of parallel passages. There was, and still is, disagreement about what precisely these terms encompassed.


104 *Positiones sive lectiones juris contractae secundum Institutiones et Pandectas ad primordia disciplinae usumque seculi adtemperatae*, Franeker 1682. See Feenstra *BGNR Franeker*, p 67, nos 190-196, p 71, nos 205-207.

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and it is directed towards a more general approach to law including references, albeit comparatively few, to antiquity and the interface between law and society. It is important to be concise, and here he yet again quotes Horace: *Quidquid praecipies, esto brevis.*\(^{106}\) Moreover, in conclusion he notes that Christianus Thomasius\(^ {107}\) in Germany, has developed Scholia on the book. He does not here explain the full plan of his teaching, but he says ‘this has been done in the Dialogue on the study of law, which has recently been published’.\(^ {108}\) One qualification is added — namely that the course should be completed more expeditiously than is suggested in the Dialogue. The *Praefatio* to part II (on the *Pandects*) states the structure of the text, explaining such terms as *leges*, the methods of citation, the derivation of *ff* for *Pandects* etc. and then proceeds to say that only those *leges* will be discussed which do not appear in the *Institutes* [§ 13]. Where material is repeated, it must be revised from the *Institutes* which will be an advantage for the students for in the vast course of 50 books to be covered, they will find places where they may breathe and, by enjoying familiar material, dispel the monotony of the new course [§ 14].\(^ {109}\)

4.2. The *Digressiones* of 1670

As it was in the 1688 edition of Huber’s *Digressiones Justinianaeae* that the Dialogue made its most effective impression, it is necessary to consider the development of the *Digressiones*. The first edition, 1670, was written as a result of Huber’s second thoughts, based on experience, about combining classical studies and legal studies. When he first moved officially to law after teaching history and rhetoric for eight years, it was his firm intention, as expressed in his inaugural oration, to lard his legal lectures with appropriate and pleasing excerpts (*amoeniora*) from classical literature and history. Later he realised that it was more practical to concentrate almost entirely on law with his law students.\(^ {110}\) Often the students were ill-prepared. Their knowledge of the ancient world and its literature was not such that a passing reference to a remark of Cicero’s or of Quintilian’s, or a verse or two from Horace or Virgil would illuminate some legal text and thus add a valuable humanistic dimension to the law. Further, the pressure of time and the amount of work to be covered precluded time spent on inessentials. However, being reluctant to deprive his students of this pleasant and enriching material, he made a collection of these *Observationes Iuris Humaniores*, relating to texts in Book I of the *Institutes*. Huber’s original plan was to draw his *amoenitates* solely from the classics, hence the title *Observationes . . . Humaniores*, but on including a wide range of later writers he decided on the title *Digressiones*.\(^ {111}\) It was in the 1688 edition that a new second section was added. This was not linked to the *Institutes* but referred mostly to the *Digest*. It was entitled *Digressionum a lectionibus Justinianaeae pars II* and starts with

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\(^{106}\) Horace, *Ars poetica* 335 et seq.

\(^{107}\) Thomasius, Christianus (1655-1728) used the *Positiones* as a basis for *exercitia disputatoria* in Leipzig (1683-1685). He added scholia to the edition printed in Frankfurt, 1685. See Feenstra BGNR Franeker, pp 67-68, no 192.

\(^{108}\) ... hoc factum in Dialogo, de juris studio nuper emisso. This is a reference to the recent publication of the *Dialogue*, 1684.

\(^{109}\) Huber *Positiones*, p 3, § 14 of the second *Praefatio* . . . commodum erit reperire loca in itinere vasto, ubi resinare liceat et juvanda repetitioae eorum quae pridem tenetbat, disastere tacebat quod iter quinquaginta libri non inexpertis pari. (It will be agreeable (for the students) to find places in the vast course, where they may get their breath and, by pleasant revision of that which they already know, dispel the monotony which a course of 50 books produces for beginners).

\(^{110}\) cf. Huber’s inaugural address (1665); see Huber *Digressiones*, pars II. Lib. I cap. I p [1].

\(^{111}\) See Huber *Digressiones*, p [2] of the *Dedicatio*. *Observationes primum Humaniores* appellabam qua tales initio dumtaxat exceptem constitueam. Postea mixtis nouis paucis quae viv hoc nomen suerit poterant Digressiones qued erant dicere mali. (At first I called these *Observationes* “classical” (*humaniores*) because at the beginning I had decided to excerpt only these. Afterwards, no few which could scarcely justify this name were included and I preferred to call them *Digressiones* (deviations) which in fact they were.

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Book I, chapter I on page 447. In the first chapter of Part II Huber reiterates his original perception that it was desirable to mix various classical observations from history, philosophy and even sometimes philology with his basic lectures on the Institutes. But these, he decided, were to be read apart from his actual lectures and hence were to be called Digressiones. He largely eschewed textual emendations for the sake of his students who needed a firm foundation of law before embarking on such exercises, and from his own point of view only essential conjectures and emendations should be considered and anything less had no place in a collection of Digressiones. And very fascinating these Digressiones are, ranging through the Greeks and Romans to the writers of his own day. Grotius rubs shoulders with Dion (Cassius), Cujacius with Cicero, van den Sande with Homer. Here, too, he again warns his students that he does not intend to venture on emendations and considers that rash and foolish conjectures as practised by some of his contemporaries will lead to endless uncertainty. As is typical of this period and of Huber’s writing, he is not here specific as to who and what. Further, Huber used the Digressiones to argue points of fact and points of law, drawing on classical and contemporary writers as their views suited his arguments.

From our point of view it is important to note that in the 1688 edition of the Digressiones he includes at the end, independently paginated, a revised version of the Dialogus, which had been published earlier (1684) but in fact, says Huber, belongs with the Digressiones “since it is nothing other than a Digressio”. And indeed, comparing the Dialogue, pleasantly relieved with classical allusions, with the somewhat barren and dogmatic Orationes II and IV, this claim is justified.

Thus it would appear that Huber’s thoughts on teaching and learning law were largely crystallised at the time he wrote the two Orationes and the Dialogus. Certainly he adverts to his teaching policies in the Praefationes to later works. These, as we have seen, are usually directed to his students, restate the main structure of his courses and on occasions refer the reader to the orations and the Dialogus.

4.3 Conclusion
To conclude, certainly Huber was a most prolific jurist, if not “the most prolific Dutch jurist” to cite Gane’s oft quoted comment. However, as I have attempted to show above, there was much repetition in his writings — much taken from his own works and often excerpts, unacknowledged, from those of others. This applies not only to his legal works. The increase in publications after 1682, not necessarily new compositions, is almost certainly attributable to the terms of his agreement with the Staten of Friesland regarding his “otium” appointment at the university.

In the prefaces and introductions to his didactic works (and in fact many of his publications can be covered by that term) Huber declares that his purpose is to assist his students firstly to achieve the qualifications necessary for practice as painlessly as possible and secondly to provide those who are proceeding to more theoretical and academic studies with a firm foundation of legal knowledge on which to build. Officially there was no doubt about Huber’s genuine interest in and concern for his

112 This is the text used for this translation.
113 Huber Digressiones, p. [3] of the Praefatio. Ceterum in calce Distriben de Ratione juris discendi atque doendi obi non publicatum, huius operi Digressionum, cum ipsa nihil quam Digestio sit, adjectum. (However, at the back to this work of Digressions we have added the formerly published Distribe about the method of learning and teaching law, since it is actually nothing but a Digression).
114 See Gane Jurisprudence, Note on the Author, p sxx, “Next to Grotius he was probably the greatest as he was certainly the most prolific Dutch jurist”, often cited by Veen, eg Veen Oration III, p 15 and Veen Redit on us, p 8.
115 e.g. Parts of De genuine aetate Assyriorum, Feenstra BGNR Franeker, pp 48-49, nos 130-131, resurface in 1692 in the Institutiones Historiae Civilis, Feenstra BGNR Franeker, pp 92-93, nos 274-278.
116 See above 1.1; and p. 1, ft 2 in the English translation of the text.
students but certain of his contemporaries suggested that Huber was in fact more concerned with his own reputation. It has not been possible to find any comment, eulogistic or critical, emanating from his students, but perhaps the popularity of his *Collegia Domestica* after 1682 is, in itself, conclusive evidence.

A final point to be considered here is the extent of Huber's influence in later decades. Certainly, works like *Heedensdaegse Rechtsgeleerdheyt* and the *Praelectiones* have continued to hold respected positions in the legal world (especially in South Africa). But here we should confine ourselves to considering the influence of the *Dialogus* and perhaps also of *Orationes II* and *IV*. Certainly, Buder in his *De ratione ac methodo studiorum iuris* of 1724 promoted Huber's works together with a number of similar writings. But the conclusion of this writer is that the influence of the *Dialogus* was comparatively limited. Probably the most trenchant aspect was his defence of compendia and in particular his promoting of Böckelmann's *Compendium* and, to a lesser extent, his own *Positiones*. There is no doubt that Böckelmann's *Compendium* remained a popular and reliable textbook until the early 19th century, but this it would probably have done on its own merits. One can hardly imagine that had Huber not defended it in the *Dialogus*, it would have failed.

In conclusion, the fact that the *Dialogus* was not reprinted except for the Buder collection speaks for itself.

### 5. HUBER AS A HUMANIST

Now to what extent can we say that Huber was part of the humanist movement? It must not be forgotten that his original appointment at Franeker was to teach ancient history and rhetoric. Evidence from his later work show that he was widely read in both Latin and Greek. His inaugural lecture delivered when transferring to the Faculty of Law clearly states his conviction that the law is illuminated by classical *amoenitates*. Later, he left the classical references aside, because of pressure of time and the unfortunate inability of many students to appreciate the passing references. Yet he never denies the need for this background knowledge. In his later writings on legal didactics he emphasises that a student’s first propraedeutic studies should be based on ancient history and rhetoric. The demands of law teaching, and that is his chief priority in the work considered here, required that it be pruned of the *amoenitates*, but they are collected into the *Digressiones*. In the *Dialogus* Huber’s fondness for the classical world is apparent in his citations and in his condemnation of the “barbaric” language of such as Accursius and Bartolus.

In assessing Huber’s didactic policy it is necessary to consider briefly his position vis-à-vis legal humanism and the Dutch Elegant School. Although he is sometimes grouped with jurists such as Vinnius, Voet and Noodt, the most perceptive assessment comes from van den Bergh, who rightly sees Huber’s position as somewhat ambiguous. Van den Bergh sums it up as follows: “In his Franeker inaugural address as law professor (1666, sic) he seemed to adhere to the humanist school . . . but in his Dialogue . . . he was rather more negative and rejected humanism’s most characteristic scientific purpose, that is criticism.” Although in the *Dialogus* Huber maintains that he has the greatest respect for humanistic scholarship and that “the emending . . . of fragments must be regarded as the peak, as it were the fulfilment of legal learning”, he, nevertheless, is highly critical of the temerity and excess of a critic . . . which, he claims can destroy the actual laws, and violate and diminish the sacred body of the law. Moreover, many conjectures and emendations *ingeni ope* are based not on sound scholarship or a comparison of texts

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117 For a discussion of Huber and the Dutch Elegant School see van den Bergh Noodt, pp 108-124.
118 Wieacker (*Weir*) *Private Law*, p 125.
119 Van den Bergh *Noodt*, p 113, ft. 25.
but on the desire of the critic to achieve a particular result. Noodt, on the other
hand, is the archetypal legal humanist of the 17th century and held a central position
in the Dutch Elegant School.\footnote{Van den Bergh Noodt, p 113.} However, his penchant for emendations ingenii ope
(with the aid of conjecture) was criticised not only by Huber but also by Perizonius
and van Eck.\footnote{See van den Bergh Noodt, p 120, ft. 69.}

Huber did not entirely disparage the philological work of the legal humanists, but
when he is arguing about its place in teaching law for practice, he understandably
rejected the indiscriminate emphasis, as he saw it, on minutiae which students could
did not appreciate and did not need. He also had his reservations about the techniques
used by some of the enthusiasts, many of whom he saw as philologists rather than
jurists.\footnote{Cf Cujacius' description of Connanus \textit{"doctissimus vir sed non juris}\ cited in Stein \textit{Elegance in Law},
p 251.}

6. WHY THE DIALOGUE FORM?

In view of Huber's previous writings the question may well be asked “Why did he
chose the dialogue form for this particular statement of his didactic policies?” The
only other occasion when he wrote a dialogue was in 1675. Then his anonymous \textit{Wegschaal van redenen over het verplaatsen der Academie}\footnote{See Feenstra BGNR Franeker, p 58 no 166.} was a dialogue between a
burgher of Franeker and a burgher of Leeuwarden over the question of moving the
University of Franeker to Leeuwarden. It was similar to many polemical pamphlets
of the day. But our dialogue is rather different. It is closer to Huber’s academic
writings.

As a genre for discussing controversial issues which are of immediate concern, the
literary dialogue has several characteristics which distinguish it from a formal treatise.
This applies as much to Huber’s \textit{Dialogus} as to its predecessors in Greece and Rome, and
there are several points of comparison which can well be made here.

6.1 The classical Dialogues

Diogenes Laertius\footnote{Diogenes Laertius (3rd century AD) wrote a history of philosophy including the lives of the
philosophers. This work is of value today as it includes much information about lost philosophers and their
works.} defines a dialogue as “being composed of question and answer on some philosophical or political subject in accordance with the characters of the persons introduced and the proper diction”.\footnote{Diogenes Laertius \textit{Plato} III 48.}

The question and answer format and the participation by a number of speakers enable the various aspects of the problems under discussion to be viewed from different perspectives without necessarily coming to a definite conclusion. It avoids the aridity and detached impact of abstract thought. Often, the speakers are not impersonal embodiments of a particular viewpoint but real historic persons, men of standing who have or had an interest in the subject and who express their views with their own diction, usually in informal, colloquial and pleasant language — with due regard to the norms of polite behaviour. The result is a relaxed but telling presentation, allowing for digressions. It is worthy of note that for the Greeks, rather than for the Romans or later the 17th century intellectuals, conversation was a natural and accepted feature of social intercourse among men.
The dialogue of the Greek world had its roots in every-day society, in the colloquial give and take of the streets and in the leisurely discussions of well-to-do men. The drama adopted and adapted dialogue to its needs, especially to the repartee of the Comedy. The Sophists, developing the question and answer form in their argumentations and embellishing their dialogues with verbal tricks, were concerned with the techniques of persuasion. Which brings us to Socrates and the Platonic dialogues, where the purpose — or so Plato gives us to understand — of Socrates’ dialogues was to expose ignorance and thus to encourage others to discover the truth for themselves — the dialectic method. With Aristotle the dialogue lost its conversational character and became largely a series of speeches. Lucian of Samasato (120–200 AD) inherited the form of the Platonic dialogue but put it to the service of satire, exposing humbug, whether that of the Olympic gods, or the philosophers and the teachers of rhetoric or of the man in the street with his little foibles. Another first century writer of dialogues was Plutarch (c. 46–120 AD). He is best known for his parallel Lives, but he also wrote fourteen dialogues on everyday issues. The pepagrama (on the education of children) is said to have had an influence during the Renaissance. Among the Romans, dramatic dialogue largely replicated that of Greek New Comedy. It was Cicero who established the dialogue as the medium for philosophical, political and rhetorical discussion and in the next section his impact on later writings will be treated in more detail. Tacitus’ (c. 55 AD?) dialogue De Oratoribus was the first of his works and was composed about 80 AD. It examines the decline in oratory and was appropriately written in a Ciceronian style. Apart from featuring in the early novels, such as Petronius’ (d. 66 AD) Satyricon and Apuleius’ (c. 123 AD) Metamorphoses or Golden Ass, the dialogue largely disappeared from the literary scene, exceptions being Macrobius and Seneca the Elder. In the late Renaissance it was revived in Italy and France as a vehicle for satire and humour.

6.2 The Renaissance Revival

The Renaissance and Reformation dialogue served a less philosophic and more argumentative purpose. As a result the structure departed from the conversational mode and became a series of ‘speeches’ reproducing view points rather than reflecting personal opinions.

The legal profession did not generally adopt the dialogue, except in didactic compendia directed at first year students. Two exceptions were Johannes Apel with his Isagoge per dialogum in quattuor libros Institutionum divi Iustiniani Imperatoris of 1540 and Albericus Gentilis with his De iuris interpretibus dialogi sex of 1582. Apel’s Isagoge does not appear to have had any influence on Huber, but what of Gentilis’ Dialogus? Here two speakers present the merits and demerits of the Mos Italicus of the Commentators and the Mos Gallicus of the Humanists in the interpreting of Roman Law. Gentilis strongly supports the Mos Italicus and is critical of the Humanist approach. The question that concerns us is what impact did Gentilis’ Dialogus have on Dutch legal thinking at the time and what, if any, was its influence on Huber. The answer, in both cases, would appear to be in the negative. In his introduction to the 1937 edition, Riccobono writes that it is only in the 20th century that an interest in Gentilis’ dialogues has resurfaced. When they first appeared they were censured.

126 The pepagrama is nowadays considered of doubtful authenticity. See the Oxford Classical Dictionary (1950) p 707.
127 Apel, Johannes (1486-1536) was the leading Protestant legal Humanist in Wittenberg.
128 Gentilis, Albericus (1522-1608?) was born in Italy. He studied at Perugia where he became a Doctor of Civil Law. Having converted to Protestantism, he left Italy and eventually settled in England. From 1581, he lectured in law at Oxford and from 1587 until his death he held the Regius Chair of Civil Law. He is remembered chiefly for his De jure beli libri tres (1589), a forerunner of Grotius’ De Iure Belli et Pacis (See the 1993 Scientia Verlag, Aalen, edition of Grotius’ De Iure Belli et Pacis and especially R. Feenstra’s Annotationes Nova).
(vituperati) and then ignored (anexacti). Evidence does not suggest that Huber was familiar with Gentilis’ work. If he was, it made little impact. Huber’s light and informal approach is far removed from Gentilis’ ponderously and inelegantly expressed sentiments.

Otherwise it was not uncommon for theological altercations to take the form of dialogues. During the late 16th and 17th centuries one of the chief uses of the dialogue form was for political religious tracts. For example, in the Netherlands in the year 1672 (the rampjaar) and in the years just before and after, an intense ideological warfare was waged in pamphlets, indulging in a wide range of propaganda strategies and the dialogue form often lent itself to these. The strict Reformed pamphleteers were enthusiastic denouncers of sin, celebrating Saint’s Days, swearing, not observing the Sabbath, houses of immorality, schools of dancing, tight-rope walkers, excessive luxury, banqueting, drinking, etc. These principles are certainly reflected in some legal writing criticizing students and their lifestyles but not necessarily in dialogue form.

On a more practical level, the question and answer type of dialogue was used for oral instruction, in particular for inculcating the elements of the Christian religion. A number of catechisms of this nature were drawn up. With the advent of printing their numbers were easily multiplied and their use spread, especially in the elementary schools where religion was the staple of education.

6.3 Huber and the Platonic and Ciceronian Dialogue

Here it is relevant to highlight certain aspects of Platonic and Ciceronian dialogues which are the predominant influence on Huber’s major work in that genre. Significant as Plato’s dialogues unquestionably are, it is probably Cicero, following Aristotle, who exerted the greater influence on Huber and, of all Cicero’s dialogues, it is the three dialogues comprising De Oratore which most closely relate to our text.

The Platonic dialogues centre on Socrates. Other well-known characters appear but usually Socrates dominates. Plato himself does not appear except twice, and then only briefly. In De Oratore the main speaker is Lucius Licinius Crassus, who voices Cicero’s views as well as his own. Cicero appears only to introduce the speakers and the subject. Huber, on the other hand, features consistently in the Dialogus; he motivates the discussion, expresses his views through the mouth of Böckelmann, with whom he is generally in agreement and in the latter part gives in his own persona an uninterrupted résumé of the different methods of teaching law.

The question and answer method of Plato’s dialogues undoubtedly reflects the Socratic techniques where Socrates’ purpose was not to instruct but to make his audience think for themselves and thus arrive at the truth. From Aristotle’s early dialogues it would appear that after a while he abandoned the Platonic model and, instead of the question and answer format, speech followed speech. It is this style

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129 Coing’s reference to Gentilis in his ‘Note on Dialogue’ (see Coing Die juristische Fakultät, p 548) is presumably the result of the Turin edition of 1937 which reinstated the text.
130 See i.a. Israel The Dutch Republic, passim, especially p 608.
131 See Feenstra BGNR Franeker, p 58, no 166 for Huber’s Weegschaal van redenen over het verplaatsen der Academie van Franeker naar Leeuwarden [1675].
132 Plato appears in the Apology [38b] where he and others offer to stand surety for Socrates’ fine of 30 minae. In the Phaedo he is mentioned as being absent on Socrates’ last day [59b].
133 Lucius Licinius Crassus (consul 95 B.C.) was an eminent orator, whom Cicero greatly admired. The other members of the group are Crassus’ father-in-law, Marcus Antonius (143-87 BC); Scaevola, the Augur (Consul 117-82), a celebrated jurist and two young men, Gaius Amelius Cotta and Publius Sulpicius Rufus, for whose benefit the precepts in the De Oratore are delivered.
134 Aristotle (384-322 B.C.) is said to have written a number of dialogues during his early years, but none are now extant. Diogenes Laertius in his Lives of the Philosophers informs us of his life and works as they were known to him.
which dominates Cicero’s dialogues, and is reflected in Huber. The only faint trace of the Socratic aim of provoking his audience to question assumptions is in Huber’s Praefatio135 to his students where he remarks that they will evaluate the merits of each argument but in fact they do not do so in the discourse, as they are purely an impersonal audience. Huber’s legal thinking leads him to see the discussion as a case before a court with Crisius as plaintiff and Böckelmann as defendant and Crisius must state his case clearly before Böckelmann replies.136 However, this structure is not continued throughout the piece. 

The settings for Plato’s dialogues are generally indoors but in the case of the Phaedrus this pattern is broken. Socrates and Phaedrus meet on the outskirts of Athens, paddle in a stream, the Ilissus, and soon arrive at a cool and shady spot beneath a spreading plane tree where they sit and talk.137 Cicero consciously reproduces the plane tree in De Oratore138 where the participants, having bathed, eaten and rested on the day of their arrival at Lucius Crassus’ country villa in Tuscany, on the following day take a stroll until they reach a spreading plane tree whereupon Scaevola, recalling Plato’s Phaedrus, suggests they sit under the tree. There they commence a discussion on oratory with — as Cicero remarks — their accustomed courtesy. The country villa, the water and the plane tree are duplicated in Huber, although the Old Rhine is hardly a stream like the Ilissus and it would be hard to visualise Huber and his learned friends paddling in its waters as do Socrates and Phaedrus. Similarly, Cicero’s Brutus or De Claris Oratoribus is set on a patch of grass near Cicero’s house in Rome. Nearby is a statue of Plato.140 Other dialogues take place in country villas. 

Regarding the personae dramatis, Plato, with his mission to help the young find the truth, usually includes one or more young men who either take part in the discussion or sit and listen. Cicero does not follow the same policy although his dialogues are often directed at some young person, for instance in De partitio Oratoria Dialogus at his son Marcus, or at a friend, for instance in Cato Major at Atticus, in De Oratione at Marcus Brutus. Huber directs his entire Dialogus to Auditoribus suis, his students, although they are not present, as they probably were when he delivered his Orationes II and IV in 1682. The only younger speaker is Adrianus Wijngaerden. His contribution to the discussion is minimal. In fact, if it were not for his question to Huber regarding the stages in which students should approach their work, he would indeed have a κεφόν πρόσωπον (non-speaking part).141

135 Praefatio. 
136 De partitione, p 7 Cum enim tu Actoris, ego Rei partes sustinere videam, non habet res facultatem ut defendendi rationes inuentur antiquam litis intentio apte, certe, clare peracta et absoluta fuerit. (For since you seem to be assuming the rôle of plaintiff and I am upholding that of defendant, the situation will not arise where the case for the defence is begun, before the indictment has been appropriately, specifically and clearly stated and brought to a conclusion.) 
137 Plato Phaedrus [229]. ‘Ωθέρα ἔχρισομενα κατὰ τὸν Ταυστὸν ὑμνεῖν ὅπου ἐν δοξῇ ἐν ὑστοχᾳ καθιζομένοι μιχᾶσθαι…’ ΦΑΛ. Ὁρεῖ ὅτι ἔχεις τὴν ψυχομακρινὴν πλῆθος; (SOCRATES: Let us turn aside from here and go along beside the Ilissus. Then we will sit down peacefully wherever it seems good. PHAEDRUS: Do you see that very tall plane tree?)
138 De Oratione VII. ‘Car non omittamus, Crassus, Socratem illum qui est in Phaedro Platonis nam me hac tua platanus adnominat etc. (Why, oh Crassus, do we not copy the great Socrates who features in Plato’s Phaedrus for your plane tree reminds me of this?) Scaevola incidentally remarks that his feet are hurting him. 
139 Praefatio, p 5. 
140 See De Claris Oratoribus § 6. . . . tum in prattolo propter Platonis statuum consedimus. (Then we sat down in a little field near a statue of Plato.) 
141 Praefatio, p 49.
Regarding the hypothetical dating of dialogues, the early Socratic dialogues concerning the last days and the death of Socrates are treated as contemporary; the later dialogues were written not long after the events which gave rise to the discussion although Plato is by no means historically punctilious and indeed in *Menexenus*¹⁴² he attributes to Socrates opinions on events which occurred after his death. Cicero is more historically aware. For instance, *De Oratore*, written in 55 B.C., is supposed to have taken place in 91 B.C. and is based on the events of the day. The speakers were well-known, as were their views. By 55 B.C. all had died,¹⁴³ thus giving Cicero a modicum of flexibility. Certainly Huber, too, needed to create the impression that the *Dialogus* took place during the lifetime of the chief speakers. Crusius died in 1676, Rusius in 1678 and Böckelmann in 1681. Hence the suggestions of 1671 or 1672 for the date of the actual discussion. For fuller discussion of the chronological issues which arise in the *Dialogus* see below, Chapter VII.

6.4 Conclusion

The answer to the question “Why did Huber choose the dialogue form for this particular statement of his didactic policy” can only be surmised. However, we know that Huber was familiar with the classical dialogues, especially those of Cicero, and with their possibilities for presenting two sides of a question. In his orations II and IV of 1682 he had done exactly that, *Oratio* II providing his policies and *Oratio* IV the points which could, and well would, be raised against him. In the *Dialogus* he exploits this aspect in a pleasantly informal manner. The attaching of specific standpoints to the various speakers was also a feature. Huber does not let his characters voice their own opinions and uses Crusius to attack Noodt. Finally, the loose form of the dialogue argument enabled him to slot in extracts from other sources, from his own writings, and from Noodt’s.

¹⁴² Plato, *Menexenus* § 244.
¹⁴³ Crassus died in 91 B.C., Marcus Antonius in 87 B.C. and Quintus Mucius Scaevola in 82 B.C.