Ulric Huber (1636-1694) : 'De ratione juris docendi & discendi diatribe per modum dialogi : nonnullis aucta paralipomenois' : with a translation and commentary
Hewett, M.L.

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CHAPTER IX

CONCLUDING THOUGHTS

The first objective of this study of Ulric Huber’s *De ratione discendi atque docendi juris diatribe per modum dialogi* was to provide an annotated translation from the Latin into English. However to appreciate the *Dialogus* it became necessary to set it into its physical and intellectual environment as a preliminary to attempting an evaluation of the work and its influence.

The physical environment of the late 17th century Republic of the United Provinces was characterised by comparative peace and stability. The national business of making money was progressing steadily and the United Provinces were, by and large, thriving. Certainly, the book trade was doing well, a fact important for our academic world. Intellectually, the Protestant Northern Netherlands were marked by comparative freedom of thought and freedom of religious observance (within certain bounds, set by the regents.) This enabled the greater, and lesser, minds of the day to explore the world of ideas, both religious and secular, to enjoy the excitements and pleasures of scientific research, to discuss and publish their findings and to give to the world a cluster of illustrious names in several fields of endeavour. We were here concerned primarily with the universities of Leiden and Franeker and their responses — particularly in the legal world — to the intellectual developments generally covered by the term humanism. As explained in chapter IV humanism covered a range of intellectual activities. Originating in philological and historical analysis of classical writings — literary, legal and theological — by the late 17th century it had resulted in a new methodology and approach to the old writings and hence to perceptions of the world itself. Understandably, not all the learned men of the universities were happy with the new direction and many clung to the old Aristotelian philosophy, the old Classical traditions and the old Roman law. In the field of teaching law (and theology), humanism and its desire to probe the meaning of words and the source of concepts was often seen as disruptive of the old foundations on which the stability and security of the state was understood to rest.

Huber has not been easy to place in the new intellectual world of legal humanism. In his early years he took a serious interest and much pleasure in considering the classical writings especially those of the Historians. As he mentions in the *Dialogus* (through the mouth of Crusius),¹ his work in the *Tractatus de temporibus ante Cyrum*² shows that he did not refrain from textual criticism — the hallmark of the later Humanists. In his early lectures on Roman law at Franeker he introduced classical *Amenitites* which he felt to be as necessary to enjoyment of law as salt is to food.³ Yet even then, Huber had his reservations. For practical didactic reasons, he took the pleasant *Amenitites* out of his teaching and placed them in his *Digressiones* (first edition 1670). He warned potential law students of the seductions of the Ancient World and recommended that they did not emerse themselves for too long in its literature and history lest they find law dry and boring.⁴ Finally he stated unequivocally that textual criticism, although an admirable goal for higher legal pundits had no place in the teaching of law students who were destined for a life in practice. Textual criticism could only confuse the beginner and not benefit his training.

Thus, as we have seen, Huber was no radical innovator in matters of teaching law.

¹ See *Dialogus* pp 4-5.
² See Feenstra BGNR Franeker, pp 48-49, nos 130, 131; pp 92-93, nos 274-278, especially p 92, no 274.
³ See Huber *Oratio Inauguralis* p 103.
⁴ See *Dialogus* p 52.
Not for him the foundation-shaking humanistic inspirations of those learned gentlemen whom he, and others, regarded as doctissimus viri sed non iuris. Yet he was undoubtedly open to new ideas, provided they were not too new, and conformed with his sense of what was required for preparing students for a life in the profession. It is the conservative aspect of Huber’s ideas which comes out clearly in the works considered in this treatise. His more innovative contributions by way of his lectures on ius publicum universale (1672) and his ius statutarium Frisicum (1682) have not entered the discussion, and for comment on them we must turn to Theo Veen. Likewise Huber’s theological convictions are beyond our present consideration, although as van Sluis has shown it is not possible to divorce his theological entirely from his legal perceptions of society.

Regarding the content of the *Dialogus*, it was to a large extent a reworking of Huber’s previous statements on teaching law, and, as we have seen, these ideas were not radically different to those prevailing among the more conservative teachers of law. What was important was Huber’s restatement of this didactic policy. To whom, one may ask, was Huber addressing his orations and the *Dialogus*? On the surface it would appear that his anticipated audience was his students, present and future, but did Dutch law students occupy their time with reading what dear Professor Huber had to say about their courses? If not, to whom was he preaching? Maybe the answer is that he was possessed of the *Cacoethes scribendi* et edendi and desired to satisfy the university authorities. Alternatively maybe he wished to make a clear analysis of his teaching philosophy. Not quite an inaugural oration but something closely approaching to it, and in a situation not unsimilar to that appropriate for such a statement.

But to return to 1684, and to the immediate effects of publishing the *Dialogus*. There appear to have been two opposing reactions. The negative, that of Noodt and his friends, the positive, that of Johannes Voet of Leiden University. On the one hand, there was the solemn and dignified silence from Gerard Noodt. His friends, van Eck and Perizonius, might protest but not a word from Noodt. This response to the *Dialogus* can probably be attributed largely to the enmity between Huber and Noodt and is not in fact a comment on the *Dialogus* as such. On the other hand Voet was at that time a highly regarded professor at Leiden with over ten years of teaching experience behind him, both at Herborn, Utrecht and, since 1680, at Leiden. Although his major work was the *Commentarius ad Pandectas*, he is the author of two small, concise and very useful compendia — the first on the Pandects and the second on the Institutes. These are by no means significant learned works, but they show clearly that Voet appreciated the need of such compendia for teaching and for practice. It is in this context that his letter to Huber must be read. On 6 November, 1684, Voet wrote to thank his most esteemed and learned colleague, Ulric Huber for the copy of the *Dialogus* which he had just received, Voet writes:

I read keenly and with pleasure the Dialogue on the method of teaching and learning Law, delivered to me in your name and on your instructions.

5 Cujacius on Connaus see Stein *Elegance in Law*, p 251. (Most learned men, but not learned in law.)
6 See van den Bergh *Geleerd recht*, p 85.
7 See i.a. Veen *Recht en Nat*, passim and Kossmann *Political thought*, passim.
9 Juvenal *Satires*, vii, 52.
10 See van den Bergh *Noodt*, p 302.
11 It is worth noting again that van Eck wrote a most useful compendium — *Principia juris civilis*, and yet he and Noodt were friends. See Ahsmann *BGNR*, Utrecht, pp 73-74 no 79-85.
12 Voet, Johannes. 1647-1713, see Feenstra — Wial *Leiden Law Professors*, pp 35-43; Ahsmann and Feenstra *BGNR Leiden*, pp 337-352.
13 Prof. Veen provided me with this letter from the *Friesch Genootschap*. See Plate XII.
certain that not only shall I owe you the greatest thanks for this gift but equally I congratulate our legal profession that, in a most polished dissertation, you were prepared to plead her case on behalf of the method of teaching law accepted and proved by its happy results over so many years. (Some persons were, not so very long ago, prepared to trample and crush this method underfoot quite savagely.) You wrote so vigorously and so learnedly that I, indeed, do not see what substance can be found in the opposing arguments.

Regarding Prof. Noodt’s successor there is to-date a deep silence among us, except that rumour has for a long time been spread about certain candidates for the Franeker professorship in law and they still persist, but what hope each of them cherishes and on what each relies is beyond doubt already known to you, dear Sir, unofficially, so at length we, too, shall get to know the outcome. Farewell, most esteemed friend and remember me. Ever a supporter of your esteemed name

Johannes Voet
Leiden, 6 December 1684

Voet’s letter, apart from the appropriate polite sentiments, clearly shows his support for the traditional methods of teaching law and he is pleased to congratulate Huber. Of interest is Voet’s reference to Prof. Noodt’s chair and the rampant gossip concerning this successor, who was in fact Cornelis van Eck. Van Eck was appointed in 1685, an appointment which must have delighted Voet as van Eck was one of his ex-students.

It was only four years later that the largely revised version (that translated here) was included in the 1688 version of the Digestiones. In Chapter II.2 and generally in Chapter IV we have discussed and attempted to evaluate the changes introduced in the new edition. For Zacharias Huber’s reprint of the Digestiones in 1696, see Chapter II.3. It is C.G. Buder’s De ratione ac methodo studiorum iuris illustrium et praestantissimorum iuris consultorum selecta opuscula of 1724 which marks a noteworthy step forward. Firstly, we must note that the Opuscula was published in Jena not Franeker, and, moreover, three decades after the 1688 edition. In his praefatio Buder reiterates, in almost the same words, the problems which had bugged legal education for almost a century. In the diffuse but enormous “race course” of legal studies, students need a “Cynosura” and an “Ariadne’s thread” and if not a compendiary or royal road at least a sure and utterly reliable path. Having cited and rejected various writings, Buder comes to his crucial point. The texts he favours are often hard to come by even for university librarians15 and students can seldom, if ever, put their hands on such valuable aids. Although Buder recognises that there may be bigger and better books on learning law he will put together a collection of short works by well known writers and thus make them available for the students. Of the ten sections

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14 Exhibitum tuo nomine ac mandato dialogum de ratione iuris docendi et discendi avide ac cum voluptate evolvi. Et est certe quod non tantum gratias pro done ago maximus, sed et pariter nostrae gratiae gratulatio jurisprudentiae quod dissertationes legibusima causam eius aegae volueris pro neque et succesi felix tot annis comprobata juris docendi methodo (quam non nulli non ita pridem sati feotavit concutulam ac potissimum iuravi) tam nervous ac erudite verba faciens, ut, quid solide possit in adversum nponi, haud equidem videam. De successore CI Noodt altum hactenus apud nos est silentium, nisi quod de quibusdam Jurisdictione Francoriorum candidatus disseminata tamen dudum fana etiamnum durat. sed quae eorum quibusque foreavit quae fretus sit fiducia, ut tibi, Vir Amplissime, prael deinde ian privatim inveniatur, sit nobis queque tandem de eventi innotescat. Vale, Vir Amplissime, et me amas. Lugduni Bat. 6 December Amplissimi nominis hi culorum perpetuum 1684 Johanne Voet

15 In fact he states, p [5], that he wanted to include Barbevíc’s De studio iuris recte instituendo of 1717, (his inaugural oration on becoming Ordinarius professor of public and private law at Groningen), but could find it nowhere. However on his writing to Barbevrac, that gracious and learned scholar sent him a personal copy. The oratio now occupies the first place in the Opuscula. A less happy outcome resulted from Buder’s search for van Eck’s De ratione studii iuris recte instituendi of 1693. It could not be found in bookshops in Jena and thus was not included in the Opuscula.
included, two are devoted to Huber. Part I no. II being the Dialogus, and Part II no. IV providing the Oratones IV, V and VII. There are also two by Barbeyrac,16 one each by Maestertius,17 Schilter18 and Schultingh.19 However, the long and short of it is that any student turning to Buder for assistance will without question find the Huber articles the most practical and helpful.

Cairns’ article “Legal Education in Utrecht during the 1740’s” throws a spotlight on some of the texts used there in the middle of the 18th century. No mention is made of Huber’s Dialogus, his Positiones or other didactic works but Cairns cites van Muijden’s Compendiosa institutionum Justiniani tractatio, Westenberg’s Principia secundum ordinem Institutionum, van Eck’s Principia juris civilis secundum ordinem Digestorum and Böckelmann’s, ever popular, Compendium institutionum Justiniani.

Even a century after Huber’s death, eminent academics were repeating most of the same didactic points, albeit by the beginning of the 19th century the Law curriculum had been broadened to include some Ius Naturale, Ius Gentium and usually a significantly greater portion of Ius Hodiernum. Thus, the problems of an expanded curriculum, a perennial shortage of time and, in many cases, a pressing financial need, were addressed consistently with the use of compendia. It was general practice for a professor to take someone else’s compendium and lecture on it usually paragraph by paragraph. The great Dionysius van der Keessel,20 based his Theses Selectae on Grotius’ Inleiding, his Dictata op de Instituten on Böckelmann’s Compendium Institutionum and his Praelectiones in libros 47 et 48 Digestorum on Cornelis van Eck’s Principia Juris Civilis. Also Joannes van der Linden,21 an advocate in Amsterdam, was writing a scheme for persons unacquainted with the law, but desirous of legal knowledge.22 First, he writes, learn the elements before progressing to controversial issues. Be adequately prepared with a thorough knowledge of Latin (with a little Greek), a knowledge of Roman political history and Roman law. Add to this a little philosophy and logic, mathematics but not in excess. The best source for the study of Roman law is the Institutes and if a compendium, such as those of Böckelmann or Westenberg, is used reference should constantly be made to the original. The Institutes should be mastered before embarking on commentaries and there, as Huber says in Oratio IV, “He who wishes to make progress should read much, but not many [authors] and practise much thinking rather than much talking.”23 Was van der Linden influenced by Huber? It is not impossible but it seems more probable that these ideas were still the common currency of law teaching. That does not in any way discredit their validity, rather the contrary.

Further van der Linden follows his suggestions for the foundations of law study by recommending books for a suitably select law library — and a very substantial library it would have been. Regarding the writers mentioned in this study it is interesting that he suggests i.a. Böckelmann’s Compendium Institutionum (1802), Westenberg’s Principia Juris secundum ordinem Institutionem (1766) and van Muijden’s Compendium Institutionum (1737). Nothing is said of Huber’s Positiones. Of Compendia on the

16 Barbeyrac, Johannes (1674-1744). Professor at Groningen (1744).
17 Maestertius, Jacob (1610-1658). Professor of law at Leiden 1637-1639.
18 Schilter, Johann (1632-1705). Councillor at Strasburg.
19 Schultingius, Antonius (1659-1734) a pupil of J. Yoor and J.F. Böckelmann, Professor at Leiden.
20 Van der Keessel, Dionysius Godefridus (1738-1816). He was born in Deventer, was Professor at the University of Groningen (1762-1770) and at Leiden (1770-1815). See Ahsmann Feenstra BGNR Leiden pp.132-138.
21 See ft 14 on p 3.
22 Van der Linden, J., Regtegeleerd, praktisch en koopmans handboek, ten dienste van roters, practizijns, kooplieden, en allen die een algemenen overzicht van regtskennis verlangen, Amsterdam 1806, translated by Sir Henry Juta, Cape Town, 1904.
23 Huber Oratio IV, p 100. Quis proficere cupit, multa legere debet, non multos, πολύνοιον ευγενέων ἀρετῶν quam πολλοῖσιν. (See Plato Laws, 641.E.)
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Pandects, we have van Eck’s Principia Juris Civilis (1725) Westenberg’s Principia Juris (1764) but nothing is said of Voet in this context. However, under general commentaries Voet’s Commentarius ad Pandectas (1707) is listed together with Noodt’s Commentarius ad Pandectas (1767) and Huber’s Praelectiones Juris Civilis (1749), his Eunomia Romana (1724) and the Digressiones of 1696. This edition does include the Dialogus and maybe one of the 19th century young desirous of legal knowledge will have read it.

The writing of epitomes, compendia, summaries — call them what you will — has a long and varied history. In the Dialogus Huber writes of the epitomes of classical historians and classical jurists, and debates their value. In his own day likewise Vossius’ compendia of history were a contribution to knowledge. The Institutes of Justinian, based on Gaius’ Institutes, was the first truly legal compendium deliberately drawn up to assist young law students to grasp the basics firmly before moving on to practice or to more profound studies. Over the centuries there had been those who considered that to write a compendium of Justinian’s compendium was an act of treason, but others realised that circumstances had changed and that there was need to epitomise and supplement the Corpus Juris.

Thus, to conclude. In Huber’s didactic writings, the Dialogus and Orationes II and IV we have a small, perhaps, but clear picture of the 17th century issues facing these teaching the elements of law to future practitioners — the problems, the frustrations and the satisfactions.