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 V

THE PERSONAE DIALOGI

In this chapter the focus will be on the three speakers who, together with Huber, shoulder the full burden of the debate. It is necessary to investigate firstly who they were in real life, what aspects of their lives were relevant to this Dialogue; and what were their actual sentiments on the topics discussed. Secondly, how does Huber present them and what views does he attribute to them. Lastly, if possible we will analyse Huber’s motives behind the rôles he allots to Böckelmann, Crusius and Wijngaerden. In a following chapter the mysterious appearance and disappearance of Rusius will be subjected to investigation as will the behind-the-scene voice from the unnamed Noordt.

1. JOHANN FRIEDRICH BÖCKELMANN \( ^1 \) (1632-1681)

1.1. Böckelmann in real life

Johann Friedrich Böckelmann \( ^2 \) was born on 18 April, 1632 at Steinfurt in the county of Bentheim. He died, aged 49, in Leiden on 23 October, 1681. His early years were spent in and around his patria. After studying at the Gymnasium Arnoldinum in Steinfurt, he registered on 5 February, 1656 for law studies at the Palatine University of Heidelberg. There he was promoted to doctor iuris on 21 April, 1659. The first of several controversies which dogged his academic career arose as a result of his inaugural disputation of 11 March 1659 which, while presenting various legal topics, \( ^3 \) trod on a number of sensitive toes among the Reformed Church authorities in Heidelberg; for example, he argued that a church blessing was not an essential element for a legal marriage; that there were grounds for divorce other than adultery and malicious desertion. On the other hand, the secular authority in the person of the Count Palatine, Karl Ludwig (elector 1649-1680), supported Böckelmann. He had already recommended his protégé to the position of Professor in the Institutes and himself attended the defence of Böckelmann’s disputation. (Certainly, Karl Ludwig had a personal interest in the discussion about divorce as he was technically a bigamist having a Lutheran morganatic wife, Louise van Degenfeld.) Shortly afterwards an anonymous and libellous pamphlet appeared which prompted an answer, \( ^4 \) (Epistola ad lectorem), by Böckelmann. This was subsequently published together with the disputation.

It was in 1659 that Böckelmann was appointed to the Heidelberg University as Professor of Law, first to lecture on the Institutes, later on the Pandects. In 1665 he became Primarius; in 1660 and 1661 he was Rector. His meteoric academic career was matched by civic office. First he was appointed to the Appeal Court in Heidelberg, then to the Elector’s Court. It would seem that these non-academic duties and

\( ^1 \) The spelling of his surname can vary: Boeckelmann(us), or Beuckelmann, as in the deed of purchase of his property. Also he sometimes appears in the literature as Johannes Fridericus or Johann Friedrich. See Plate VII.

\( ^2 \) On the life of Böckelmann I have relied chiefly on R. Feenstra’s article “Johann Friedrich Böckelmann (1632-1681). Een markant Leids hoogleraar in the rechten”; minimally on NNW III, p 125 and A.J. van der Aa’s Biographical Dictionary of the Netherlands. Further, as will be apparent, I turned to Böckelmann’s own writings, eg the Praefatio to his Compendium (1679) and to various documents in the Streekarchief Rijnlands Midden.

\( ^3 \) Exhibens diversa iuris themata. See Ahsmann-Feenstra BGNR Leiden, p 55, no 10.

\( ^4 \) See Ahsmann-Feenstra BGNR Leiden, p 55, nos 10 and 11, for details, discussion of the dates and sequence of events; also for the various editions with the Epistola ad lectorem.

100
Dialogus

in Digesta, Lectori Domini mei Serenissimi Principis Electoris Palatini Domini mei Clementissimi et Serenissimi Principis Electoris Palatini Serenissimi Principis Electoris Palatini

The Personae Dialogi

responsibilities weighed on Böckelmann to the detriment of his teaching and writing and were partly responsible for his resigning from Heidelberg and moving to Leiden in 1670. However, it is certain that during the 11 years while he was professor at Heidelberg Böckelmann developed his didactic policies and also presided over a great number of disputations, many of which he had written himself. It was in late 1670 that a momentous event occurred which is crucial to our investigation. Böckelmann was appointed to the University of Leiden, as Professor in Civil Law. In July of 1671 he became responsible also for ius publicum. Regarding the negotiations which preceded his appointment, speculation revolves around why he decided to leave his well-regarded and well-paid post in Heidelberg. Not much is established on this point but it is not improbable that the upheavals consequent on the 30 Years War were a deciding factor. Also maybe the more relaxed attitude to religious matters as found in Leiden, may have appealed to one who had aroused the hostility of the Reformed authorities in his inaugural lecture of 1659. Further why did Leiden call Böckelmann? Böckelmann was not their first choice to replace Adrian Beeckerts van Thienen (1623–1669). Both Antonius Matthaeus III (1635–1710) and Huber had refused the appointment. Feenstra suggests that after refusing the post himself, it was Huber who proposed Böckelmann. The two men had known each other in Heidelberg when both were students there (1656–1657) and the friendship continued. Böckelmann certainly accepted the call almost immediately (November 1670) and began his lectures in April 1671. He started by teaching the ius actionum and in July 1671 took over his predecessor’s responsibility for Public Law. For the next ten years he continued giving public lectures (praelectiones), and private collegia and supervising disputations. Presumably in his private collegia, Böckelmann adopted the compendary methods he had developed in Heidelberg and used early drafts of what was to appear in due course (1679) as his famous Compendium Institutionum Justiniani sive elementa juris civilis in brevem et faciorem ordinem redacta. Thus it was that Böckelmann’s major contribution to teaching law justified his inclusion in Huber’s Dialogus.

5 See Böckelmann In Digesta, Lectori p [7], Serenissimi Principis Eletoris Palatini Domini mei Clementissimi gratiorum consilii negotiisque ista immersus fui ut et telam coeptam et omnem disipulorum curam per aliquot annos abiere coactus sum. (I was so immersed in the more serious councils and business of my Lord, the most Clement and Serene Prince, and Palatine Elector that I was compelled for several years to lay aside the plan I had begun and all care for my students.) The ‘plan’ was the Exercitationes ad Pandectas.

6 For the Collegium Actionum see Ahsmann-Feenstra BGNR Leiden, p 56, no 12; for the Differentiae Juris Communitis et Electoralis Palatini, ibid, p 56, no 13; for Exercitationes ad Pandectas, ibid. p 57, no 14. It was in 1664, while still at the University of Heidelberg, that Böckelmann produced his Exercitationes ad Pandectas containing 25 disputations concerning books 1–6 of the Digest. Böckelmann himself had acted as Praeses and it is presumed he was the author. The Exercitationes was published (1664) in Heidelberg by one Adranus Wijngaertgen, the father of the Adrianus Wijngaerten of the Dialoge. Wijngaerten sen. who was originally from Leiden was active as a printer-publisher from 1657–1668. In 1668 he published Böckelmann’s Collegium Pandectarum compendiose exhibens fundamenta et praeceptas controversiarum quae in singularis titulis ocurrunt, praeide Joh. Frederico Böckelmanno. This contains disputations on books 1–22 of the Digest. In 1678, eight years after being appointed as hoogleraar in Leiden, Böckelmann produced his Commentarium in Digesta Justitiarum libri XIX published by Felix Lopez de Leiden. The first 6 books were a reworking of the Exercitationes ad Pandectas. In 1694 this work was expanded and re-issued.

7 Appendix CI.

8 The Peace of Westphalia (1648) by no means solved the political, economic and military threats to Heidelberg, for the worst of these occurred after 1670, and in fact after Böckelmann’s death in 1681. In 1685, Louis XIV whose brother the Duke of Orleans had been married to Karl Ludwig’s daughter, Liselotte, claimed certain lands and when this was refused invaded. Heidelberg surrendered in March, 1689 but in 1680 the French were forced to leave and as they departed, March, 1689 the castle was set alight. The French again occupied the town in 1693, the castle was ruined and the town burned to ashes.

9 Feenstra Böckelmann, p 140.

10 See, for example, Dialogus, p 2.

11 See Molhuysen, Bronnen Leidse Universiteit III, p 235*.

12 For the numerous editions of this work see Ahsmann-Feenstra BGNR Leiden, pp 61–64, nos 32–44. For its later popularity see Feenstra Böckelmann, pp 141 ff.
Böckelmann’s contribution to university life was not only limited to teaching and picnics. He was Rector Magnificus, 1675-1676, albeit reluctantly. He gave two funeral orations, the first for his younger colleague, Georgius Conradus Crusius (27 July 1676) and later for his older colleague, Albertus Rusius (7 March 1679). Further, in his will he left a considerable sum to be administered by the Senate as a stipend for less fortunate students. This bequest still holds.

Böckelmann died on 23 October 1681. The funeral oration was spoken on 22 January 1682 by Antonius Matthaeus III, but was never published. A commemorative silver ‘penny’ was struck and distributed and a memorial plaque was set up in the Pieterskerk. The plaque read as follows:

MEMORIAE AETERNAE
JO. FRID. BOCKELMANN. JURIS. ANTECESSORIS
INCOMPARABILIS. FINITI. A.D. X. KAL. NOVEMBR.
A.C. MDCLXXXI.

1.2 The Böckelmann property at Hazerswoude

It would appear from the information made available from the Rechterlijk Archief Hazerswoude that Böckelmann bought the erfpacht (emphyteusis) of two adjoining plots of land in 1676. These were situated besides the Rhine at Hazerswoude, between the river and the Hooge Rijndijk. The first (deed of conveyance, dated 25 April, 1676) was for 504 roods of houtlandt (wooded land). The seller was one Jacob Wolbrandtsz. Verhagen who had obtained the hereditary tenure on 26 March 1667. The annual ground rent was 13 guilders to be paid to Haesgen Ouwelant. The purchase price of the lot was 500 guilders. Abutting onto this plot was the ground held by the heirs of the late Hendrick Bugge van Ringh and the late Jan Jacobsz. Koel. In the following June the erfpacht of the land and the buildings thereon were sold and transferred to Prof. Böckelmann (deed of conveyance, dated 27 June, 1683).

13 Molhuysen Bronnen Leidsche Universiteit III, pp 268-269.*
14 In his will Böckelmann left money to a number of legatees. See Böckelmann’s will Gemeentearchief Leiden, inv no 1276, aktes no 152 and 153.
15 See Feenstra Böckelmann, p 144, ft 96.
16 On a number of occasions in the past years I have searched for the plaque but without success. The church is undergoing extensive renovation. See van den Berg, B, De Pieterskerk in Leiden, Utrecht 1992. Finally, Prof. Paul Nève and Dr R.M. Sprenger discovered that the plaque was removed some time prior to 1864, but the wording as given below was reproduced in a book by Mr K.J.F.C. Kneppelhout van Sterkenburg, entitled De Gedenkteekenen in de Pieters-Kerk te Leyden, Leiden 1864. See p 72, no 335 (To the everlasting memory of Johannes Fridericus Böckelmann, incomparable Professor of Law, died 23 October in the year of Our Lord 1681).
17 Thanks to the kind services of Prof. Jan Hallebeek of the VU University, Mr Arjan van’t Riet of the Streekarchief Rijnlands Midden, and Prof. Paul Nève and Dr R.M. Sprenger, the deeds of purchase, 1676, and sale, 1683, were made available to me. It is particularly to Dr Sprenger that I owe a debt of sincere gratitude for her help in transcribing and translating these documents. See Appendix C and Chapter VII for comments on the significance for this work of the dates.
18 Emphyteusis, erfpachtrecht (Dutch) or perpetual quitrent (English). The word emphyteusis from the Greek ἐμφυτεύω, literally “in planting”, is a legal term meaning a perpetual right in a piece of land belonging to another, on condition of improving such land and subject to the payment of a fixed annual rent. The real owner of the land to whom the rent is paid is the emphyteusos, the tenant the emphyteuta. The emphyteuta can transfer his right to another, dispose of it by will, mortgage it and create servitudes. Under certain conditions the land can revert to the original owner. Forms of emphyteusis were known to Roman law, Roman-Dutch law (as here) and South African law. See, for example, Inst. 3.24.3; C. 4.66; C. 11.63(62); Grotius’ Inleidinge, 2.40, 3.18; Van Zurck Codex Batavus, Emphagen etc.; van Leeuwen Het Roomsch-Hollandisch Recht, part II, chap. X; Voet Ad Pandectas, VI.3 and Gane’s Selective Voet, Translator’s Note to VI.3, Bell Legal Dictionary emphyteusis, quitrent tenure.
19 See Appendix C II for the text of the conveyance of 25 April 1676.
The purchase price was 500 guilders and the annual ground rent (due on 1 February) was 12 guilders, to be paid to Haesgen Ouwelant’s daughter. This plot, 153 roods, was clearly smaller than Böckelmann’s first purchase. Some months after Böckelmann died, 23 October, 1681, these two plots were sold (deed of conveyance, dated 9 January, 1683\textsuperscript{23}) to one Nicolaes Clignet of Leiden. Böckelmann’s executors were Theodorus Kraene, Prof. of Medicine and Johannes Mullerus, minister of the Hoogduitse congregation at Leiden, together with the guardians of Böckelmann’s minor heirs who lived abroad.\textsuperscript{24} The total area of the lots was 1 morgen, 57 roods.\textsuperscript{23} The buildings included a spacious homestead, stables, coach house and a second dwelling with its outhouses. In addition, there were orchards, a formal garden and three well-stocked fish ponds.\textsuperscript{24} This is the property referred to in the \textit{Acta} of the Senate of 14 July 1679\textsuperscript{25} where it is noted that the Senate decided to hold a \textit{convivium pisciculorum} (fish lunch party) outside the city for which purpose the noble gentleman Böckelmann made his property available, and it was held there.\textsuperscript{26} This is the site for the \textit{Dialogus}. The question of whether the \textit{convivium pisciculorum} (fish lunch party) was the occasion for the \textit{Dialogus} will be considered below.

1.3. Böckelmann and the \textit{Praefatio} to his \textit{Compendium} of 1679

Certainly the most explicit statement of Böckelmann’s views on the use of \textit{compendia} in teaching law to young students is to be found in the 1679 \textit{Praefatio} to his published edition of his \textit{Compendium Institutionum Justiniani}.\textsuperscript{27} The \textit{Praefatio} is addressed to students and Böckelmann begins by giving a conventional explanation that he originally drew up these notes for the private use of his own students but that contrary to his intentions this little book was passed on from student to student\textsuperscript{28} and ultimately to neighbouring universities. Although

\textsuperscript{20} See Appendix C III for the text of the conveyance of 27 June, 1676. Among the heirs of the late Hendrik Bugge van Ringh and the late Jan Jacobsz Koel were several minors and orphans, who could not act in their own names. Mr. Cornelis Bugge van Ringh, an advocate, procured mandates (20 and 25 June, 1676) and appeared for the sellers.

\textsuperscript{21} See Appendix C IV for the text of the deed of sale of 9 January 1683.

\textsuperscript{22} Attempts have been made to trace these heirs but to no avail.

\textsuperscript{23} One morgen equalled approximately 600 roods.

\textsuperscript{24} Feenstra Böckelmann, p 145, says that the property was worth 4000 guilders.

\textsuperscript{25} Molhuysen \textit{Bronnen Leidsche Universiteit}, III, p 342* . . . \textit{convivium pisciculorum extra urbem ad quod Nobil. D. Böckelmannus praedium suum concessit, ibique celebratum}

\textsuperscript{26} See \textit{Dialogus}, p ii, p 3.

\textsuperscript{27} \textit{Compendium Institutionum Justiniani sive elementa juris civilis in brevem et facilem ordinem redacta}, (Leiden 1679).

\textsuperscript{28} cf Böckelmann \textit{In Digesta, Lectori} p [8]. \textit{Primum ergo Pandectas docere caepi per praecepta et regulas satis consitas quas primum calamo excipere Auditeores sed et temporis jacturam et sanbiendi tacitum fugientes, quotquot poterant edita Heidelbergae excitationes nostras sibi comparare, deficientibus autem jam exemplariis omnibus me negare, eas densa ut edi curamem telamque non ultra 6. librum contestam, pericissem. (At first therefore I began to teach the \textit{Pandects} by precepts and comparatively brief rules, which the students took down by pen,
some saw such notes as Ariadne’s thread through the maze, others dismissed them as an empty nutshell, while yet others began to snarl at Böckelmann and any authors of *compendia* declaring that, like Socrates, such corruptors of youth should be compelled to drink hemlock. But Böckelmann said not a word to those loud shouting Stentors. However, it is his duty to his students and to the state to point out the shoals on which he himself (initially) and many others suffered shipwreck on the vast ocean of law. Such students never achieve a sound knowledge of law. The fault lies both with the students who are often unprepared and so incapable, even if they wished, of grasping the inner meaning of the law. Many students also, says Böckelmann, are not willing to work hard. (However, he does not here mention the distractions of wine, women and song as is the complaint he supposedly voices in the 1684 version of the *Dialogus*, pp 28-30.) Fault also lies at the door of the teachers, some of whom are more intent on their own glory than on the best interests of their students; others overwhelm their students with information which is often not wrong but ill-timed and too complicated for beginners. A third group are themselves confused and not clear about what they themselves have learned and cannot teach what they do not really understand. Good law teachers are few and far between.

Thus it is the general perception that to master law a student needs an ‘iron’ head to hold all the material, a ‘lead’ body to slave early and late and a pocket full of ‘gold’ to pay for books and fees. Justinian set a period of five years to study the Civil Law. Thereafter more years are required for the Canon Law, Feudal Law, Customary Law but, alas, most who study law are heaving at Sisyphus’ Rock without success — a not surprising result since law is generally taught without order, without limits and without reason. Under ‘without order’ Böckelmann states the obvious — that first principles should come first and controversial questions be left till the foundations are established. Moreover, the learned commentaries of such as Bachovius or Mynsingerus should be avoided till late in the course, although earnest students not infrequently wrestle with these in a vain endeavour to reach the heights early on. From this Böckelmann leads on to ‘excess’, condemning those teachers who, while maintaining some sort of order, throw into their lectures a mass of peripheral legal information, classical allusions and other digressions. The occasional apposite citation is well and good but commentaries running into a multiplicity of details are to be avoided. Finally, he condemned those who fail to provide understanding, relying instead on the students’ capacity to memorise. The principles underlying the but as they sought to avoid the waste of time and the boredom of writing, they tried to procure for themselves some copies of my Heidelberg *Exercitationes*, but these were no longer available, so they strenuously asked me to get them reprinted and to continue my plan beyond Book VI). See Ahsmann-Feenstra, pp 56-58, nos 12-16.

31 cf. Noodt’s response to Huber’s attacks.
32 *Illotis manibus* See Noodt, Huber, Böckelmann, Rusius and others. A metaphor implying “without due preparation”. It stems from classical times and appears in Gaius *libro primo ad legem duodecin tabularum* (D. 1.2.1) and not infrequently in later writers, condemning the ill-prepared students who cannot cope with law.
33 cf. dial. p 13 and p 42, where Huber says that *compendia* writers must have digested the material.
34 See Böckelmann, *Compendium, Praefatio* p [6]. Cun Sisypho sacrum volunt.
35 p 6 *Nec minun cum ars laco pereuntque excecutur sine ordine sine nodo et sine ratione.*
36 Bachovius Echtius (Bachov von Echt), Reinhardus, c. 1575-1640. Inter alia he wrote *In Institutionum juris Justiniani libros quattuor commentarii theoretici et practici*, Frankfurt, 1643.
37 Mynsingerus (Mynsinger von Frundeck), Joachim, 1517-1588. He was known for his *Apolesma, hoc est corpus perfectum scholiorum ad Institutiones Justinianas pertinentium*, Basle 1569.
38 cf. Huber and his attitude to *Digressiones*. See Chapter IV. 2.
details must be established, understood and evaluated, then committed to memory. However, modern teachers and students must realise that Justinian’s precepts applied to his time and not necessarily in total to present days.

Böckelmann admits that he, together with many others, found his first years of law study impossibly difficult, and even a second attempt, with a different approach, did not really solve the problem. With great effort he managed to complete his studies but was still ignorant of much that was basic and needful. His problem was by no means unique and this prompted him to try another and, perhaps, better method. The success of his method is shown by the great number of law students at the Palatine University of Heidelberg who are now realising the goal spelled out by Justinian that “on the completion of their law studies they may be able to govern the state in the rôles entrusted to them”.

Here Böckelmann embarks on an explanation of his plan for teaching as illustrated in the frontispiece of his 1679 edition. The ‘open’ route of four years is shown as four steps, steadily rising to the top of the mountain; each step has a precise task, or book, allotted to it. The old, or Royal Road, is thorny, precipitous and almost impassable. The successful student, standing triumphantly on top of the peak, clearly mounted there by the ‘four step’ route. For those who can only complete three years, the end goal is the courts and practice. Those who have the inclination, the time and the money for a fourth year will be jurists with a sound knowledge of the law.

At that point Böckelmann concludes his Praefatio with the warning not to be led astray by the mirage, the Fata Morgana, of the opposite school. They will give not a Compendium but a great squandering (Dispendium) of your study time. His Compendium used in conjunction with the Institutes as indicated in the margins and later his commentary on the Digest and his writing on Actions will serve to lighten the burden and he wishes his students well in their studies.

Not surprisingly, Böckelmann’s Compendium was a great success. It was reprinted many times and superseded other similar but presumably less adequate compendia such as that of van Muijden and continued to be used until early in the 19th or end of the 18th century.

1.3.1 Böckelmann and the Road to the Summit of Success

The metaphor of roads as courses and means to achieve sound knowledge (in our case legal knowledge and the desired doctorate) occurs in various forms and in several discussions on 17th century law teaching. Often the via (road) is used simply, as for example in Huber’s Oratio II but sometimes it is developed into a significant metaphor. In Oratio II Huber says “It is very important by which road you proceed to complete your course successfully; . . . I shall show you the road by which I went in preference to others. . . . I shall not crawl with you through twists and byways . . . but I shall proceed by the common royal road”.43

Probably the most striking of the extended metaphors concerning roads is that to be found in the Praefatio to Böckelmann’s Compendium Institutionum Iustiniani

39 Constitutio Imperatoriam § 7.
40 For further discussion of the Roads metaphor see below section 1.3.1.
41 Böckelmann, Compendium, Praefatio p [23] Pro compendio magnum studiorum Vestrorum det dispendium. Here Böckelmann is playing with the words, supposedly used against him. See below The Dispendium/Compendium antithesis.
42 Ahsmann-Feenstra BGNR Leiden, p 64, no 44 gives the date 1802 for a reprint at Amsterdam. As this bibliography stops at 1811, this is not evidence that there were no later reprints, although this seems probable.
43 Huber Oratio II, pp 63-64 . . . plurimum interest, qua via proficiscaris ad iter tum prospere aholverendum . . . monstrabo vobis cum viam qua et ipse potissimum incess . . . Non peremptabo vobis cumvi aut ambages . . . sed via communis rogare possum.
A Dialogue on the Method of Teaching and Learning Law

(1679). Böckelmann says that he cannot show the differences between the direct and the foolish way of learning law better than by drawing attention to the picture (emblema) which appears as a frontispiece. In the centre is a mountain on the top of which stands a triumphant student waving his degree certificate in his right hand. He is looking down at three other students each mounting a step (ie a year) at a time and each carrying merely one book. On the other side, the mountain is precipitous and overgrown, and a solitary student, carrying a heavy basket of books and scrolls, is struggling upwards but has not succeeded in reaching even the height of the first step. A banner over those taking the via aperta (open route) reads *Nec seno, nec difficileter* (neither late nor with difficulty); that over the *via prava* (wrong route) declares *aut seno aut munquam* (either late or never). Above the head of the successful student is a wreath encircling the words *ars juris perfecta* (the completed knowledge of law). It is the arduous and precipitous route which is said to be the *Via Regia* (the Royal Road) as if, says Böckelmann, our goddess had wished to admit only a few priests and not many mortals.

The first step, the first year, is labelled *Princip(i)us Jur(i)i* (basic principals of law); the second *Pandectae Juris certi* (non-controversial texts from the Pandects); the third *Ius controversum* (legal controversies) and the fourth on which the successful student stands *Exercit(ium) fori* (practice in court). In the fourth year certain writers such as Cujacius and Donellus are to be read but with discretion. Thus for Böckelmann his compendium and a four-year course is directed at producing practising lawyers not legal scholars or academics. In this course it is important not to digress and collect a mass of indigestible material; to handle it will be like trying to cleanse the Augean Stables. This advice is given from the heart by Böckelmann. In his youth he himself suffered from an unstructured programme of learning and wasted much time and effort without achieving anything. He writes that he got bogged down in the shallows. He eventually found the key to learning and is passing it on to his students.

Böckelmann used the metaphor of roads on other occasions, for example twice in funeral orations for his colleagues. When giving the funeral oration for Crusius

44 See Plate VIII.
45 See Plate IX. For these I am indebted to Prof Dr Remco van Rhee of the University of Maastricht.
46 As can be seen in the Latin below Böckelmann says the right hand path is the *via aperta* and the left hand the *via anhia* whereas it would appear from the picture to be the other way around. Feenstra Böckelmann, note 63, considers that Böckelmann is viewing right and left from the perspective of the successful student. It may also be the not infrequent Left over Right inversion which occurs when printing engravings from a plate. This presupposes that the lettering is added afterwards.
47 In English the term *Via Regia* or Royal Road refers to a broad, flat and easy highway. See the OED (road). In some of the texts consulted, as here, it is used to describe a hard, tiresome route.
48 Böckelmann, Compendium, Praefatio, 19]; ... videtis Emblema in dextra (sic) parte referens viam apertam, quattuor gradibus interstinctam, qua nec seno nec difficulter ad perfectam juris scientiam eunt Studiosi, nullis sanxis graves ns singulas, alias post alien agentes; in sinistra (sic), adhaam montis praestipito, sebitibus repribus impeditam, quam unius, omnia simul portatis, nullo ordine, modo aut ratione ingressus, aut seno aut munquam, cetera non sine improbo labore et molestia somma emetteat, ad miserrimam citius quam scientiam perventurus. Et tamen hac regia est via ... quasi Diva nostra panos tantum sacrams, non multos mortales, ad sumnum sanctiuei admittet voluisset. (You see the picture showing on the right side the open route marked off by four steps by which the students are proceeding to the complete knowledge of law, neither late nor with difficulty, not weighed down by any burdens, doing things singly one after the other. On the left side is a difficult route on a precipitous mountain blocked by briers and thorn bushes, a route which a single student, carrying everything at one time, and having set out with no order, no limits and no reason, will traverse (either late or never)) and certainly not without enormous labour and the utmost difficulty. He will come to misfortune more quickly than to knowledge ... yet this is the Royal Road as if our goddess had wished to admit only a few priests, not many mortals, to her innermost sanctuary.) This illustration (see Plate IX) appeared in the 1679 edition and subsequent editions up to and including the 1706 edition. In the later editions the editor notes that there is no need to supply the picture as Böckelmann’s description is adequate.
49 See Böckelmann Compendium, Praefatio [p 15].
The Personae Dialogi 107

(27 July, 1676) who was, it appears, a model student, unlike so many of his contemporaries who were ill prepared and guilty of the usual student vices, he said: Crusius pursued another, very different and more direct road.\footnote{Böckelmann O.F. Crusii, p 14 aliam, aliam longeque rectam magis viam instat Crusius.} In his funeral oration for Albertus Rusius (7 March 1679) Böckelmann again laments the general student attitude, especially the wasted opportunities while touring Europe with their tutors. Our Rusius also entered on a very different course (p 21).\footnote{Böckelmann O.F. Rusii, p 21 aliam longe viam ingressus est Rusius noster.} By hard work and conscientious attention Rusius early made a brilliant reputation for himself and those students attending the oration would do well to follow the same road. This road, the \textit{Via Regia} is the one now recommended, but here the \textit{Via Regia} of serious study and sober minded associates is contrasted with the “\textit{Via Voluptatis}” in the company of drunken, quarrelsome and gluttonous youths.\footnote{Böckelmann O.F. Rusii, p 16 cum temulentis rixosisve juvenibus aut heluonibus.}

Huber, too, has his \textit{Via Regia}. In his inaugural oration (p 120) he refers briefly to his plan to lead his students directly to the citadel of legal knowledge and not be distracted from the \textit{Via Regia}. In the \textit{Dialogus}\footnote{See Dialogus, p 41.} he is much more specific. In his own persona, he says that the \textit{Via Regia} is the name given by others to the tactic of solving textual difficulties by ruthless emendations carried to extremes, as in the case of Antonius Faber, but he and scholars of a like mind would rather label that the \textit{Via Militaris}, the military method of cutting knots with a sword!

Now let us consider what Noodt has to say on this.\footnote{See van den Bergh Noodt, p 164; Noodt Comptua Jurisprudentia, especially pp 619-620.} Van den Bergh claims that Noodt is attacking the compendia which his Utrecht colleagues van Muijden and van der Poll were using. Here Noodt admits that the old Royal Road is steep and dark, long and difficult. It is overcome by few and then only with much intellectual stress and effort. The Compendiary Road on the other hand is flat, direct and easy for everyone, even the somewhat unintelligent. However, the mountain (Böckelmann’s mountain?) is not as intimidating from nearby as it is from afar; there are pleasant levels between the steep gradients; the darkness and mists of confused thought dissipate and the pleasures of great understanding emerge. In addition, the fact that the easy route is popular is to be laid at the door of gullible students, over-ambitious and parsimonious parents and intellectually dishonest professors and tutors. So Noodt favours the old, if arduous, \textit{Via Regia}.

1.3.2 The \textit{Compendium-Dispendium} antithesis\footnote{Lewis and Short \textit{A Latin Dictionary} (1980 impression) derives \textit{compendium} from \textit{compendo} = to weigh together, to make a profit by saving. Thus to make a \textit{compendium} means to “make a gain, saving” hence “to shorten or abridge profitably”. \textit{Dispendium} from \textit{dispendo} = to weigh out, to pay. Hence \textit{dispendium} is a cost or loss and once in Virgil \textit{Aeneid} 3.453 ‘a waste of time’.}

Twice in the \textit{Dialogus}\footnote{1688, p 6 and p 17; 1684, p 11 and p 24.} we encounter the epigram \textit{Compendium Böckelmanni est nihil aliud quam Dispendium} (Böckelmann’s abridgement is nothing other than a waste of time). Böckelmann, in fact, opens his case supporting compendia in general, and his own in particular, by asserting that his enemies had circulated this derogatory epigram in order to denigrate his work. He, nevertheless, maintains that the popularity of his compendium contradicts the effect of these words.\footnote{Feenstra \textit{Böckelmann}, p 142 and ft 73, writes that this epigram was cited until the end of the 18th century and the beginning of the 19th.}

On page 17 (1688) Böckelmann adverts to the fact that Crusius/Noodt has rephrased the epigram to read \textit{Compendium est damnum}. This is clearly not as pithy as the original, but it is a much more powerful condemnation of the Compendium. Although the Oxford Latin Dictionary (1980) gives \textit{damnum} as a synonym for...
dispensium (and compendium as the opposite of dispensium), the jurists encountering damnum would undoubtedly understand more than a waste of time. Damnum is loss suffered by the victim of an offense. Apart from loss to actually acquired property (damnum emergens) damnum also includes loss of gain (lucrum cessans). Thus Noodt is giving an extra significance to the damnum suffered by the students. Further the causes of damnum include acts or omissions by reasonable persons which they are liable to make good. Is Noodt here challenging Huber? Certainly this change can be attributed to Noodt. In his inaugural oration58 he tells the students fallit vos ambiguitas vocabuli, quae festinatio dicitur, mora est: et quod compendium vocatur, sapientiae damnum est. (The ambiguity of a word deceives you. What is called speed is delay and what is called a compendious summary is damage to wisdom.) What is of interest is that both instances where damnum is used instead of dispensium were not included in the 1684 edition but were added in the 1688 Digressiones version (p 9 [8] and p 17). Was Huber trying to strengthen his case against Noodt? On p 4 Crusius, addressing Huber, says he is glad to see that his Digressiones are an indication that he (Huber) does not promote compendia of jurisprudence which are nothing so much as dispensia of that most sacred science.59 This, presumably, is referring to the contents of the Digressiones, not to the Dialogus.

Van den Bergh60 writes that the epigram was of Huber’s own invention and he cites the 1688 edition, page 6, but evidence would suggest that this word play was not new to the Dialogus. Before Huber, Rusius, in his inaugural oration of 1659,61 used those exact words in combination qui isto modo captant compendium, nae illi plerumque hic dispensium capiunt (those who seize on a compendium in that manner, generally find they have caught a waste of time).

Böckelmann, in the preface to his own Compendium (1679), juxtaposes compendium and dispensium62 saying that some people wish to lead students astray after a fatuus ignis and pro compendio magnum studiorum vestrorum det dispensium (after an ignis fatuus or will o’ the wisps they will lead them astray and instead of a compendium give them a dispensium.) Huber himself uses these terms in his Oratio II63 and Oratio IV64 and writes of achieving the basics with the least expenditure of time and effort (minime temporis operaeque dispensio) and more trenchantly, in Oratio IV, there are some persons who condemn aucta compendia tamquam merar dispensus studiorum (all compendia as a pure waste of study time). Even earlier in his inaugural oration (1665) Huber uses compendium in the sense of a summary (p 103) and 5 pages later (p 108) dispensium with reference to the waste of time and general confusion caused by the multiplicity of laws which Julius Caesar did not succeed in codifying.

However, be that as it may, the epigram attached itself to Böckelmann’s Compendium. Whether it helped to popularise his method or not is an open question, but I would support the view that Böckelmann’s compendium did not suffer.

1.4 The Böckelmann of the Dialogus

By and large it seems that Huber’s depiction of Böckelmann in the Dialogus is a true, if a trifle selective65 representation of the man himself. Huber and Böckelmann had first met in Heidelberg and the friendship there established had continued. It was

58 Noodt Corrupta Jurisprudentia, p 621.
59 ... quam nihil quam totidem dispensia sanctissimae artis sunt.
60 Van den Bergh Noodt, p 166.
61 Rusius De Jejuna Compendiaria, p 19.
62 Böckelmann Compendium, p [23].
63 See Huber Oratio II, p 67.
64 See Huber Oratio IV, p 89.
65 Huber understandably omits certain aspects of Böckelmann’s career, eg his relationship with the Count Palatine, Karl Ludwig.
also, as we have seen suggested,\textsuperscript{66} Huber who was instrumental in helping Böckelmann to the position of Professor of law at Leiden. Many of the factual details such as Böckelmann’s property beside the Old Rhine (where he held the fish-lunch party in the summer of 1679), his carriage, his career in Heidelberg, his famous Compendium and the Compendium — Dispendium antithesis are all attributes of the Böckelmann of history. When it comes to Böckelmann’s views on teaching, Huber clearly reflects passages from the Praefatio to Böckelmann’s Compendium, for example, the metaphor of the roads.\textsuperscript{57} Huber and Böckelmann clearly had similar views on the place of compendia in teaching. He, in fact, quotes passages from his own writings which he attributes to Böckelmann\textsuperscript{68} as has been indicated in the footnotes to the text. This was no small compliment from a scholar of Huber’s calibre.

Although Huber was himself the author of compendia,\textsuperscript{69} in the Dialogus he maintains a moderate view and a neutral stance, leaving Böckelmann to argue in favour and Crusius (Noodt) to argue against the use of these teaching aids.

The answer to the question as to why Huber gave Böckelmann a fair rendering in the Dialogus is largely conjecture. Perhaps one can say that their original friendship and similarity of opinions decided Huber to cast his friend in a positive role. By comparison, his treatment of Crusius was very different as we shall see.

1.5 Conclusion
Böckelmann’s views on the general problem of teaching law to those intending making a career in practice are clearly stated in his own writings on the matter and in general Huber has not done violence to them. Obviously, he himself followed much the same policy. Indisputably, much of Böckelmann’s fame with future generations rested on his compendium. Even shortly after its publication it was making its mark, such that Huber, who was in the process of developing his own Positiones, entrusted to its author the defence of the genre in the Dialogus.

2. GEORGIUS CONRADUS CRUSIUS\textsuperscript{70} (1644-1676)

In the Dialogus Crusius is cast as the opponent of Böckelmann. He is the critic of compendia, their authors and all students and professors who use them. In order to assess the role assigned to him by Huber it is necessary to review his life and his writings, also to probe his relationship with Huber and with Böckelmann.

2.1. Crusius in real life
The bald facts of Georgius Conradus Crusius’ life are that he was born at 11 pm on 14 May 1644 in Zutphen where his father Bernhard (or Barend) Crusius was a minister of the Reformed Church. Georgius Conradus was the second son of four children born to Bernhard and Lucretia Damman. Young Crusius showed promise of intellectual achievement and fortunately his education was not grievously disrupted by the death of both his parents in 1655 when he was only 10 years old. By the time he came to Franeker for his law studies, after Utrecht and Leiden, he had a sound grounding in literature, history and philosophy; he was \textit{non illotis manibus} as

\textsuperscript{66} See Feenstra Böckelmann, p 140.
\textsuperscript{67} See Dialogus, p 9
\textsuperscript{68} See Dialogus, p12 and ft. 35; p 13 and ft 37.
\textsuperscript{69} See Dialogus, p 15, ft 41 of the English text and the references there cited.
\textsuperscript{70} This note must inevitably be brief because little has been written on the life and works of Crusius. See van den Bergh, \textit{Elegante Schule}, p 177. He merits 30 lines in \textit{NNBW III} (1914), 269; half as much in A.J. van der Aa’s \textit{Biographical Dictionary of the Netherlands} and casual references in other secondary literature. Perhaps the most useful information comes from Böckelmann’s \textit{Oration Funebris} of 27 July 1676.
Böckelmann put it. During his student days at Franeker Crusius encountered both Wissenbach and Huber. When Wissenbach died in 1665, Crusius contributed a poem to his memory. The 22 September 1669 saw Crusius, aged 25, defending his *disputatio pro gradu*, *De Pactis et Conventionibus* and to honour the occasion Huber contributed a laudatory poem. The friendship thus established between Crusius and Huber continued, if we are to believe what Huber writes in the *Dialogus*, but how sound was that friendship? It is important to note that Crusius’ promoter for his doctoral degree was Taco van Glins — no friend of Huber’s and also the promoter of Noodt a few months earlier. In the *Dialogus*, despite Huber’s protestations of good will towards the Crusius persona, he passes several derogatory comments. Crusius intrudes on his chat with Böckelmann (pp 2), is critical of his *Digressiones* (p 13) and is excessively verbose (p 10). Is a basic hostility to Crusius as a person the key to Huber’s foisting on him the views of his own chief adversary, Noodt? Certainly, evidence does not suggest that the attitudes voiced by the Crusius of the *Dialogus* in any degree reflect Crusius’ real-life opinions and, one asks, why did Huber cast him in the rôle of devil’s advocate?

Shortly after he was promoted *Iuris Utriusque Doctor*, Crusius was appointed *lector* at Leiden. On 20 November 1670 he became *Professor Ordinarius* of Law, a position he continued to hold until his death on 31 March 1676 (aged 31). His early death was brought about apparently because his naturally weak constitution was further strained by excess study and too little exercise. His funeral oration was delivered on 27 July 1676 by his colleague, Böckelmann. The oration follows the customary pattern, including a lengthy eulogy of the deceased’s family, describing in some detail their origins, lives and achievements, an outline of Crusius’ career and academic interests and concludes with the sentiment that although Crusius was cut short in his prime, his colleagues should not mourn for him because, having exchanged this mortal world for everlasting bliss, he is now enjoying the purest Latin of the angelic chorus and instead of delving in the Florentine for light on Roman Law, he is receiving the wish of the Divine Legislator. Perhaps, for our purposes, the most significant aspect of Böckelmann’s oration is that he makes no reference to the didactic differences of opinion which are stated so emphatically in Huber’s *Dialogus*. But of this more anon.

2.2 Crusius’ published works

Further light can be thrown on this question by a consideration of Crusius’ intellectual interests and the publications which were completed during his short academic life.

First, let us consider *De Pactis et Conventionibus* as printed in Everardus Otto’s *Thesaurus juris roman*, *continens rario meliorum interpretum opuscula*, Leiden, 1725, p 672g–672m. For many years the question of the edictal rubric had teased the minds of legal humanists both in France and the Netherlands. Crusius whipped up support for his version of the rubric from ancient jurists, classicists and the authorities...
of his own day. He seems to have achieved success for Lenel writes that it was Crusius who was the first to reconstruct the rubric (de pactis et conventionibus) correctly.

Of Crusius’ academic status, van den Bergh writes: “Crusius was a fair enough representative of the elegant tradition.” Evidence for this can be seen in his Diatribe de Restitutione cap. Si Paterfam. 40. D. De Hered. Instit. ie D. 28.5.41(40), a fragment drawn from Julian’s Book XXX of his Digesta. Crusius prefaces his Diatribe with citations from Andreas Alciatus (Dispunctiones, 1.2) and from Antonius Contius (on Inst. 2.15.4) and comments briefly on those interpreters who have written on these issues. He, in general, favours Cujacius’ views. In this little work there is evidence of Crusius’ familiarity with the techniques and attitudes of textual criticism. As support for his linguistic arguments, he cites classical authors such as Petronius, Suetonius and Livy. Further, Crusius is relevant for his simple emendation of D. 45.1.101 so that Modestinus’ original Puberes sine curatoribus suis possunt ex stipulatu obligari (Those over the age of puberty can be bound on stipulation without their curators) reads Puberes sine curatoribus suis possunt ex stipulatu obligare (Those over the age of puberty can bind on stipulation without their curators). It seems that Crusius first recommended this emendation in a disputation exercitii gratia defended by Adrianus Wijngaerden with Crusius as praeses (1672). Presumably it is from this 1672 version that Noodt incorporated it into his Probabilia 1.4.2 of 1674.

2.3 Crusius’ relations with Böckelmann and Huber

It would seem that, despite the fact that Huber had been well disposed to Crusius during his Franeker days, there was no sincere regard between the two men. Soon after his promotion (September 1669) Crusius obtained a position as Professor Ordinarius at Leiden. Huber, in the Dialogus (p 3) makes it quite clear that this was thanks to his (Huber’s) refusing the post, thus enabling Crusius to secure it. At Leiden Crusius and Böckelmann seem to have been on friendly terms but in the Dialogus Huber has them sparring against each other. Was there an element of jealousy there? Did Huber feel that Böckelmann, his old friend from the Heidelberg days, was disloyal?

Regarding Huber pinning his hostility to Noodt and textual criticism on Crusius, there is possible justification for this in Noodt’s Probabilia where he cited Crusius’ emendation of D. 45.1.101 to read obligare, not obligari. This emendation, together with the extensive laudations of Crusius, was only taken out of the Probabilia in 1713, many years after Crusius’ death (1678). Yet Huber was not prejudiced by the fact that Noodt also cited Böckelmann favourably but not for textual emendations, and later removed him from the text (1719). Both instances occurred after the publication of the Dialogus. Perhaps it is as well that Crusius and his friend Böckelmann were both dead by the time Huber put pen to paper in his attack on Noodt.

2.4 The Crusius of the Dialogus

The picture of Böckelmann as given in the Dialogus bears a strong relationship to the man himself and to his views on education. The picture of Crusius, however, is very

80 Otto Lenel in Das Edictum Perpetuum (see p 357 of van den Bergh Noodt). Lenel does not necessarily follow Noodt. See further van den Bergh Noodt, pp 257-258.  
81 Van den Bergh Noodt, p 55; see, too, Böckelmann O.F. Crusii, p 19 f. Here “Diatribe” is used in the sense of a discussion.  
82 Ex variis observationibus quae ad ius civile pertinent diatribe I: cap. Si Paterfamilias, 40 D. de herribus instituendis in Otto’s Thesaurus, 1725, p 668 f.  
83 Alciatus, Andreas (1492-1550). See Who is who?  
84 Contius, Antonius (1517-158), Professor at Bourges and Orleans. His views were often opposed to those of Duarenus and Hotman. Contius wrote the Disputationum juris civilis liber unus, 1607.  
85 This disputation was first published in 1672 by Joh. Elsevier, Leiden. It was subsequently republished in 1712, 1741 and 1761. See Ahsmann-Feenstra BGNR Leiden, p 84, nos 118, 119, 120.  
86 See Chapter VI 2.3 for Noodt’s Probabilia.
different and we may well ask what prompted Huber to impose a false character on this party to the discussion.

Not much evidence remains as to Crusius' personality. According to Böckelmann's funeral oration, he was a conscientious and comparatively innocuous individual, at most a promising scholar and reasonably moderate in his views. In the Dialogus however "Crusius" comes across as argumentative and dogmatic. As will be shown in detail below in chapter VII the views put into his mouth are not his own but clearly those of Gerard Noodt with whom Huber had an on-going polemic. Noodt was a far greater scholar than Crusius, a man of decided opinions but not inclined to be aggressive. In fact of the four speakers it was Huber who was known to be somewhat cantankerous for all he portrays himself here as moderate and reasonable. Further the impression given by the Dialogus is that Crusius and Böckelmann were not on particularly good terms. Is this a twisting of the truth? Certainly nothing in Böckelmann's funeral oration suggests deep seated hostility to the younger man. The possible motives behind Huber’s foisting Noodt’s opinions on Crusius, is a topic to be discussed further in Chapter VI.

3. ADRIANUS WIJNGAERDEN\textsuperscript{87} (1648-?)

3.1. Wijngaarden's academic career and early life\textsuperscript{88}

Adrianus Wijngaarden, son of Adrianus van Wijngaarden\textsuperscript{89} and Lysbeth Ardiers, was born in Leiden and was baptised in the Pieterskerk (22 April 1648).\textsuperscript{90} On 1 February, 1666 he enrolled as “Adrianus Wijngaert, Lugduno-Batavus, phil.” at the University of Franeker.\textsuperscript{91} It was there he met and studied under Huber as mentioned in the Dialogus.\textsuperscript{92} In 1669, while at Franeker, Wijngaarden defended three disputations \textit{De substitutionibus} under Huber as \textit{Praeses}.\textsuperscript{93} It would seem that these disputations, together with many others, were only published much later, 1688, as nos 69, 90 and 91, in Huber’s \textit{Disputationum juris fundamentalium}.\textsuperscript{94} At some stage after 1670 Wijngaarden moved to Leiden where, as Huber tells us in the Dialogus, he was introduced, on p vi, as Hadrianus Wijngardenius; he reappears as Wijngardenius on p 3, three times, and once each on p 18, 49 and 50. In the translation and commentary he is Adrian Wijngaerden, except where circumstances dictate otherwise.

\textsuperscript{87} Wijngaarden’s name appears in various forms. He was baptised as Adrianus Wijngaerden. He enrolled at the University of Franeker as Adrianus Wijngaert, Lugduno-Batavus, phil. on 1st February 1666. See Fockema-Andreae, \textit{Album Studiosorum}, part I, no. 6889 (p 199), but appears in Postma and van Sluis’ \textit{Auditorium Academiae Franekerensis} (p 195) as Adrianus Wynjaarden. At Leiden, 13 March 1674, he acquired his doctorate in law as Adrianus Wijngaarden (see the title page of his doctoral disputation). He was admitted as an advocate of the \textit{Hof van Holland} as Adrian Wijngaarden. In the Dialogus he is introduced, on p vi, as Hadrianus Wijngardenius; he reappears as Wijngardenius on p 3, three times, and once each on p 18, 49 and 50. In the translation and commentary he is Adrian Wijngaerden, except where circumstances dictate otherwise.

\textsuperscript{88} I am sincerely grateful to Dr R.M. Sprenger for providing me with archival material which supplements the printed sources available to me.

\textsuperscript{89} Adrianus van Wijngaarden (senior) was born in Leeuwarden, but spent much of his working life as a printer/publisher in Leiden, 1643–1656, and again from 1668 till his death, c. 1677. During the years 1657–1668 he worked in Dussburg and Heidelberg where he printed several works by J.F. Böckelmann; see Ahsmann-Feenstra BGNR Leiden, pp 56–59, nos 11, 14, 15, 16, 23.

\textsuperscript{90} See the \textit{Regionaal Archief Leiden}, Register of Baptisms (8 June 1644 — 29 February, 1664), inv no 222.

\textsuperscript{91} See Fockema-Andreae \textit{Album Studiosorum Franekerensis}, part I Franeker 1968, no. 6889 (p 199). Postma and van Sluis \textit{Auditorium}, p 613 under \textit{Album Studiosorum} no. 6889.

\textsuperscript{92} See \textit{Dialogus}, p 3 where Huber says \textit{Auditorum olim meum} (a former student of mine).

\textsuperscript{93} See Postma and van Sluis \textit{Auditorium Academiae Franekerensis}, p 195. For a full discussion of Huber’s practice with disputations \textit{pro exercitia}, see Veen \textit{Exercitia}, in particular pp 142–150.

\textsuperscript{94} See Feenstra BGNR Franeker, pp 50–51, nos 136–137.
giving private lessons. It is clear that he was still in Leiden during the first half of 1674 for it was on 13 March of that year that he defended his disputation juridica inauguralis pro gradu. The subject was De vectigalibus, the Rector Magnificus was Arnoldus Sijen and his promoters were, we note, Albertus Rusius, Joh. Fred. Böckelmann, Georgius Conradus Crusius and Antonius Matthaeus (III). Just over a month later, on 20 April, 1674, Wijngaerden took the oath as an advocate at the Court of Holland. On 3 June of that year, the register of the membership of the Reformed community of Leiden shows that his name was removed, possibly because he moved to the Hague to practise. Nearly two years later, 21 April 1676, we have mention of Wijngaerden, advocate voor den Hooven van Hollant in the Hague. He features as witness in two notarial wills. The first involved one Jacobus Naehout (Naalhout) who left his moveable property to a certain Catharina Stolwijk of Rotterdam and the second involved the same Catharina Stolwijk who appointed Jacobus Naehout her sole and universal heir to all she inherited from her mother. Apparently Wijngaerden was still in the Hague later 1676 as the notice of his intended marriage to Maria Stolwijk of Rotterdam was entered there on 26 July. Notice had previously been given to the Schepenen of Rotterdam on 18 July of the same year. In the margin of The Hague register a clerk wrote that the civil marriage took place in the city hall, but no date was given.

Unfortunately this is the point where Wijngaerden disappears from the records. The Haag Gemeentearchief, the Centraal Bureau voor de Genealogie (CBG) and the records of Rotterdam, provide no date for a wedding. No further information has emerged regarding Wijngaerden’s professional career or his putative offspring. The key date which would throw light on Huber’s treatment of Wijngaerden is that of his death but nothing has come to light so far. It is regrettable that it has not been possible to trace Wijngaerden’s career further.

3.2. Wijngaerden in the Dialogus — a minor rôle

Wijngaerden appears to have been one of the guests at the vismaaltyd at Böckelmann’s estate on the Old Rhine and to have joined Huber, Böckelmann and Crusius there. After the meal was over he and the three seniors moved away to the plane tree for their discussion. It is only towards the end, p 49, that Wijngaerden joins in, merely to ask if Huber will give him some hints as to how best to teach his students. It is not clear what the relationship was between Catherina and Maria Stolwijk. Were they sisters? The notary was Johannes Groenesteijn of the Hague. See inv. no 466, pp 289-289v and pp 290-290v of the Haag Gemeentearchief (CBG).
A Dialogue on the Method of Teaching and Learning Law

(Wijngaerden’s) private students. This question serves as a springboard for Huber to launch into a discussion of law teaching, as exemplified by himself, and seems to be the sole reason for Wijngaerden’s inclusion in the Dialogue. Huber’s contribution is largely a reflexion of the policy outlined in his Orationes II and IV of 1682. 105 Wijngaerden is not asked to offer an opinion on the final question of the literary and scientific journals. In short, he has, as he himself remarks on p 49, a non-speaking part in the play and, as is indicated in the chapter Fact or Fantasy, his rôle is minimally functional.

4. HUBER AS REFLECTED IN THE DIALOOGUS OF 1684 AND OF 1688

Huber’s own contribution to the Dialogue, that is to those sections where he expresses his views under his own banner, not that of Böckelmann, come chiefly after the debate on Compendia and consist firstly of a statement of his own teaching methods, largely a repetition of Orationes II and IV, and secondly of a review of earlier teaching practice, with particular reference to Justinian and his Institutes, Irnerius, Duarenus and their successors.

He agrees with Crusius that compendia as a shortcut to legal knowledge achieve nothing. This is well-known 106. In answer to Wijngaerden’s request for hints and shortcuts, he maintains that hard work is the key to success and he advises his students as follows: prepare for collegia, take notes, revise, consult the relevant Corpus Iuris texts, memorise and above all take part in disputations 107.

In the first year the new law student should concentrate on classical history, literature, logic, ethics etc. but should study only the general principles of law. He should become very familiar with Suetonius and polish his ability to communicate in Latin. A reading knowledge of Greek is useful. Regarding rhetoric, knowledge is the source of fluency. If the ideas are there, the words will follow. 108 But, above all, the student should attend to the words and explanations of the Master. The second year is spent on the Institutes as well as on D. 50.17 and D. 50.16 with the aid of a compendium. The humanities must be continued. Disputing now becomes very important. Year III focuses on the Pandects and the Codex. The student should collect illustrative examples from his reading of history and literature and keep on with disputing. 109 Year IV will either complete the practitioner’s studies or will lead to further academic study, including textual criticism etc. At this stage the student is introduced to some canon law and contemporary law.

In his review of past didactic practices, Huber makes the following points regarding summaries, outlines etc. Justinian, in order to compress the vast field of knowledge required by a jurist into a 5-year course produced the Institutes and allowed indices and paratitlæ but no commentaries. 110 Later, manuals, including updated laws, translations into Greek and further epitomes were written and used by students and practitioners. Thus, it is right for modern teachers to explain to modern students the relationship between Roman law and the indigenous law. In due course Irnerius (d. 1125) added the Authenticæ to the Codex, and other authors wrote summæ and glosses, which, says Huber, were nothing more or less than paratitlæ. Thereafter, commentators made their appearance and reproduced the state of uncertainty which had prompted Justinian to codify and to prohibit commentaries. 111 Chief among these commentators were Bartolus (1314-1357) and Baldus de

105 See Chapter IV. 4.2.
106 Dialogus, p 35.
107 Dialogus, pp 49-50, cf Huber Oration IV, pp 88f.
108 Dialogus, p 51.
109 On Huber’s attitudes to disputations, see Veen Exercitia, passim.
110 Dialogus, pp 36-37. See Tanta § 21, Deo Auctore § 12.
111 Dialogus, p 39.
Ubaldis (1327-1406) who wrote consilia, responsa etc. which led to doubt (as Justinian had predicted) and the communis opinio. The techniques of scholasticism did not lead to a proper understanding of the law.

With humanism there came new light and new methods: Some, eg Cujacius, Duarenus and Donellus confined themselves to the Corpus Iuris Civilis and explained the law contained there. Others linked the old and the new (eg Alciatus, Zasius, and Viglius). Yet others added antiquarian and philological commentaries (eg Antonius Augustinus, Budaeus and Raevardus). This categorisation is undoubtedly valid but one must not forget that these writings were not directed at students, but at colleagues and practitioners. Hence, Huber’s wise warning that this material is too strong for beginners who will waste time and energy to no good purpose. Later in their law studies, students may well benefit.

Regarding textual criticism — emending corrupt texts — he remarks that in the past all those who emended corrupt texts had copies of old manuscripts, especially the Florentine, and often knew Latin (and Greek!) well. To be successful with emendations and conjectures, the scholar must be very knowledgeable, although, he admits, there are occasional happy hits, as for example Baudius. Antonius Faber and his naïve attitude to emendations arouses Huber’s scorn. Moderation in criticism is essential, particularly where the critics are tampering with the actual text. It is dangerous to disturb the texts and especially to foist this on students who do not understand the law in the first place. Huber’s policy is “only emend where there is absolute need”. This was the policy of Vinnius, Matthaeus I, and Wissenbach.

Regarding the Journal des Sçavans, the words spoken by Huber show a reasonable and comparatively balanced view, as will be seen in chapter IX.

In the Dialogus picture of Huber, as portrayed by Huber, little of his polemical nature emerges. By and large, by contrast to the other speakers, he appears self confident, reasonable, calming ruffled feathers and moderate in his attitudes. Is this how he saw himself? Not as the author of “a sharp attack on each and every person who takes his pride in humanistic philology. To teach this is sane stupidity, to teach it before students have got an overview, in the form of paratitla, of the whole of the law superat omnem stultitiam.”

112 Dialogus, p 39.
113 cf. Huber Oratio II, pp 69f.
114 emendando corrupta juris antiqui loca (by emending the corrupt texts of ancient law).
115 Dialogus, p 40.
116 Dialogus, pp 41ff.
117 See Dialogus, pp 35, ff.
118 See van den Bergh Noodt, p 166, paraphrasing Huber’s words through Böckelmann’s persona. Dialogus, p 32.