ULRIC HUBER’S PROGRAMME FOR
LEGAL EDUCATION –
WHAT LESSONS FOR TODAY?

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A man who does not understand Latin is like one who walks through a beautiful region in a fog; his horizon is very close to him. He sees only the nearest things clearly, and a few steps away from him the outlines of everything become indistinct or wholly lost. But the horizon of the Latin scholar extends far and wide through the centuries of modern history, the Middle Ages and antiquity.

Arthur Schopenhauer

No teacher of law students in South Africa should need to be alerted to the difficulties and perils that confront our enterprise today. Typical of the responses made to a recent survey on the LLB Curriculum, commissioned by the Council on Higher Education, were the following:¹

Generally, students are underprepared for studies in law. They are thrown in at the deep end with little ... or no knowledge ... of the use of the most important tool of the trade in law – proficiency in reading, writing and, to a lesser extent, speaking English. Moreover, the lack of skill in reading and writing results in an inability to put across legal arguments in a coherent and logical fashion.

Students struggle with reading and writing, formulating coherent arguments, and absorbing ... the quantity of work that is expected of them at a tertiary level. This is not something that can be taught as part of the LLB. There simply is not enough time. Students should already be equipped with ... these skills when they reach university, but they are not.

Respondents to the survey generally agreed that the crucial abilities expected of law graduates include the ability to solve problems, English language proficiency, and the


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ability to apply legal principles and research skills. In its reaction to the CHE Report, the Law Society of South Africa expressed its concern that a substantial number of law graduates lack these abilities. As a result, clients in legal matters are placed at risk.

We have now bred the first generation of semi-literate South African law graduates. Consider but one consequence of the lack of basic language skills in these graduates: in recent letters to the press, company executives have bemoaned the fact that the legislation governing their business is so poorly and incoherently drafted as to be incomprehensible, so that it is impossible for them to comply with it.

Why have things come to this woeful pass in South Africa? It is true that many students who enter our universities are products of the system of outcomes-based education, which is now officially acknowledged to have been an abject failure. But the single direct cause of the parlous state of our legal education is, I believe, the government’s disgraceful policy decision to sacrifice the humanities on the altar of science and technology. The term “humanities” is taken here to include primarily the classics (Greek and Latin), literature, classical philosophy and Roman law.

In general terms, the study of the humanities promotes the development of critical thinking rather than training for specific jobs. The humanities do not just provide vocational training for a successful career but prepare one for all aspects of life. This vital distinction between true education and the inferior but important process of vocational training was first drawn by the philosopher Plato, who has justly been described as the teacher of the West. Plato does not undervalue vocational training and lays down important guidelines for it. However, it is with true, that is to say non-vocational education, that he is primarily concerned. He defines true education as instruction from early childhood in virtue, which produces in the child a keen desire to become a perfect citizen, who knows how to rule and be ruled as justice demands. Thus the clear socio-political aim of this true education, or instruction in virtue, is to ensure that in later life the pupil will be able to participate fully in the affairs of the state. By insisting on value-based education from earliest childhood, Plato provides a moral impetus that is

2 “Concern at law graduates’ lack of basic skills” The Times (Legal Times supplement) 26 Nov 2010.
3 Ibid.
4 But see the article by Rice entitled “The rot runs much deeper than a failed curriculum” Business Day 14 Jul 2010. See, further, a recent article by Jansen “Zim can teach us a thing or two” The Times 2 Dec 2010.
5 My own University has in recent years slavishly and shamefully followed the government line, first by closing its Classics Department and its departments of various European languages, and more recently by taking a decision to discontinue its teaching of Roman law with effect from 2012. All is not lost, however, and other Southern African universities are doing a fine job of keeping the classics and Roman law alive. Special mention must be made here of the University of Cape Town, which after ceasing to teach Roman law some years ago, has seen the error of its ways, and has now restored the course to its curriculum. But the shining success story is surely the University of Zimbabwe which, in the midst of the political and economic upheaval in that country over recent decades, has succeeded in keeping its Classics Department alive and functional. This feat deserves the highest praise.
6 Plato Laws 643e-644a.
7 Plato Laws 643a-644b.
8 Plato Laws 643e.
largely absent from today’s secular systems of education. By the term “virtue” in this formulation of true education, Plato means the aggregate of the four cardinal virtues of justice, temperance, wisdom and courage.9 The major components of Plato’s programme of true education include music, literature (in the form of storytelling and the recitation of poetry) and gymnastics (which includes dance).10 These activities fall squarely within the field of the humanities, as defined above. It will be clear by now that the bulk of what we call education today is, in Platonic terms, little more than vocational training. Recent developments appear to vindicate Plato by providing remarkable confirmation of the ability of very young children to engage with the humanities.11

The Platonic principles considered above, together with the quotation from Schopenhauer at the beginning of this article, serve to show that the scope of the Greek and Latin classics is universal, not Eurocentric. The classics speak to Africa as much as to any other part of the planet. The result of South Africa’s devaluation of the humanities, which of course include the classics, is that educational standards in Africa’s wealthiest country are today rated among the poorest on the continent.12

The value of education in mathematics, science and technology is undisputed. But the need for training in these important areas, even if successful, can never excuse the criminally ignorant abandonment of the humanities in this country over the last fifteen years.

Peter Vale has recently drawn attention to the vital importance and the plight of the humanities in our tertiary education in general.13 He attributes the falling-off in support for the humanities over the past fifteen years to government’s inexcusable abandonment of this educational sector. Only at the applied end of the humanities, in disciplines such as public administration, law and communication studies that provide a clear-cut career direction with prospects of a job, have student enrolments risen during this period.

The intrinsic value of the humanities is not in question: Vale cites evidence from the United States to show that education in fields other than the humanities is undoubtedly more valuable in the early stages of a graduate’s career, but that employees trained in the humanities outstrip their peers after the fifth (or so) year of employment.14 Moreover, a

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9 Plato Laws 965c-d.
10 This, however, is not the place to consider in detail the practical implementation of Plato’s educational principles. The interested reader is referred to Republic 401b-402a, Laws 654a-656d passim, and Laws 802d-e. These texts are by no means exhaustive.
11 See “Philosophy lessons for 5-year olds cause controversy in British classrooms” Saturday Star 11 Apr 2009.
12 Ironically, this chilling statistic includes mathematical ability, which government has specifically sought to promote at the expense of the humanities.
13 See “Humanities key to our Republic” Sunday Times 24 Oct 2010. Vale is a fellow of the Stellenbosch Institute for Advanced Study, professor-designate in the humanities at the University of Johannesburg and, significantly for present purposes, joint chair of the Academy Consensus Panel on the Humanities of the Academy of Science of South Africa.
14 Vale (n 13) cites Bobby Godsell, former CEO of AngloGold, and Gail Kelly as examples to illustrate this point.
study of South African graduates suggests that levels of job and career satisfaction are much higher in humanities graduates than in those from other disciplines.\textsuperscript{15}

Given the unhappy scenario that has been sketched above, the natural instinct of a legal historian (and indeed of a classicist) would be to seek a solution in the experience of earlier ages. Can the legal thinkers and systems of the past provide help? It is the purpose of this paper to examine the educational ideas of a great seventeenth-century Frisian jurist with a view to answering this question.

Although he was not from Holland, the formative influence of Ulric Huber (1636-1694) on the fabric of Roman-Dutch law was considerable. His credentials are not in question. Both as a jurist of formidable intellect and as an exceptional law teacher, Huber occupies a distinguished place in European and South African legal history, alongside such giants as Hugo de Groot and Johannes Voet. Huber’s academic career saw him occupy in succession the offices of Rector Magnificus, Professor Ordinarius and Professor Primarius at the University of Franeker, in his home province, Friesland. Huber twice declined offers of prestigious positions at the University of Leiden. Students flocked to his lectures.

Huber’s ideas on legal education are expressed in dialogue form in a little-known treatise,\textsuperscript{16} whose title I shall for convenience abbreviate to the “\textit{Dialogus}”. This text illustrates the range of Huber’s erudition, which spanned philosophy, rhetoric, history and, of course, law. Professor Margaret Hewett, formerly of the University of Cape Town, has recently published a very fine translation and edition of Huber’s \textit{Dialogus}.\textsuperscript{17} Professor Hewett’s work, which is a model of thorough scholarship and meticulous research, is the source on which I rely for the following discussion of Huber’s ideas on legal education.

Before proceeding, however, I pause to address a key question which arises naturally at this point: What possible relevance could a seventeenth-century European treatise on legal education hold for the needs of twenty-first-century African, and particularly South African, law students?\textsuperscript{18} In seeking an answer to this question, it is worth considering a description of the law students of Huber’s own time. The students, who were said to be “ill-prepared, ignorant of classical literature, concerned only to get the qualification which would admit them to the rewarding world of government or business, and meanwhile they amused themselves with wine, women and song”, were blamed by the

\textsuperscript{15}Ibid. There are encouraging signs that the South African government may again be willing to take the humanities seriously: The Minister of Higher Education has very recently appointed a Reference Group on the Humanities.

\textsuperscript{16}De ratione juris docendi & discendi diatribe per modum. Dialogi, published during Huber’s lifetime in two editions, namely those of 1684 and 1688.

\textsuperscript{17}Ulric Huber (1636-1694) De ratione juris docendi & discendi diatribe per modum Dialogi (trl Hewett) (2010) (hereinafter the “\textit{Dialogus}”). Copies of this book may be obtained from the Gerard Noodt Instituut in Nijmegen, or directly from the translator at “Stekjeshof”, Fleetwood Avenue, Claremont, Cape Town 7708.

\textsuperscript{18}This question becomes more pointed when it is borne in mind that the influence of Huber’s treatise was limited. The fact that the treatise was not reprinted speaks for itself. \textit{Dialogus} 94.
law teachers for the decline in legal education in the late seventeenth century. Has anything changed? The Dialogus contains passages in which Huber could be said to be describing our modern educational conditions with uncanny prescience and accuracy. Consider, for example, the following:

This is not the place to complain about the most wretched conditions of our schools and preparatory education, but it is quite blatant that these new law students who present themselves to us are generally ignorant of polite literature, ignorant of history and of all the Ancient World, ignorant of the Greek language and of the proper elegance of Latin, to say nothing of philosophy, especially moral philosophy.

Clearly, ours is not the only age that has been guilty of neglecting the humanities!

I turn now to the substance of Huber’s ideas on legal education as they are set out in the Dialogus. He begins his exposition by acceding to his students’ entreaties to reveal to them his “secret path” to success in study. His advice, which no doubt disappointed his students profoundly, is to toil unremittingly, prepare diligently before coming to lectures, listen attentively, revise everything at home, check against the sources of the law, commit everything to memory, master the rules most thoroughly, and probe the reasons for and sources of the material. This is a tall order that leaves one wondering how many law teachers, in this age or any other, regularly succeed in convincing an entire class, as opposed to a small core of dedicated individuals, to prepare diligently before coming to lectures.

Turning to the humanities, Huber insists that the study of law must be preceded by the study of literature and the arts, for without learning these tolerably well, “jurisprudence cannot be effectively understood”. No one, says Huber, doubts this. The term “literature” includes the precise and thorough learning of Latin literature, Greek literature to a limited extent, history, logic, ethics and rhetoric (the art of oratory). Huber regards these preliminary studies as indispensable. More than once in the Dialogus, he expresses himself in the following or similar terms: “One warning must be raised; a warning which some people will perhaps not expect at all, namely that literature and the arts must indeed be learned before you attack the law (but nothing in excess).”

Politics should accompany rather than precede the study of law. Huber regards the writing and delivery of speeches as the most difficult of all skills: they should not be included in the preparatory courses.

Once a whole year (and no more) has been spent on preparatory studies, the student should turn to law in the second year. Huber, however, makes a concession that would be most beneficial to the underprepared students who enter our modern universities:

19 Dialogus 75.
20 Dialogus 30.
21 Dialogus 50.
22 Ibid.
23 Dialogus 51. Jurisprudence in this context is taken broadly to mean the study of law.
24 Ibid.
25 Ibid.
26 Dialogus 52.
he would give students who lack the ability to perform well in the preparatory courses within the space of a year, as much extra time as is necessary for them to match the performance of the better students.27

A key feature of Huber’s scheme is that the study of the humanities and literature should not cease when the study of law begins in the second year but should run parallel to it.28 In fact, Huber believes that the study of the humanities ought to continue throughout the entire period of learning law. He adds: “And I usually recommend this route ... all the more confidently, because, by that method, I ... came more happily to master jurisprudence.”29 Moreover, this route, namely the continued study of literature parallel to the study of law, offers a great saving of time by comparison with curricula that prescribe several years of preparatory studies.30 This too would be an important practical consideration for modern students. It is already clear at this stage that the study of the humanities plays a vital and indispensable part in Huber’s scheme for the training of law students and that in his view law can only be successfully learnt in conjunction with the study of the humanities.31 Huber points out that it is particularly those students who seek a career in litigation who need instruction in the humanities. He says:32

[Those who seek] a legal career in the courts need instruction adapted to the customs of our day, together with Latin rhetoric, a knowledge of things Greek, combined with philosophy, history and further humane literatures which this method of mine requires and provides. Such a course can produce, by the end of four years, a praiseworthy jurist, even one with adequate critical skill. That is provided, in the three-year legal course, he does not omit to add politics and the theory of public law to the learning of private law.

Elsewhere, in one of his orations on the teaching of law, Huber declares that his purpose is to help students acquire the skills necessary for legal practice. They should be able, in Cicero’s words, *respondere, cavere, scribere* (to respond, to advise, to write).33

In his orations, Huber focuses on the role of rhetoric (one of the core components of his curriculum of preliminary studies in the humanities, discussed above) in public life. He believes that skill in public speaking has always been, and remains, the key to success in life. Hence Huber’s insistence on the need for students to practise rhetoric. In these orations, he also repeatedly emphasises the need for a classical foundation to one’s studies.34

27 *Dialogus* 53.
28 *Ibid*.
29 *Ibid*.
30 *Ibid*.
31 Huber practiced what he preached. As a first-year student at the University of Franeker he took courses in Greek, philosophy, history and rhetoric. In his second year, he began to study law, but simultaneously continued his history and language studies. Huber’s own simultaneous study of law and the humanities informed much of his later thinking about legal education: *Dialogus* 221.
32 *Dialogus* 56, wording slightly rearranged.
33 *Oratio* of 27 Apr 1682, delivered not long before the publication of the first edition of his educational treatise in 1684: see *Dialogus* 89.
34 *Dialogus* 87-88.
The primary focus of this article is Huber’s insistence on his programme of study of the humanities as an indispensable precursor to effective study of the law. His proposals concerning the study of law itself are peripheral, and I shall therefore do no more than allude to some of Huber’s main ideas on that subject.

Huber’s insistence on the practice of rhetoric during the year of preliminary studies leads on naturally to his equally strong insistence on the ongoing practice of disputation, once law studies have commenced in the second year. He says:

Merely listening to lectures in no way suffices ... to achieve a ready and sound knowledge of the law ... [P]ractice in disputing should be diligently commenced and continued during the whole time that is spent on law, for nothing is more efficacious than this in preparing the mind, the mode of expression, and the manner of speaking appropriate to public litigation where, at some stage, jurists have to stand up and discharge their duty successfully.

Disputations were a fundamental feature of legal training in *collegia* (corresponding to our present-day tutorials or seminars, and numbering ten to twenty students). In the student’s early practice of disputation, a thesis would usually be drawn up by the professor and then defended by the student. In the course of a year, many of the important prescribed texts would be covered, for each student was required to dispute several times a year. The student’s final and qualifying disputation was usually held in public. Huber’s insistence on practice in disputing is not confined to the *Dialogus*.

A matter of central importance in the *Dialogus* (though it is less important for purposes of this paper) is Huber’s unwavering insistence on the use of compendia in the teaching of law. A compendium may be described as a summary, epitome, or manual in which the material was selected, abridged, analysed, and presented in a manageable form. This rendered it comparatively easy to remember. Once the student had mastered the basic principles and definitions and thus had gained self-confidence, he could move on to details and to the law in action.

What, if any, would be our modern equivalent of this educational device? An abridgment of a legal textbook? The flynote or headnote to a reported judgment? A case summary in the *Annual Survey of South African Law*? A précis of a law lecture? A university study guide? None of these seems quite to fit Huber’s definition. Is a compendium perhaps a *sui generis* educational device that we have lost over the centuries between Huber’s time and our own?

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35 *Dialogus* 54.
36 *Dialogus* 70. This method of teaching was introduced to Leiden in the 1630s. A *disputatio* should be carefully distinguished from the modern academic moot: a *disputatio* was not a mock trial, but was rather an oral debate around a legal principle, text or argument. Furthermore, disputation was compulsory for all law students in Huber’s educational scheme, while moots typically take the form of an elective course in the modern law curriculum. On both counts, I believe, the practice of disputation is of far greater value than the modern moot to prospective legal practitioners.
37 In his second *Oratio* of 1682, Huber says that practice in disputing is essential: see *Dialogus* 90.
38 *Dialogus* 75.
39 A clue is provided by Huber himself, who considers Justinian’s *Institutes* to be a compendium to the *Digest* (and indeed the very best one). The former work was the first legal compendium drawn up...
Huber regards good compendia as indispensable for the purpose of learning the basic principles of law. His reason for adopting this method is that a first course in legal studies ought to enable students to give legal opinions, advise on legal transactions and draft documents, which are the principal functions of a jurist. Many professors used a standard manual, designed to present the basic principles of the law in a simplified (though presumably not simplistic) manner, and lectured on the basis of that summary.

Huber cannot be said to have been an innovator in his ideas on legal education. As Professor Hewett observes, there is a conservative and traditional colour to his ideas as they are presented in the Dialogus and in his orations. That, however, does not reduce their value in any way. In my view, Huber’s educational policy is intrinsically sound: it could usefully be adapted to address the problems we face in our teaching of law students today. At the very least, we need to give careful consideration to his ideas on teaching the humanities to pre-law and law students. No less a luminary than Johannes Voet expressed his approval of the traditional methods of teaching law espoused by Huber in the Dialogus. Even a century after Huber’s death, eminent academics were repeating most of his didactic points.

Two features of Huber’s programme of study of the humanities deserve special mention. Firstly, one of the courses that Huber requires students to take, both as part of their preliminary studies, and later in conjunction with the study of law, is ethics. This, I believe, is a policy that we ought to incorporate in our own law curricula as a matter of priority if we seriously wish to address the scourge of rampant fraud, corruption and dishonesty in the public and private spheres. These spheres include, of course, the legal profession itself. Our common practice of tagging on one course in legal ethics to the final year of law studies is, in my view, hopelessly inadequate. Following Huber’s model, I therefore propose that would-be law students be required to take a preliminary course in general ethics (ideally together with other courses in the humanities) for at least a year before they start studying law. Further courses in ethics should then be taken during every year of their law studies. The syllabus for the ethics courses should include, inter alia, classical natural-law theory and legal ethics.

Secondly, it will be noticed that the courses included in Huber’s programme of preliminary study of the humanities are, without exception, non-vocational courses, that is to say, courses that do not in themselves lead to a specific career. Such courses are, as specifically to enable young law students to grasp the basics firmly, before moving on to practice or to more profound studies: Dialogus 91, 144.

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40 Dialogus 54.
41 Dialogus 76. Hewett points out, however, that acceptance of the use of good compendia, though widespread, was not complete even after 1679: ibid.
42 Dialogus 141.
43 Dialogus 141-142.
44 Dialogus 143.
45 I am reminded of CS Lewis saying that education without values, as useful as it is, seems rather to make a man a more clever devil.
we saw earlier, entirely consonant with Plato’s principles of true education. He regards this as being of primary importance, and he distinguishes it sharply from vocational training that for present purposes takes the form of the study of law. I therefore contend that there is a vital need for our universities to teach non-vocational courses, such as the courses in the humanities listed by Huber, to both pre-law and law students. In addition, I would eliminate all professional practice and skills courses from the academic law curriculum: these ought to be taught only outside universities and after graduation.

I shall conclude by citing the case of Mexico in the early twentieth century, a country that could well serve as a model for South Africa. In 1909, a leftist movement of young Mexican intellectuals was established in the spirit of Hellenism. These young intellectuals, in a country where illiteracy was rife, rejected the positivist modernism of their predecessors in favour of embracing classical values. They undertook readings of Plato’s dialogues, and on the strength of these, adumbrated ideas of a “new humanity” in Latin America. One member of the movement, José Vasconcelos, who later became Mexico’s Minister of Education, claimed that, through the institution of museums, libraries, and the extension of schools into rural areas, he had persuaded Latin America to read the Iliad. His imaginative appropriation of the classics in the cause of Pan-Latin American revolutionary nationalism provides a good example of the extension of the classics into new cultural forms. And Alfonso Reyes, a contemporary of Vasconcelos, is quoted as declaring: “I want Latin for the Left, because I see no advantage in letting go of conquests already attained. And I want the humanities as the natural vehicle of everything that is autochthonous.” Reyes understood “autochthonous” to be “an inner strength which is already there ... and which can only be imbibed if ... taken with water: the water of Latin and Latin culture”. Thus both the spirit of Hellenism in the work of Vasconcelos and the “Latin water” of Reyes played a significant part in forming the educational ideas of Mexico’s revolutionary leadership.

To conclude, I do not claim that for South African law schools to teach the humanities along the lines proposed by Huber would provide an instant cure for the problem of our increasingly dysfunctional law graduates. The malaise runs deeper than that, and there is no quick fix. I have no doubt, however, that such a programme would, over time, produce a marked improvement in the literacy, self-confidence and ability of our law graduates.

46 See nn 6-10 supra and text thereto.
47 See n 24 supra and text thereto.
Abstract

The teaching of law in South Africa today faces daunting challenges. One of these is the large number of underprepared students who lack skill in reading, writing and speaking English. Even after completing their studies, many law graduates lack the ability to apply legal principles and to solve problems. This parlous state of affairs is largely the result of government’s deplorable policy decision to sacrifice the humanities on the altar of science and technology. The term “humanities” is taken to embrace the classics (Greek and, in particular, Latin), literature, ethics, classical philosophy and Roman law. Given the vital importance of the humanities at tertiary level, I argue that there is much we can learn from the educational ideas of the great seventeenth-century jurist Ulric Huber. There are striking similarities between the law students of Huber’s time and those of our own age. Particularly students who seek a career in litigation need instruction in the humanities. Huber also insists on skill in public speaking and he regards the ongoing study of ethics as an essential feature of law studies, a feature of particular relevance to our modern conditions. In conclusion, I argue that the adoption of a law curriculum on the lines proposed by Huber is capable of producing a significant improvement in the literacy, self-confidence and competence of our modern law graduates.