Hugo De Groot was a man of many parts. Poet, classicist, historian, philosopher, academic jurist, practising lawyer, politician, statesman, theologian, a dedicated Dutch nationalist with a strong Germanic orientation, a prodigy who impressed Henry IV of France as 'the miracle of Holland' but was seen by James I of England as 'a tedious pedant full of words and no judgment', a man possessed of all the virtues except the ability to get on with his fellow-man, Grotius did not realise his full potential in spite of his many achievements. He was heavily involved in his country's politics, backed by the wrong horse, landed in gaol and escaped in sensational, but still literary, fashion concealed in a crate intended for his books. He spent most of his life in exile, served as Swedish ambassador to the Court of France but antagonised Richelieu and was eventually recalled, and died, embittered and neglected, in 1645 at the age of 62.

The specific question posed by this paper is whether Grotius is entitled to be called the Father of Roman-Dutch Law in addition to his presumptive paternity of public international law. If we are to judge by the attitudes of some modern writers, the question is scarcely worth asking, for Grotius' Inleidinge tot de Hollandsche Rechts-geleerdheid, or Introduction to the Jurisprudence of Holland, is not very well known outside countries where Roman-Dutch Law is still in use. The extreme position is that of the Dutch scholar Van Vollenhoven, to whom Grotius is more of a philosopher and theologian than a jurist. Erik Wolf also has reservations, and W.S.M. Knight finds it possible, in his 300-page biography of Grotius, to dispose of the Inleidinge in less than a page. More recently, however, Edward Dumbauld has managed to improve on that meagre ration. Even within the Roman-Dutch area there are some

*Department of History, University of Sydney.  

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reservations, for R.W. Lee, the leading modern authority, declares that apart from his work on international law, Grotius does not take rank with the world's greatest jurists. Indeed Grotius himself might at one time have endorsed this view, judging by his doubts and hesitations in regard to publication of the *Inleidinge*.

Grotius' *Inleidinge* was written over the period June 1619 to March 1621, while he was imprisoned in the Castle of Loevestein. He already had a fair amount of practical legal work behind him, having been fiscal Advocate to the Court of Holland, Zeeland and West Friesland from 1607 to 1613. He wrote a number of other works in prison, including his well-known treatise on the truth of the Christian religion and a dialogue on taciturnity. He also translated Euripides' *Phoenician Women* and some minor Greek poets, and made a collection of moralising fragments from the Greek tragic and comic poets. His extensive interest in Greek literature gives his thinking something of a hellenistic slant and may be relevant to his view of jurisprudence. It is also worth noting that the short maxims of the Greek poets, the *stichomathia*, have a close parallel in the short statements which are frequent in the *Inleidinge*. It would seem that this form of expression by way of tags was prominent in Grotius' thinking.

The *Inleidinge* was not originally intended for publication. Grotius' purpose was to instruct his children in the laws of their country, as he himself said in the first preface to the work which was later replaced by a preface said to have been written by his brother Willem, although it still reflects ideas expressed by Grotius in correspondence. In making a brief compendium of the law for the guidance of his children, Grotius was following the Roman tradition, as exemplified by Cato in the second century BC and by the *Sententiae* attributed to the Severan jurist, Julius Paulus, in the third century AD.

A few years after completion of the *Inleidinge*, it was decided to publish the work because of the many unauthorised and inaccurate copies in circulation. Grotius is said to have burnt the original manuscript in prison, but this looks like something put out to discredit the unauthorised
copies. The suggestion about publishing emanated from Grotius' brother Willem. Grotius himself, then living in exile in Paris, was lukewarm about the idea at first, claiming that when he wrote the book he had been out of touch with the practice of the courts for many years and needed time to bring himself up to date. He specially mentions the order of preference among tacit hypothecs as something with which he is not altogether familiar. But he overcame his hesitations, and by January 1629 the manuscript was in his brother's hands. The States General and the States of Holland refused to license the work, thus denying it copyright protection, but publication went ahead and the work appeared in print early in 1631. Grotius had had to leave it to his brother to see the work through the press, and this resulted in the perpetuation of errors that personal proof-reading might have eliminated.

The *Inleidinge* is generally seen as the first systematic treatise on the law of Holland. When Grotius wrote the reception of Roman law in Holland was more than a century old, and the system compounded of Roman law and Dutch custom had already received some attention from commentators. But the older writers like Merula had not gone further than compiling guides to the practice of the courts or collecting opinions and decisions on specific points. With one possible exception no one had attempted to expound the law as a whole, or to treat the law of Holland as a system in its own right which incorporated many elements of non-Roman origin; hitherto the tendency had simply been to treat it as an appendix to Roman law. But the tail had begun to wag the dog, and a new approach was badly needed.

The one possible predecessor to Grotius is Gudelinus, professor of law at Louvain and Grotius' senior by some thirty years. His *De jure novissimo* published at Antwerp in 1620 is certainly close to Grotius' time of writing, and is seen by some as the first attempt at a systematic exposition of the law of the Netherlands. But Gudelinus dealt with the Netherlands as a whole, not with Holland in particular, and we are specifically concerned with *Roomsah Eollandseh Reoht* - literally *Roman Hollandio Law* - but the somewhat misleading *Roman-Dutch Law* is hallowed by custom. There is nothing to show that Grotius saw Gudelinus' work in prison: its date of publication suggests that he did not, and Molhuysen's
list of the thirty-three books that Grotius's wife was permitted to take to him at Loevestein does not include Gudelinus. Grotius' pioneering claim may be considered reasonably secure.

What we have from Grotius is a concise summary of existing law, a work of skillful systematisation and arrangement which is said by R.W. Lee to have created light where before was darkness, to have harmonised what before was chaotic. As for Grotius' method, he himself tells us that he took Justinian's *Institutes* as a model. He says that he has striven to treat everything in its proper order and to employ proper terminology and accurate definition, which his predecessors have neglected, and he hopes that he has succeeded as well as Justinian in the *Institutes*. In regard to Roman Law, he has included what is in use in Holland, and to this he has added the law of Holland as ascertained from old charters and judgments. His one regret is that when he wrote the work he had few books and no access to colleagues whom he would have wished to consult on the customs and usages of Holland. He therefore advises his children to seek out experienced lawyers in order to supplement the work's deficiencies.

As for the language in which the work is written, Grotius himself says he has used 'onze duitse moedertaal'; he has sought to honour the Dutch language and to show that it is perfectly capable of handling the science of law. I suggest, however, that there is something significant about Grotius' abandonment of Latin, for it took the subject further away from its Roman origins than the realities of the situation warranted. There are parallels in the late Roman period. For example, when West Roman vulgar law substituted *proprietas* for *dominium* as the word for ownership, it lost a great deal of the body of learning and interpretation which had grown up around the word *dominium*. Somewhat similar considerations apply here. A good example is the buyer's remedies for latent defects. The great aedilician actions of Roman law, the *aatio redhibitoria* and the *aatio quanti minoris*, cannot be divorced from the Latin terminology without a serious loss of precision and clarity. Grotius states what he believes to be the Roman law on the buyer's remedies, but his treatment is cursory and inadequate.
Grotius himself attached special importance to what he had written on community property, antenuptial contracts and interstate succession - all topics based on Dutch custom and owing virtually nothing to Roman law. We gain the impression that to some extent he was more at home in customary law than in Roman. He also shows up to advantage in the chapters on maritime law and in his account of the old criminal procedure, and here too he is in non-Roman territory, for the origins of maritime law were Greek and the old criminal procedure was Germanic. But sometimes Grotius goes to the other extreme by overstating the impact of Roman law, as when he mistakenly says that the validity of a will depends on the institution of an heir - good Roman law but probably not part of the law of Holland.

Grotius' uneven treatment of Roman law has generated some debate as to the extent to which he made a systematic study of Roman law, and it has been suggested that his academic study of the subject was superficial. Be that as it may, the point to which I wish to draw attention is the very curious works that Grotius wrote on Roman law. We know of two publications, a translation of Justinian's *Institutes* into Dutch verse (probably the only time that the rules for acquiring ownership have been set to music) and a strange work entitled *Florum Spareio Ad Jus Justinianeum* - 'The Scattering of Flowers on the Law of Justinian'. This work uses Justinian's *Corpus Juris* as a framework for a collection of passages from ancient historians, orators, poets and legal commentators. The passages are intended to illustrate the meaning of words and phrases used in the laws. The work is thus on linguistics as much as on jurisprudence, which is no doubt why van Vollenhoven dismisses Grotius as a mere philologist. But this is a short-sighted view, for the meaning of words is a vital part of legal interpretation. Nevertheless, Grotius' approach to Roman law does include a certain dilettantism.

In taking the *Institutes* as a model, Grotius presumably intended to follow that work's division into four books dealing respectively with persons, things, obligations and actions. But in fact Grotius' work is divided into only three books; he omits actions which he says have been sufficiently dealt with by Merula. He also omits public law, and this
alerts us to a possible example of political bias on Grotius' part. To have included public law would have meant saying something about the autocratic principles which the Holy Roman Empire claimed to have taken over from the Roman emperor. This would not only have struck at the republicanism of the United Provinces; it would also have emphasised the centripetal character of the federal government, to the detriment of states' rights in which Grotius believed.

Grotius was pessimistic about the *Inleidinge*, as we have already observed, but that pessimism disappeared after publication. The work was given a most favourable reception and ran to nine editions during his lifetime, enabling him to say that he had conferred honour and glory on Holland by making its people acquainted with its laws, but they had not rewarded him by sending a ship to fetch him home, as the Athenians had done for Demosthenes.

It was not only among practising lawyers that the *Inleidinge* found favour for it inspired legal writers as well. A year before Grotius' death, an extensive commentary on the *Inleidinge* was published by Simon à Groenewegen van der Made, an advocate practising at the Hague. Grotius wrote to Groenewegen pointing out that the latter enjoyed resources which had not been available to Grotius himself and was thus in a position to settle questions which he had been left unsettled in the *Inleidinge*. Subsequently, in 1757, W. Schorer, President of the Court of Flanders, published a full Latin commentary on the *Inleidinge*. This publication in the Southern Netherlands suggests that Gudelinus' work from the same region had not acquired the status of a standard work after all. In the mid-eighteenth century, G. Scheltinga lectured on Grotius at Leiden and did so in Dutch, which caused eyebrows to be raised in some quarters. At the turn of the eighteenth century, D.G. van der Keesel, also at Leiden, cast his lectures in the form of a commentary on Grotius, but he reverted to Latin for this purpose. He published an epitome of the lectures in 1800, and in 1961 the full text was published, together with an Afrikaans translation. Finally, Johannes van der Linden, the Roman-Dutch writer whose career was bisected by the changeover in Holland itself from Roman-Dutch law to a code, translated the *Inleidinge* into Latin. The wheel had come full circle.
One other writer should be mentioned alongside the commentators on Grotius. He is Simon van Leeuwen, who in 1664 published his *Roomeneh Hollandsch Recht*, or *Roman-Dutch Law*. This was the first use of the expression 'Roman-Dutch Law' in print, though whether van Leeuwen invented it or was simply the first to use it in print is a moot point. At all events the expression was not used by Grotius. Van Leeuwen's work was not a commentary on Grotius, but his whole idea of treating the subject as the law of Holland, and not as a mere appendix to Roman law, was inspired by the *Inleidinge*. Generally speaking, van Leeuwen does not compare well with his illustrious predecessor. As Professor Feenstra of Leiden recently remarked, "Van Leeuwen shows that the time had not yet come to conceive the synthesis of Roman and customary law which Grotius aimed at." Another writer who is marginally relevant is Ulric Huber, whose work on the conflict of laws published in 1687 owes its international reputation to the inspiration of Grotius' *De Jure Belli ac Pacis*.

It should now be pointed out that not everyone used Grotius as a model, or even as an indirect inspiration. The alternative method, whereby the law of Holland was treated as an appendix to Roman law, flourished as vigorously after the *Inleidinge* as it had done before. The great exponent of this method is Johannes Voet, professor at Leiden in the late seventeenth and early eighteenth centuries. His commentary on Justinian's *Digest*, in Latin, was published over 1698-1704. It follows the order of the fifty books of the *Digest*, first giving an exposition of the Roman law and then setting out the current law of Holland. Voet thus stands at the diametrically opposite pole to Grotius. A good example of the difference is again the aedilician remedies in sale. Voet devotes some twenty pages to that topic, compared with half a page by Grotius, and even then it has been claimed that Voet compresses the sixty-five long sections of the *Digest* too much.

It seems to me that the differences in method and purpose between Grotius and Voet, coupled with the tendency in some quarters to frown on the use of Dutch, point to something more than a superficial differentiation. One wonders whether we have here the traces of two competing schools. We might imagine, for example, that a difference of opinion as to the
respective merits of Roman law and Dutch custom was closely linked to the language question - if you believed in the law of the Romans, then you ought to use the language of the Romans, but if you were a Dutch nationalist, you ought to use Dutch. We might also detect a connection between Grotius' concentration on the law of Holland, instead of on the Netherlands as a whole, and his position on states' rights.

Grotius, the great synthesiser, presents us with a smooth, harmonious bronze surface, while Voet, the great compiler, sets the copper and the tin before us separately and with enormous erudition, even if elegance of structure and language are not prominent. The survival of the two writers in modern Roman-Dutch law exhibits the same dichotomy as their methodologies. Voet is the writer most often quoted in modern courts, easily outstripping Grotius in that respect, and it is fair to say that if it had not been sustained by Voet's commentaries, Roman-Dutch law might have been swamped by English law. Even as it is, the tidal wave has been considerable. On the other hand, Grotius achieved a degree of recognition denied to Voet, when the old South African Republic wrote a clause into its constitution in 1859 making the Inleidinge and van Leeuwen's Room sach Hollandsch Recht authoritative sources alongside van der Linden's Institutes, although it was rather a left-handed compliment to Grotius to make his work supplementary to van der Linden's handbook, which was made the official lawbook.

At all events, Grotius was cited extensively in the Hooge Raad, the High Court of Holland, and modern judges have also gone out of their way to praise him. Perhaps the most striking example is the well-known case of Madzimbamuto v. Lardner-Burke N.O., 1966 Rhodesian Law Reports 756. In that case, the High Court of Rhodesia was called on to decide the legality of the unilateral declaration of independence by Rhodesia, and Grotius figures prominently in the case, some eight pages of the judgment being devoted to him. Lewis J quotes with approval the following remarks of Sir John Wessels in his History of Roman-Dutch Law:

For our purposes there are two works of Grotius to which we must devote some attention. The first is the De Jure Belli ac Pacis, and the second is the Introduction to the Jurisprudence of Holland. It may be said that we should dismiss the De Jure Belli ac Pacis with a passing reference,
inasmuch as we are considering the development of the Roman-Dutch law. The answer to this is that it is in the De jure Belli ac Pacis that we find a full exposition of De Groot's philosophy of law, and that a due appreciation of this is necessary in order to grasp fully the work that he did for the Netherlands in composing the Introduction.

Lewis J then makes the following pronouncement:

I know of no authority which says that the jus gentium as propounded by Grotius is no longer a part of our law, and that the courts may not resort to its application in an unprecedented situation where the law is otherwise silent... The jus gentium or the law of nature, chiefly through the conception thereof formed and applied by Grotius, is still a part of our modern law.

Before summing up I want to deal briefly with two other matters of importance to our theme, namely Grotius the historian and Grotius the legal philosopher.

Grotius was a major historian, although his work in that area has been largely neglected by legal historians. He was appointed official historiographer to Holland in 1603, and to the United Provinces as a whole in 1609. His special interest was the history of his own country. As early as 1601 he wrote on the parallel customs of the Athenian, Roman and Dutch peoples, and it was here that he first used the Roman law concept of *bona fides*. In 1610 he wrote on the antiquity of the Batavian Republic, and in 1612 he produced the *Annals and Histories of the Belgic Communities*. This was written in Dutch, and Grotius himself says that he has relied more on patriotic fervour than on researches in the archives. In this we already have the signs of a strong nationalism, although a nationalism which had not forgotten its debt to classical antiquity. The same spirit was to move Grotius when he came to write the first Dutch work on his country's law.

Grotius' most extraordinary historical work is the *History of the Goths, Vandals and Lombards*, which he wrote, in Latin, while holding office as Swedish Ambassador at the French Court, although it was only published in 1655, after his death. After making his classic statement
about the importance of law in historical studies ("The genius and character of peoples can be discerned from their laws no less than from their history"), Grotius went on to compare Roman law with the law of the Germanic peoples, to the distinct advantage of the latter. He says the following:

I see in the Roman laws too much subtlety, too much variety and inconstancy, and such a vast and confused mass of material that no one can commit it all to memory. Philosophy calls for law that is simple, brief and clear, like the commands of the father of a family. Also, the law derives greater authority from enduring for a long period without any change. I rejoice to find these qualities in the laws of our Northern peoples.

How are we to explain this astonishing attack on what was, on any basis, an integral part of his country's legal system? There have been suggestions of a political motive, inasmuch as Grotius wanted to show that Sweden had an older claim to diplomatic precedence than other nations. But how could Grotius have hoped to get away with it? The French had their own reception of Roman law, even if less sweeping than the reception *in complexu* of the Holy Roman Empire. It seems to me that Grotius' position here agrees well with his ideas on legal writing in general. His preference for brief, simple laws, for paternalistic commands which do not bother to give reasons, reminds us of his fondness for maxims, tags and precepts. It is also, in a strange sort of way, a return to Rome in the shape of *responsa prudentium*. The other possible explanation is, of course, that Grotius was firmly convinced that Roman law should be downgraded in favour of the national, native elements, but on the whole this solution is not a compelling one.

Finally, Grotius' philosophy of law. The great prophet of natural law does not fail to include numerous references to it in the *Inleidinge*. But the results of a brief analysis are disappointing. In the first two chapters of Book I, Grotius appears to go into natural law more fully than the corresponding chapters in Justinian. He defines jurisprudence and justice in Aristotelian terms and examines the difference between natural law and positive law in some detail. Elsewhere he views many institutions in the light of natural law, such as family relationships, the inferior position of women, the origins of ownership, the sources of personal rights
and the justification of usury. But whenever he turns to natural law he exhibits a marked change of pace. There is a striking enlargement in scope, an abandonment of the terse maxim in favour of the expansive discourse. It is almost as if Grotius flashes a signal to warn us that he is switching from legal rules to philosophy. It is clear that his thinking was thoroughly steeped in the philosophy of natural law as revived in the second flowering of Scholasticism. But such material is not really at home in a work which is supposed to give guidance in the law of the land at an elementary level. Despite the weighty opinion of R.W. Lee, it seems to me that the ligatures between philosophy and positive law in the Inleidinge are not skillful enough. The joins are nearly always painfully visible, and it is almost as if Grotius has written two books in one.

We can now attempt to answer our question: Was Grotius the father of Roman-Dutch law? Many criticisms can be levelled at the Inleidinge, but at the end of the day it stands forth as the greatest single achievement of the Dutch legal genius while Roman-Dutch law was in use. Like all pioneers, Grotius left great gaps for others to fill, but without the inspiration of his work - and a lesser man could not have deputised for him - there would have been precious little for them to work on. Hugo Grotius was not only 'the miracle of Holland'. He was also, in the words of the Italian jurist Vico, generis humani jurisconsultus - 'the jurisconsult of the human race'.

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Notes


5. Professor P. van Warmelo has suggested to me that Grotius might also have been thinking of Gaius' Institutes. This is eminently possible.


7. Cited by Hahlo & Khan, 555-56.

8. Lee, PBA XVI (1930), 49: "A singular feature about it is that it is at once a treatise on jurisprudence and a statement of positive law, but the concatenation of the two is so artfully contrived that the abstract character of the classification does not affect its value as a guide to an actual system of law."

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