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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Margaret Hewett

Ulric Huber (1636-1694)

DE

RATIONE JURIS

docendi & discendi diatribe

per modum

DIALOGI

Nonnullis aucta

ΠΑΡΑΛΙΠΟΜΕΝΟΙΣ
DE RATIONE JURIS
docendi & discendi diatribe
Portrait of Ulric Huber (1636–1694)
Collection Museum Martena, Franeker
Ulric Huber (1636-1694)

DE
RATIONE JURIS
docendi & discendi diatribe
_per modum_
DIALOGI
Nonnullis aucta ΠΑΡΑΛΙΠΟΜΕΝΟΙΣ
with a Translation and Commentary

ACADEMISCH PROEFSCHRIJT
ter verkrijging van de graad van doctor
aan de Universiteit van Amsterdam
op gezag van de Rector Magnificus
prof. dr. D.C. van den Boom
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# TABLE OF CONTENTS

PREFACE ............................................. ix  
ABBREVIATIONS ...................................... xiii  
INTRODUCTION ....................................... xv  

## PART I

**CHAPTER I**  
INTRODUCTIONS ALL ROUND xix  

**CHAPTER II**  
THE 1684, 1688, 1696 AND 1724 VERSIONS OF THE *DIALOGUS* xxiii  
1. 1684 — A DESCRIPTIVE BIBLIOGRAPHER’S DELIGHT xxiv  
1.1 Possible reasons for the changes xxv  
2. THE 1684 AND THE 1688 VERSIONS COMPARED xxvii  
2.1 The title changes — Dialogue or Diatribe xxvii  
2.2 Alterations to the text xxviii  
2.3 Content of the excised passages xxix  
2.4 Comment on the passages added xxx  
3. 1696 — A POSTHUMOUS EDITION xxxi  
4. 1724 — THE BUDER EDITION xxxi  
5. CONCLUSION xxxii

## PART II

*De ratione discendi atque docendi juris diatribe per modum dialogi*  
A diatribe in the form of a dialogue on the method of learning and teaching law.

## PART III

**CHAPTER III**  
LEGAL EDUCATION — A BRIEF GLANCE AT SOME RECURRING ISSUES 67  
1. LEGAL EDUCATION IN THE NORTHERN NETHERLANDS IN THE 17th CENTURY 67  
1.1 The University of Leiden and the Faculty of Law 68  
1.2 Didactic policies 69  
1.3 Disputations 70  
1.4 A Scottish student’s-eye view of Leiden 1694-1697 71  
2. HUMANISM AND LEGAL EDUCATION 73  
3. SOME CRITICISMS OF LAW TEACHING 74  
3.1 Where does the blame lie? 74  
4. THE *METHODUS COMPENDIARIA* 75  
4.1 Antonius Matthaeus (1564-1637) 75  
4.2 Johannes Christenius (1600-1672) 76  
4.3 Cornelis van Eck (1662-1732) 77  
5. CONCLUSION 78
CHAPTER IV  THE AUTHOR, ULRIC HUBER (1636-1694)  79
1. HIS LIFE AND CAREER  79
1.1 Vitringa’s ‘Oratio Funebris’  83
2. HUBER’S STATEMENTS CONCERNING TEACHING AND LEARNING LAW AS PROPOUNDED IN HIS PUBLISHED WORKS  84
2.1 Sources considered  84
2.2 Huber’s general publishing strategy regarding student aids  85
3. HUBER’S ORATIONS ON TEACHING LAW  85
3.1 A summary of Huber’s inaugural oration of 19 September 1665 (‘Oratio I’)  86
3.2 The ‘Oratio’ of 27 April, 1682. (‘Oratio II’)  88
3.3 The second ‘Oratio’ of 1682 (‘Oratio IV’)  90
4. TWO OF HUBER’S BOOKS CONCERNING TEACHING  91
4.1 The ‘Positiones’ of 1682  91
4.2 The ‘Digressiones’ of 1670  92
4.3 Conclusion  93
5. HUBER AS A HUMANIST  94
6. WHY THE DIALOGUE FORM?  95
6.1 The Classical Dialogues  95
6.2 The Renaissance revival  96
6.3 Huber and the Platonic and Ciceronian Dialogue  97
6.4 Conclusion  99

CHAPTER V  THE PERSONAE DIALO GI  100
1. JOHANN FRIEDRICH BÖCKELMANN (1632-1681)  100
1.1 Böckelmann in real life  100
1.2 The Böckelmann property at Hazerswoude  102
1.3 Böckelmann and the ‘Praefatio’ to his ‘Compendium’ of 1679  103
1.3.1 Böckelmann and the Road to the Summit of Success  105
1.3.2 The ‘Compendium-Dispendium’ antithesis  107
1.4 The Böckelmann of the ‘Dialogus’  108
1.5 Conclusion  109
2. GEORGIIUS CONRADUS CRUSIUS (1614-1678)  109
2.1 Crusius in real life  109
2.2 Crusius’ published works  110
2.3 Crusius’ relations with Böckelmann and Huber  111
2.4 The Crusius of the ‘Dialogus’  111
3. ADRIANUS WIJNGAERDEN (1648-?)  112
3.1 Wijngaerden’s academic career and early life  112
3.2 Wijngaerden in the ‘Dialogus’  113
4. HUBER AS REFLECTED IN THE DIALOGUS OF 1684 AND OF 1688  114
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>IV BIBLIOGRAPHIES</td>
<td>208</td>
</tr>
<tr>
<td>Bibliographical Notes</td>
<td>208</td>
</tr>
<tr>
<td>Bibliography I — Primary Sources mentioned in the <em>Dialogus</em> and in the Commentary</td>
<td>210</td>
</tr>
<tr>
<td>Bibliography II — Classical authors cited in the 1688 <em>Dialogus</em> and in the Commentary</td>
<td>214</td>
</tr>
<tr>
<td>Bibliography III — Secondary literature consulted</td>
<td>215</td>
</tr>
<tr>
<td>V SUMMARY AND SAMENVATTING</td>
<td>221</td>
</tr>
<tr>
<td>VI PLATES</td>
<td></td>
</tr>
<tr>
<td>VII INDEX OF NAMES</td>
<td>229</td>
</tr>
</tbody>
</table>
PREFACE

This project had its origin in a proposal made to me some years ago by the late Prof. Theo Veen of the University of Amsterdam. We envisaged my providing the Latin text of Ulric Huber’s *De Ratione discendi et docendi iuris, diatribe per modum dialogi*, the 1688 version, included at the back of Huber’s *Digressiones Justinianeae* (1688), together with a parallel text, English translation, appropriate footnotes, and an introduction containing brief résumés of the lives of the principal characters participating in the debate. This was to be a small volume on the lines of Veen’s *Ulrici Huber Oratio [III]*.

However, as I worked on the *Dialogus* it became clear that this was no freestanding oration which could be treated more or less in isolation. Rapidly the parameters widened, the issues to be considered multiplied and my commentary grew exponentially. It became necessary to probe the identity of the speakers, Johann Friedrich Böckelmann, and Georgius Conratus Crusius and to verify the authenticity of the views expressed by them. Where and when did the *Dialogus* take place, if it was a narrative based on fact? And most significantly, in how far were the views expressed by Huber, in his own persona, a true reflection of his didactic policy, a question which necessitated reading other of his orations and writings, especially the prefaces and introductions to certain of his didactic works. In how far were his ideas revolutionary or were they a variation of the traditional approach? What did Huber say here, and elsewhere, about disputation, textual emendation and the Humanistic approach to law? Finally, in how far were the views attributed to Böckelmann and Crusius, those of Huber himself or was there another speaker behind the scenes? In short what were Huber’s motives in publishing, what was the significance of the “non appearing” Noodt, and what effect, if any, did this *Dialogus* have? Peripheral issues relate to the Dialogue form and its use by the 17th century jurists, the use of compendia in university teaching, literary comment and the teasing question of the Dieterich ‘loose leaves’. A certain amount of background information, especially on the teaching of law, was necessary, but inevitably this was selected purely with a view to illuminating the *Dialogus*.

There is little mention made of the *Dialogus* in secondary literature. The great contemporary authority on Huber was Prof. Veen and his spoken and written words provided me with a treasure house of background information.¹ Prof. Robert Feenstra² in his article on Böckelmann treats of the *Dialogus* in passing, as does Prof. Govaert van den Bergh³ in his comments on Noodt and Huber. To these three scholars I owe a significant debt.

Consequently, my chief understanding of Huber’s intentions in writing and publishing this dialogue is drawn from 17th century printed material, especially prefaces and addresses to the readers, both in the works of Huber himself and in those of others. Similarly, funeral orations, used with reasonable discretion and a pinch of salt, can provide useful biographical information and, to a moderate extent, a contemporary evaluation of the deceased. Manuscript material, in the form of draft articles and private letters, has not proved illuminating in the case of the *Dialogus*. Neither Veen nor I could trace any preliminary draft of the *Dialogus* and the plethora of letters cited in Veen’s *Recht en Nut* do not concern the matter of the *Dialogus*.

¹ For Veen’s written work on Huber see Bibliography III.
² Feenstra Böckelmann, p 142.
³ Van den Bergh Noodt, pp 54-55, 165-166, 300-304.
Each and every work of research owes much to those who aid and support the writers. The dedicated staff who man institutions, libraries and archives, both in Cape Town and in the Netherlands have been generous with advice and help and prompt in providing books from special collections, documents and various source materials.

Here I must first mention the staff of the Van Zyl Library at the University of Cape Town. Without its collection of antiquarian legal material, research into European (and South African) legal history and translation would be almost impossible for those of us — “the few who hew” and “all fellow-workers” in the quarry 4 — who toil in the remoteness of Southern Africa. May I mention Prof. I. Leeman, for many years presiding deity over the collection, and Mrs Tanya Barben of the Special Collections, Mrs Amanda Barratt, erstwhile chief Law Librarian, Mrs Pamela Snyman who guides the library, its staff and above all its users over many a rough patch; and all the others — librarians, Ms. Dilshaad Brey, and Mr Lubabalo Booi, Library assistant Ms. Zoelfa Jaffer, and departmental assistants Mrs Jasmine Ismail, and Mr Raymond de Wet. To them all a sincere thank you.

While I am mentioning South Africans I must include an ex-student Mr Mark Hermans, now lecturing at the University of the Western Cape. His competence with the web has solved a number of minor, but significant, problems. And last but not least the Hon. Ian Farlam of the High Court of Appeal Bloemfontein and Honorary Professor of Law at UCT.

At the Library of Tresoar-Frysk Historysk en Letterkundich Sintrum, Leeuwarden I am especially indebted to Dr Jacob van Sluis, the Conservator Oude Drukken for his friendly help regarding the replacement-leaves in the 1684 edition of the Dialogus, 5 for facilitating my visit to Franeker, to the house once owned by Ulric Huber and to the museum Martena, also for giving me a copy of his book on Herman Alexander Röell with its keen perception of the Duker promotion and Huber’s reaction to it. 6 Only those who must wrestle with library copies of reference books can appreciate the pleasure of one’s own copy at hand whenever needed. Thank you again. At the Streekarchief Rijnlands Midden, (Groenehart Archieven) my thanks are due to Mr Arjan van ’t Riet who provided Prof Jan Hallebeek with essential information about Böckelmann’s property at Hazerswoude.

As always the Librarians of the University of Leiden, the University of Amsterdam and the VU University Amsterdam were unstinting in the information they provided when approached by their Dutch colleagues on behalf of an unknown researcher in Cape Town. My personal investigations into the Huber antecedents were profitable thanks to the Staatsarchiv, Zurich.

When it comes to extracting relevant and elusive material from archives I can only bow before Dr Regina Sprenger who spent many hours successfully tracing and extracting source material which substantiated much of my argument. Both she and her husband Prof. Paul Nève have a wide range of contacts in academia who were called upon to help. Among others I thank Prof. Dr J.J.V.M. de Vet of the Radboud University, Nijmegen.

Of my many friends and colleagues in the Netherlands, and Scotland, I cannot begin to list their claims to my gratitude and I hope they realise how deeply I appreciate their help and advice (even if I do not always agree with it!) — Prof. Mr Robert Feenstra, doyen of legal historians and author or co-author of the invaluable serious of legal bibliographies. Prof. and Mrs J.E. Spruit, Mr Margreet Duynstee, Prof. and Mrs Eltjo Schrage, Prof. L.C. Winkel, Prof. Eric Pool, Prof. Mr J.Th. de

4 The Hon. Percival Gane in his dedication to Gane Voet, and Gane Jurisprudence.
5 See Chapter II. 1.
Preface xi

Smidt, Prof. Hans Ankum, Prof. T. Wallinga, Prof. Boudewijn Sirks, presently Regius Professor of Civil Law at Oxford. Prof. Bernard Stolte for aid with Greek accents; from Scotland, Prof. John Cairns whom I must especially thank for sharing with me the Dieterich loose leaves,7 and in that regard also Dr Douglas Osler, with his deep wells of bibliographical knowledge; also Prof. Cairns’ contacts in the Advocates’ Library and among the archivists in the London School of Economics. Latterly Mrs Dr Hylkje de Jong of the VU University, Amsterdam, has stepped to the fore and provided considerable assistance, especially checking information originating from Tresoar, Leeuwarden. My grateful appreciation of their help.

To my typist, Mrs Suzanne Krige, and to her late husband, Leon, my debt goes beyond words. Likewise to Pat and Brian Hopking of Helanna Investments cc. Without their skills my often tangled thoughts would never have achieved a readable form. To Mr Neville Collins with his vast experience of legal publishing and type-setting origination I am greatly indebted, both for his help with my previous publications and with this present Huber.

Moral and academic support is always welcome but financial support is essential. In South Africa, my prime funder is the National Research Foundation (NRF), within which I receive a grant as part of the Key International Science Capacity Programme. My thanks to the NRF and to the staff of UCT who administer the grants. The UCT Law Faculty provides a small but very necessary top-up grant, and to Mr I. Nieuwoudt and Mr P. Westra of the Van Ewijck Stigting I again voice my thanks for their help. In the Netherlands financial support from the University of Amsterdam was initially provided from the Hijmans Fonds, thanks to the application of Prof. Veen on my behalf.

From the beginning Prof. Theo Veen shared the supervising of the research with Prof. Jan Hallebeek of the VU University Amsterdam and after the untimely death of Prof. Veen in September 2005, Prof. Hallebeek continued with the assistance of Prof. John Cairns of the University of Edinburgh as second promoter.

7 See Chapter II.
ABBREVIATIONS

BGNR Bibliografie Nederlandse Rechtswetenschap tot 1811.
C. Codex.
CJC Corpus Juris Civilis.
C.Th. Codex Theodosianus.
ca. circa.

cf. compare.
D. Digest.
e.g. exempli gratia, for example.
ed. Editor.
edd. Editors.
et al. et alii, and others.
Inst. Institutes.
jun. junior.
LIAS Sources and Documents relating to the Early Modern History of Ideas.
ms. manuscript.
NNBW. Nieuw Nederlandsch Biographisch Woordenboek. 10 vols. (1911-1937)
no. number.
N.S. New Style.
OED Oxford English Dictionary.
O.F. oratio funebris. Funeral oration.
O.S. Old Style.
p, pp page, pages.
q.v. quem, quid vide.
R.A. Rechterlijk Archief.
Rep./REP. reprint.
S.A.R.M. Streekarchief Rijnlands Midden.
sen. senior.
trs. translator.
UCT University of Cape Town.
US University of Stellenbosch.
VOC. Verenigde Oostindische Companie.
vol. volume.
INTRODUCTION

The principal focus of this treatise is on Ulric Huber’s *De ratione discendi atque docendi juris diatribe per modum dialogi*, to give the work its full title as in Huber’s *Digressiones of 1688*. (Hereafter it will be referred to as the *Dialogus*, or sometimes the Dialogue.) The text of the 1688 version together with an English translation appears in Part II. The Introduction and Commentary in Part I and Part III, is intended to set the *Dialogus* in context and to discuss certain issues arising there from.

PART I contains the framework of the discussion

After the usual preliminary material and this introduction, there follows Part I of the commentary.

CHAPTER I of this section is directed to a general survey of the text itself. It introduces the main characters and, briefly, sketches the physical and intellectual milieu in which the dialogue takes place.

CHAPTER II. There were only two editions of the *Dialogus* produced during Huber’s lifetime — that of 1684 and that of 1688. As we shall see in the text itself they differ in several respects including a change of title. While remarking on these differences an attempt is made to explain why Huber made these alterations and if they were in accordance with a well conceived plan. The two posthumous editions are mentioned briefly to keep the record straight. In addition there are the last minute pre-publication alterations made to pages 79 and 80 of the 1684 edition as shown by the Dieterichs loose-leaved edition in the National Library of Scotland.

PART II is the keystone. It contains, on the right-hand pages, a photocopy of the 1688 text, on the left my English translation with indicators regarding textual differences to the 1684 text, and footnotes explanatory of the text itself. An appreciation of the *ipsissima verba* of the *Dialogus* is a necessary prerequisite for understanding and evaluating the commentary.

PART III contains the commentary where a number of issues are addressed.

CHAPTER III. Within a historic framework, the following questions are discussed. In how far were Huber’s didactic problems similar to those of the past, and, hence, in how far were his solutions the same as those attempted by his predecessors? What were the distinctive characteristics of Dutch legal education in the late 17th century and especially of the University of Leiden? How was legal knowledge imparted? And what were the students’ responses to it? Finally, a consideration of teaching with compendia will be in order as that is one of the chief topics for discussion in the *Dialogus*.

CHAPTER IV. This chapter homes in on Huber as the author of the *Dialogus*. Who was he? What influence affected his attitude to law and law teaching, leading ultimately (for our purposes) to the writing of the *Dialogus*? What do his other writings and orations on the topic of law teaching show about his thinking? To what extent was he influenced by humanism? Finally, in view of his other writings, why did he choose the dialogue form, what are its characteristics and what effect did it have on the structure of the work?

CHAPTER V. Here we are brought face to face with the three other speakers in the *Dialogus* Johann Friederich Böckelmann, Georgius Conratus Crusius and Adrianus

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* A diatribe in the form of a dialogue on the method of learning and teaching law.
* The first edition of 1684 is entitled *De Ratione Juris Docendi et Discendi Dialogus*.
* For a detailed bibliography of Huber’s works and of the editions of the *De ratione juris docendi et discendi dialogus* see Feenstra *BGNR Faneker*, pp 74-78 and especially nos 298, 143, 144, 285.
Wijngaerden. In how far are these characters, as portrayed, true to their real-life selves? In how far are the opinions they are given an expression of their real views? And if not, why not? Why did Huber fix on these three individuals to represent divergent views and in some instances to speak for himself. In how far does the Huber of the Dialogus reflect the man himself? Is the Dialogus what it seems, an amiable chat between friends under the shade of a spreading plane tree or is there a sub-plot?

CHAPTER VI. In this chapter we meet two elusive figures, Albertus Rusius and Gerard Noodt, and try to understand what their rôle in the Dialogus is and why they were included.

CHAPTER VII. In how far is the Dialogus a record of an actual event? Here we consider the conflicting evidence and attempt to understand Huber’s motivation and to assess the dates suggested by the text.

CHAPTER VIII. In this chapter the questions centre on why Huber ended the debate by introducing what appears to be a topic extraneous to the theme of the discussion — Le Journal des Scavans. Was the introduction of the Journal, also referred to as the Ephemerides Eruditorum, relevant to the discussion on teaching law? Was it true to say that in the Journal there was a notable paucity of references to legal matters? And what, if anything, was Huber hoping to achieve?

Questions beget questions. May we hope that the first generation has been adequately addressed. Time and later scholarship may well throw more light on the developing issues. Certainly a careful study of Huber’s Orationes II and IV\(^\text{11}\) will produce further questions and further answers to the understanding of Huber’s stance on teaching law.

\(^{11}\) See Huber Oratio II, pp 62-74, Oratio IV, pp 88-100.
PART I
CHAPTER I

INTRODUCTIONS ALL ROUND

Ulric Huber (1636–1694) was the author of this work De ratione discendi atque docendi juris diatribe per modum dialogi (a diatribe in the form of a dialogue on the method of learning and teaching law). He was professor at the University of Franeker, teaching Rhetoric and History from 1657–1665, and Law from 1665 until his death, with a brief 3-year break at the Provincial Court (Hof van Friesland) at Leeuwarden (1679–1682). Huber was certainly the most significant of the late 17th century jurists in Friesland, and much respected in the Netherlands and abroad. He is known for a wide range of significant legal writings. Here we are concerned with one of his minor works in which he discusses some of the problems relating to teaching law, especially to first-year students.

The Dialogus made its debut in 1684 as a small octavo volume printed by Joh. Gyseelaar of Franeker. Four years later it was reprinted, in a modified form, with an extended title and included in Huber’s Digestiones Justinianae of 1688. This 1688 edition of the Digestiones together with the Dialogus was subsequently reprinted in 1696 and eventually the Dialogus appeared as part of Christian Gottlieb Buder’s De ratione ac methodo studiorum iuris of 1724. This present edition is a photocopy from the 1688 edition of the Digestiones held in the Library of Tresoar, Leeuwarden.

At first glance the Dialogus appears to be a record of a relaxed discussion which took place one afternoon at Hazerswoude beside the Oude Rijn, in the summer of 1671. The personae dialogi are Huber himself, Johannes Friederich Böckelmann, Professor of Law at Leiden since 1670, Georgius Conradus Crusius, likewise a professor at Leiden since 1669, (Albertus Rusius, professor since 1659, only appears in the 1684 edition) and Adrianus Wijngaerden, an ex-student of Huber’s in Friesland, then tutoring in Leiden. Huber himself was the only participant with no direct links to Leiden, although it was not because the Leiden authorities had not made every attempt to win him over to the law faculty in 1670 and again in 1681. The text of the Dialogus refers to the first offer but not that of 1681.

Under the general umbrella of the reasons for corrupta jurisprudentia (the decline of jurisprudence) a number of topics are brought up for discussion — the use or abuse of compendia, the inadequacies and follies of professors and students, the success or failure of teaching beginners the intricacies of textual criticism. Here Huber launches an attack on those who practice humanistic philology and links it with the question of whether students are being trained for the profession or for academia; and finally the group discusses the pros and cons, for jurists, of notices of new publications in literary journals.

1 Ulric Huber, 1636–1694. Professor of Law at Franeker, 1657–1679 and 1682–1694. See Chapter IV.
2 For details of publications and changes in title see Feenstra BGNR Franeker, p 72, no 208; pp 52-53, nos 143, 144; p 96, no 285, and below, Chapter II.
3 The first edition of the Digestiones appeared in 1670, Franeker, and was followed by title page editions of 1671 and 1677. The 1688 edition is an expanded and reworked version of the earlier edition. See Feenstra BGNR Franeker, pp 51-53, nos 140-144, and below Chapter II.
4 See Veen Recht en Nut, pp 337 and 338 for the letters from the Curators of the University of Leiden and the Burgemeesters.
5 See Dialogus, p 3.
The discussion is comparatively amiable; by and large each participant adopts a particular line of arguments, for example Böckelmann argues in favour of compendia (especially his own), whereas Crusius voices a more hostile attitude and favours textual criticism as the means to improve the quality of jurisprudence. As is often the nature of a literary dialogue, the speakers are not always consistent, no hard and fast conclusions are reached and at the end of the day little new has been added to the central debate.

For several decades the question of the decline in the quality of jurisprudence had been a popular theme, especially for inaugural orations and even, sometimes, for student disputations. The main arguments, with minor variations of emphasis, had been aired before and would be aired again. Peculiar to this dialogue are a few additional topics — a somewhat biased diatribe by Crusius on the evils of classical epitomes, such as Annaeus Florus’ on Livy; a debate on the nature of paratitla, and an attempt to evaluate the new journals circulating in the Republic of Letters. By the time he published the Dialogus (1684), Ulric Huber was well established in the legal and academic world. He had a substantial body of publications to his credit, and was constantly working on new material or on expanding and reworking existing notes and editions. In 1679 he had been appointed to the Hof van Friesland as a Senator (or councillor) but had, after three years, resigned and re-established himself on very favourable terms in the university where he was not required to give public lectures, but could devote his time to teaching in private, writing and publishing. The number of students who beat a path to his door, rather than to those of his colleagues, is fair proof of his competence as a teacher (and probably to the comfortable size of his income). He was certainly in a position to write on the methods of teaching and learning law, but what actually was he trying to do here? Certainly he had stated his didactic policy clearly and specifically before — chiefly in his two recent Auspicia Domestica Orations numbers II and IV of 1682. The first (II) sets out the teaching programme he intended to follow in that year and the second (IV) counters objections he felt sure would be levelled at his policy. What need then was there for a dialogue — largely reiterating the points made in the Orations? Certainly, the dialogue form allows for a measure of flexibility, enabling Huber to combine the main points of Oratio II with those of Oratio IV and,

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6 See, for example, Antonius Contius (1517 - 1586) and his introductory remark in his Chapter XI on teaching and learning law (Contius, Lectiones cap xi, p 15), De ratione docendi et discendi juris, multi varios libros,uidam summas, plerique methodos, alti communes locos, omnes veram juris artem se tradere scripserunt; quos si quis omnes ordine evolverit, ensque invicem contulerit, discordiam reperturos est implacablen. (On the method of teaching and learning law, many people have written various books, some have written summae, a great number have written on methods, others on communi loci, and all declare that they are passing on the true scholarship of law; if anyone reads all these in order, and compares them one with another, he will find an irreconcilable conflict of opinions.)

7 The Republic of Letters refers to the collective body of those engaged in literacy pursuits. The term originated in the exchange of letters between influential philosophers and other thinkers. In the 18th century this evolved into a system of academic journals.

by using individual spokesmen, to highlight certain aspects. Further, the first edition, that of 1684, includes a handful of classical and later allusions which to an extent relieve the unadorned seriousness of the earlier works. By the time the Dialogus is included with the Digressiones (1688) its nature is becoming clearer. Digressiones are pleasant allusions which, as Huber says at the beginning of his Positiones, are as necessary an addition to the study of law as salt is to food. In fact, in the Praefatio to the Digressiones Huber himself writes that the Dialogus is rightly placed in this work “as it is nothing other than a Digressio.” Furthermore, the Dialogus, like the Digressiones, has a loose structure, but unlike the Digressiones, the allusions are largely decorative and add little to the arguments.

The concluding section, not concerned with teaching law, is a brief debate, initiated by Böckelmann on the question of literary journals. He introduces the topic by waving a libellum (small book) entitled Ephemerides Eruditorum which in fact was a Latin version of the Journal des Scavans and angrily declares that the reviewers largely ignore or just casually mention serious work, for example law, while promoting trivial writings. He claims that two worthless books, one by A.S., (Bernard Swalve) a Medical Doctor at Amsterdam, and another by N. (Johannes) Amerpoel, are presented with great praise, and that the writers of these résumés arrogantly claim to be capable of assessing merit. In addition, these journals include light French follies to titillate the minds of frivolous readers. Crusius then calms Böckelmann down by pointing out that the views of these reviewers and of the readers are not really of any significance for serious scholars. All the material in the journals is superficial. He personally doesn’t feel in any way affronted but if Böckelmann feels strongly why doesn’t he write and inform the editor when he is about to produce a new book, give an outline and say why it is important. Huber’s attitude is rather different. He advises against offending the editors and contributors who could well harm the reputation of a serious scholar by deliberately misconstruing a book and prejudicing public opinion. It is foolish to alienate the contributors and discount one’s reputation in the world at large. On the other hand a

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9 Huber’s Digressiones are a collection of Humaniores juris and various other literary, rather than legal, writings. The original Digressiones of 1670 were references to and reworkings of classical sources which had originally been included in Huber’s lectures on the Institutes and in his Disputationes juris fundamentales. In 1688 an expanded and revised version was published including, as said above, an extended version of the Dialogue. In his Praefatio to this edition, Huber makes various comments which are relevant to our assessment of the Dialogue. He reiterates his reasons for removing the Humaniores from his law lectures, his view that textual criticism of the Florentine must be justified by manuscript authority and says the Dialogue is included because it is in fact a Digressio. He mentions that the issue of compendia is raised in the Dialogue but that he has given no hard and fast ruling. For the Digressiones see Feenstra BGNR Franeker, pp 51-52, nos 140-144. For the Disputationes see Feenstra BGNR Franeker, pp 50-51, nos 136-137.

10 See Positiones Juris secundum Institutiones et Pandectas Praefatio p [2]. (Quod temperamentum vobis tam et necessarium ad Juris studium quam sal est ad vicium. (Which is for you as necessary a modification for your study of law as salt is for food.)

11 Digressiones Justinianae, Praefatio p [3], dum ipsa nihil quam Digressio sit (since it is nothing other than a Digressio).

12 This largely decorative use of classical references and allusions is in marked contrast to the humanists use of the same type of material to analyse and substantiate texts whether classical, legal or theological.

13 The Journal des Scavans, first issued in 1665, was one of a number of fashionable journals which catered for the literary-minded society of the 17th century, especially in France. These literary journals were chiefly concerned with developments in physics and science as well as politics, philosophy and belles-lettres. According to the Dialogue law was not a topic of concern.
A scholar should certainly not tout for favour. Further, these journals do serve a purpose in that they give scholars and the Republic of Letters an idea of who is writing and on what subjects.

As said above the *Dialogus* appears on the surface to be recording a real life situation with four friends discussing their teaching policies and problems. But appearances are deceptive. Evidence indicates that Huber cobbled the *Dialogus* together from various writings of his own and of other persons. It is this which requires consideration.

Significantly there are several sub-themes underlying the apparently casual chit-chat; first, and not least, the real life relations of the persons involved. What was Huber’s attitude to Böckelmann, to Crusius and in particular to the non-appearing Gerard Noodt? Why did Huber attribute Noodt’s views (with which he mostly disagreed) to Crusius? How did he portray these men and what were his motives? Secondly, why did Huber play fast and loose with dates? Was this deliberate or merely a sign of careless workmanship? Further, what, if anything, is the significance of the changes made to the 1684 edition? The fact that it was the convention of the day not to mention, by name, the victims of one’s criticism or scorn (even although those interested undoubtedly knew what was afoot) adds a certain spice to modern research. Does it, in some degree, convert the superficially innocent *Dialogus* into yet another, typically Huberian, polemical assault on Noodt and others?

These are the most important issues which have arisen in the course of reading around and about Huber’s *Dialogus de ratione juris docendi et discendi*. 

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*A Dialogue on the Method of Teaching and Learning Law*
CHAPTER II
THE 1684, 1688, 1696 AND 1724 VERSIONS OF THE
DIALOGUS

In considering the text of the four versions of the Dialogus there are a number of issues to be addressed. These chiefly involve the extent and nature of the changes introduced into the editions, especially those introduced into the 1688 version. When considering these alterations an attempt will be made to trace their origins and possibly to deduce the grounds which prompted them. In the process it will hopefully become clear why the 1688 edition was selected for translation and commentary.

The Dialogus was first published as a small octavo volume by Joh. Gyselaar of Franeker in 1684. The second edition, significantly altered and expanded, appeared as a separately paginated addition to Huber’s revised Digressiones of 1688, which was published by Joh. Gyselaar, Henricus Amama and Zacharias Taedama of Franeker. When the Digressiones was posthumously revised by Huber’s son, Zacharias Huber, in 1696 the Dialogus was not separately paginated but included as pages 585–628. This edition was published by Jacobus Horreus of Franeker. Finally in 1724 the Dialogus, together with three of Huber’s orations from the Auspicia Domestica (1682) was published as part of a collection of short works on teaching law. This volume De ratione ac methodo studiorum juris was edited by Christian Gottlieb Buder, then librarian at the University of Jena and published by the Officina Hartungiana. The latest version of the Dialogus is this, of 2010. It is a photocopy from the 1688 Digressiones, and is accompanied by a translation into English and copious commentary. It will be clear below that Huber made a number of major changes to the text. The first was a (last minute) substitution of pp 79–80, before publication of the original 1684 edition. To appreciate the pre-publication substitution of p 79 and p 80, consult the 1688 edition and footnote 8 below (referring to Appendix B).

Subsequently, several substantial alterations were effected before republishing in 1688. Passages added are marked with * † below the English text and excised passages (marked A1, A2, etc.) are included in Appendix A — both Latin and English.

The use of italics in the different editions merits a note, even if only to say that there is editorial inconsistency. In the 1688 edition proper names and book titles are italicised, and often sentences which are clearly quotations or paraphrases of would-be quotations. Many of these I have identified and attributed to their authors; a certain number I cannot identify. Italics are also used for emphasis. In the 1684 edition, however, italics are far more rare. Compare, for example, 1684 pp 16–17, and 1688, pp 9–10. The 1696 edition of the Digressiones follows the 1688 edition but not absolutely. The Buder edition is not subjected to comment here.

1 See Feenstra BGNR Franeker, pp 51–53, nos 139-144; p 72, no 208; pp 95-97, nos 285–286.
2 From the copy in the library of Tresoar, Leeuwarden.
1. 1684 — A DESCRIPTIVE BIBLIOGRAPHER’S DELIGHT

Copies of the first edition of the *Dialogus* are rare. Gyselaar apparently only made a small print run, as indicated by the number of surviving copies.\(^3\) However, recently (2006) a somewhat puzzling alteration to pages 79 and 80 emerged, thanks to the kind offices of Prof. John Cairns of the University of Edinburgh. He told me of a set of printed but unbound sheets of the 1684 edition of the *Dialogus*.\(^4\) These sheets are presently held in the National Library of Scotland and are part of the Dieterichs’ Collection\(^5\) which was bought by the Advocates’ Library in 1820 and passed to the National Library when it was founded in 1926.

The existence of unbound sheets is no unique phenomenon, as in the 17th century it was not unusual to sell the unbound sheets to be bound at the buyer’s decision. The point of interest in these sheets is that they contain a cancel leaf, pages 79 and 80 (E 8) which is replaced by *4. There are no other changes in the printed text. Thus the loose leaves of the first, the 1684 edition, show two different states\(^6\) for pages 79-80. The page beginning *legibus inferri potest. Nescio at illa CRUSIUS* is the final text and it appears again, although slightly altered (pp 45-46), in the 1688 edition. The text beginning *legibus inferri potest. Tu vero excipere . . .* was Huber’s original text which he must have decided to change after it had been set up in print. Gyselaar, the university printer,\(^7\) instead of wastefully resetting the entire sheet,\(^8\) which also contained pages 65, 66, 71 to 74, merely printed the *cancellans* on the spare space on the last sheet, leaf *4, which contained some of the preliminaries. (These were usually set last as, being indices, contents lists etc., they were dependent on the pagination of the main text.) During the binding, the cancelled page, the *cancellandum* (pp 79-80) was cut out and discarded, the new leaf, the *cancellans* (leaf *4*), was glued on to the stub.

That was the theory! The next step was to check any extant copies for clear evidence that the leaf containing the new pages 79-80 had in fact been included and that the necessary adjustments had been made. It is no secret that irregularities occurred in the binding even when there were no cancelled leaves to be replaced.

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\(^3\) See Feenstra *BGNR Franeker*, p 72, no 208 for a partial listing. There are no copies in South Africa.

\(^4\) Prof. Cairns discovered these sheets twenty years ago but did not have time to examine them closely or to write them up. He rightly guessed that I would be fascinated and I sincerely thank him and the National Library of Scotland for passing photocopies of the originals on to me.

\(^5\) The so-called “Dieterichs’ Collection” was part of the library of Georg Septimus Dieterichs (1721-1805) Count Palatine and Senator of Regensburg. After the Count’s death the library was auctioned but the collection sold slowly and comparatively cheaply. Much of the collection was eventually bought by the Advocates’ Library. It would appear that the Huber 1684 sheets were part of a bundle of unbound sheets, many perhaps originating from the Gyselaar Printers. See Meixner *Dieterichs’ Collection*.

\(^6\) The term “state” usually refers to changes made to the text during printing. There can be different states of the leaves involved, when the *cancellandus* (leaf to be replaced) is corrected by substituting a corrected leaf (the *cancellans*). The *cancellans* is tipped in i.e. stuck onto the stub of the *cancellandus* which is cut away.

\(^7\) Johannes (Hans) Gyselaar was the official publisher to the *Staten* of Friesland and to the University of Franeker from 1674 to 1700. His predecessor was Johannes Wellens and a note under Feenstra *BGNR Franeker*, p 51, no 136, suggests that Gyselaar could have taken over a number of already printed but as yet unbound sheets from his predecessor Johannes Wellens. In the late 1680’s he appears to have joined forces with Henricus Amama and Zacharias Taedama, as can be seen from the title page of the 1688 *Digressiones*. Unfortunately, my requests to the Archives and Tresoar in Franeker can produce no further information. From the point of view of this project Feenstra *BGNR Franeker* lists 166 entries under Ulric Huber, of these 30 deriving from the years 1677-1700 are printed by Gyselaar.

\(^8\) See Appendix B.
The first copy that has produced definite evidence that this alteration was successfully completed is the Leiden copy (shelf mark 499 G7:2). It was inspected by Dr Osler and he commented that this is “the standard version which the publisher and the author wanted to give to the public.” There are, however, three leaves of preliminaries which are misbound.9 I understand from Osler that Harvard and Yale have copies but as yet no information regarding them is available. Of the copies in Dutch libraries, the Koninklijke Bibliotheek’s copy (signature 378L 20:2) has the new pages 79 and 80.10 The Leeuwarden copy, a photostat copy of which was used for this work, apparently has the new cancellans version, and according to Dr Jacob van Sluis of Tresoar het gekke is dat dit een halflos blad lijkt te zijn, dat er in ons exemplaar een beetje slap bij hangt.11 In Scotland there are two copies in the Advocates’ Library. A.68.2 has the 1684 Dialogus bound with Huber’s Specimen Philosophiae (1686), A.68.4 has the 1684 Dialogus bound with Huber’s Auspicia Domestica (1682). In both copies the cancellans has been substituted for the original leaf but there are no visible signs of a strip and pasting; no doubt because of the tight binding. In addition there is a copy in the London School of Economics bound with Huber’s De Iure civitatis (Archives-Special OU/1684/2B). This is reported to include the new pages 79 and 80. So far we have not found any copy containing the cancellandum which suggest that in general the binders did a professional job.

1.1. Possible reasons for the changes

So much for the technical aspects. Now let us consider the possible whys and wherefores of Huber’s changes. What was so undesirable about the original p 7912 or so vital about its replacement that it deserved the time, trouble and expense of excising it? And why only that leaf when a mere 4 years later the 1688 edition in the Digressiones shows many radical alterations, including further minor alterations to these very pages13

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9 *3 is bound before *2. This is confirmed by Osler. See Feenstra BGNR Franeker, p 72, no 208.
10 This copy was inspected by Prof. Hallebeek.
11 “The funny thing is that it appears to be a half-loose leaf which in our copy hangs a bit loosely.” Information provided by Dr Jacob van Sluis of Tresoar in a friendly letter to an enquiry by Prof. Hallebeek on my behalf, 14 January, 2008.
12 Pages 79 and 80 (1684), sheet 12, sheet G. reads as follows: “... You indeed, continued CRUSIUS, seem to forget, my dear Huber, that we are engaged in a dialogue and I see that you are not far removed from the vehemence of a declamation. If I were to follow your example and if I were to consider that I should reply to every point you have raised, the sun would set and we would infringe on the policy which you initially stipulated and prescribed for us. (See 1684 p 11.) Otherwise it would be easy to show that you are not doing anything which cannot be defended by great writers or by better reasoning, and what Alciatus, Cajacius, Augustinus, Duarenus, the Fabri and others, without number, have practiced. Indeed you may recall something of the glory of legal textual criticism, and of the critics of the last century even although you are in no way reserved in your hatred for and aversion to that aspect of learning which we, despite snarling Envy but with the help of the Muses, will practice with alacrity while life shall rule these limbs, and we will not be deterred
13 These paragraphs can be compared with 1) pages 79 and 80 of the 1684 edition and with 2) pages 45 and 46 of the 1688 edition.
There is no doubt that the decision to cancel page 79 as set on E8 was a decision made by Huber himself. The resetting of page 80 was made necessary chiefly because there was an overflow of 5 lines from p 79 and this required resettling of the typesetting. Here the actual changes are minor — e.g. *ad spernari, atque* (l. 20) for *aspernari &* (l. 20); the addition of the Greek phrase τὸν πάντα τὸν νάνυ (l. 17).

The section under consideration occurs towards the end of the discussion on legal textual criticism. Huber is laying down the law on emending without manuscript authority and asserts that emendations should not be used to resolve conflicting arguments in support of the emender’s own opinion. He is critical of Crusius’ emendation of *obligare* for *obligari* in D.45.1.101.14 He passionately declares that these arbitrary emendations disrupt the certainty of the law and, if allowed to continue, might well be used to moderate the penalties for homicide, theft and adultery. In the original, rejected, version, Crusius replies that he cannot answer every point that Huber is making as they are discussing the work of Alciatus, Cujacius, Augustinus, Duarenus, the Fabri and many others. On the replacement sheet Crusius picks up Huber’s argument, saying that he is exaggerating the danger of textual emendation changing the old jurisprudence. He concedes that penalties must sometimes be mitigated and refers to Alciatus’ boy15 but maintains that the normal penalties for homicide must stand. Despite hostile criticism he will continue to practice textual emendation.

Then Huber suggests that they should conclude at this point as he does not like this arguing.16 He himself then launches into a defence of such as Vinnius, Matthaeus II and Wissenbach who, he says, were convinced that those who practiced criticism were not lawyers (an allegation often brought against the humanist philologists).

It is perhaps useful here to consider the further changes which were effected to this passage in the 1688 edition, anticipating the discussion in sections 2.1 and 2.2 below. After Crusius has said that he is not replying to other of Huber’s points, he now says that it is foolish to foist unintended opinions on writers, when by the adjustment of a letter or two “good sense can be achieved for the ancients and honour for the subject”.17 In Huber’s speech a remark is added to the effect that Crusius and his fellows should not think that only those who practice emendations are knowledgeable of the law. Vinnius, Matthaeus II and Wissenbach are then cited as scholars who understood the law and practised criticism.

Considering the changes in the 1684 and the 1688 version together it would appear that Huber was reinforcing his arguments against those whom he saw as tampering with the received law. He certainly considered Noodt to offend in this regard. The addition and subtraction of many passages in the 1688 version indicate that he was not satisfied with the 1684 edition and perhaps we may conclude from these sheets that this dissatisfaction arose even before 1684 was published.

14 See Crusius’ posthumous *Dissertatio ad Constitutionem Divi Maxi de curatoribus minorum quinque et viginti annis*, Leiden 1712.
15 See Alciatus *Dispunctiones*, 1.17.; cf. the 1688 edition, p 79. This boy, says Alciatus, in a fit of anger struck a comrade with a knife, and hence it was argued that the full penalty of the law should be mitigated.
16 See 1684, pp 79–80; 1688, p 46.
17 1688, pp 43–48.
2. THE 1684 AND THE 1688 VERSIONS COMPARED

The title page of the 1688 edition claims that this edition is *nonnullis aucta* ΠΑΡΑΛΙΠΟΜΕΝΟΙΣ, paralipomena being from the Greek παραλείπω = I pass over, i.e. including material which was formerly omitted. This is in fact only a half truth as not only does the 1688 edition contain additional material, but certain passages in the 1684 edition have been deleted, extirpated, pulled up by their roots.

2.1 The title changes — *Dialogus* or *Diatribe*

The first, although not necessarily the most important, question to be considered when comparing the first edition of 1684 with the *Digressiones* edition of 1688 is the alteration to the title. The 1684 edition made its appearance under the title *De ratione juris docendi et discendi Dialogus*. (A Dialogue on the method of teaching and learning law) With the second edition, included in Huber’s *Digressiones* of 1688, the title was extended to read *De Ratione Juris docendi et discendi diatribe per modum Dialogi. Nonnullis aucta* ΠΑΡΑΛΙΠΟΜΕΝΟΙΣ. (A Diatribe in the form of a Dialogue on the method of teaching and learning law — with the addition of some material previously omitted) Now what, if any, was the distinction between a ‘Dialogue’ and a ‘Diatribe’? The term ‘Dialogue’ does not present major problems. The derivation is from the Greek διάλεγον = to converse or reason. In Classical Latin a dialogue acquired the exclusive sense of an informal philosophical conversation, usually on a single theme but allowing for digressions. The prefix δια is sometimes seen as δις = two and gives rise to the understanding of a dialogue as a duologue and is often used in this sense in drama. In general, the connotations of a literary dialogue for Huber were not very different to those for the English speaker today.

‘Diatribe’ is less straight-forward. The modern English (and probably also the Dutch) reader when presented with a ‘Diatribe’ immediately conjures up a ‘bitter and vitriolic criticism’. However, in English this meaning is said to be an early 19th century development.18 In the earlier English usage the term is merely implying a discourse or dissertation. Crusius entitled his 1669 discussion of D.28.5.41(40) a *diatribe*,19 and there the term is used more as a discourse, a discussion. However, the word ‘diatribe’ was used in its full pejorative and polemical sense in the verbal and legal controversy which initially involved Claudius Salmasius20 tract *De usuris* of 1638 and Petrus Cunaeus21 of the University of Leiden. Mud-slinging and academic abuse escalated as Cyprianus Regnerus ab Oosterga 22 of Utrecht and Johannes Jacobus Wissenbach23 of Franeker joined the fray. Salmasius’ *Diatriba de mutuo non esse alienationem adversus Coprianum quemdam iuris doctorem, auctore Alexio a Massalia, Domino de Sancto Lupo* (1640) was correctly entitled a *Diatribe* and its answer by Cyprianus Regnerus — *Petr Ciunaei sententia defensa mutuum esse alienationem adversus

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18 See OED ‘diatribe a bitter and violent criticism; an invective (1804)’; van Dale ‘diatribe, scherpe kritiek’.
19 See Ahsmann and Feenstra BGNR Leiden, p 83, nos 115, 116.
20 Salmasius (Saumaise), Claudius 1588-1653. He was invited to Leiden to give lustre to the university and was allowed to give lectures as and when he chose.
21 Cunaeus, Petrus 1586-1638. Professor of politics and law at Leiden, 1615.
22 Regnerus ab Oosterga, Cyprianus 1614-1687. Professor at Utrecht, 1641-1687.
23 Wissenbach, Johannes Jacobus (1607-1665) Professor at Franeker, 1640-1665.
Sphalmasium quendam, dominum de Sancto Lupo (1640), was a continuation in the same spirit. In view of Huber’s well-known polemical tendencies it is not impossible that in the 1688 Dialogus he intended to join battle, as he himself would be the first to admit.

However, a glance at the origin of the word perhaps suggests another significance. ‘Diatribe’ is derived from the Greek διατριβεῖν one meaning of which is “to while away time”. (This may be compared with the Latin tempus terere “to rub away time, waste time”.) Couple this sense with Huber’s statements about his 1688 Dialogue, which appears on p [3] of the Praefatio to the Digressiones. Having explained in the Dedicatio (to Zacharias Huber, his father) that the Digressiones, also referred to as Observationes iuris humaniores or amoenitates, were intended to relieve the solid weight of the law, Huber remarks that he has included at the end of the Digressiones, the Diatribe de Ratione juris discendi et docendi “since this is nothing other than a Digressio”. The Latin digressio means a physical departure or, more commonly, a departure from a subject under discussion. The latter is today the most usual sense of the English “digression”, from the verb “to digress”. We digress in speaking or writing, often for a necessary explanation, illustration or elucidation.

Is that the spirit in which Huber wishes us to read his attacks on Noodt, four years after the original Dialogus of 1684? Is the emphasis now on the pleasantries? May we assume so?

2.2 Alterations to the text

There is a marked difference between the text of the first edition published in 1684 and that of the version published in 1688 as an independently paginated (pp 1–63) addition to Huber’s revised edition of the Digressiones (1st edition 1670). This 1688 version is much more readily available, possibly because of its association with the Digressiones which had already been reprinted in 1671, 1677 and was to be reprinted in 1696, again including the Dialogus. The minor typesetting variations in the 1688 edition from the 1684 edition are not of any significance; and will not be considered here. It is only the major alterations which will be considered.

In the 1688 edition some passages have been excised from 1684, others added. These alterations have been marked in the English translation. The insertions are indicated with * at the beginning and † at the end. The Latin words beginning and ending the passages are also provided. The excised passages are marked in the English translation as A1, A2, — A14. In Appendix A the Latin has been copied and provided with an English translation.

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25 See, for example, the Praefatio to the Digressiones of 1688, p [3]. Accidit aliquando ut de sententiis quondam emulentem hani sech viorun nostrum quoque in diversum opiniones alcihi postulerimus. (For it has sometimes happened that I have in some places produced opposing opinions regarding the views of certain learned men of this generation.)

26 (More humanistic or classical observations on the law or pleasing accompaniments.)

27 cum ipsa nihil quam Digressio sit.

28 See Feenstra BGNR Franeker, p 72, no 208 and p 51f, nos 140-144.

29 E.g. 1684, p 66 ad formandos . . . validos Iurisconsulars, non est, ut magnopere impoheretur, utunque aliter deinceps visum fuerit posteriti; 1688 p 38 ad formandos . . . validos Iurisconsulars, non est ut magnopere impoheretur, utunque deinceps aliter visum fuerit posteriti;
A comparison of lineage will show that Huber added more (approximately 207 lines) than he removed (approximately 132 lines). Of the three speakers Crusius loses 12 lines and gains 43, Böckelmann loses 80 but gains 137, Huber, perhaps understandably, is least affected. He loses 40 and gains 27. A brief comment on the distribution of these changes is relevant. The excisions are grouped. However, as Crusius and Böckelmann dominate the first half of the Dialogus and Huber the latter, it is to be expected that the Crusius and Böckelmann passages are removed from the beginning and Huber from the end. The additions do not correspond with the subtractions — either in position nor in length. They certainly cannot be regarded as replacements, as will be clear when the content is considered.

2.3 Content of the excised passages

Regarding the content of the excised passages, mention will be made in Chapter VI, of the removal of Rusius from the 1684 edition and the concomitant alterations in the text.

Of the longer passages, Böckelmann is the chief loser. On pp 28–30 (A₁) he admits that he has tried to persuade the loose-living students that they can achieve success in their studies by following his advice, attending collegia (where a compendium will be used) and working steadily. This viewpoint is found in other writings on study habits but does not reappear in the 1688 edition. There is no apparent reason why Huber should have removed it. Interestingly, it is re-introduced in the 1696 edition — in an abridged form on p 585. It is uncertain whether this renewal was thanks to Huber or to his son Zacharias.

On pp 40–42 (A₃) Böckelmann argues that he finds students who have not used his method perform badly in examinations but he will not condemn them just for this. However, those who pursue the more abstruse aspects, such as textual emendation and legal controversies, do not cope with the day to day problems and questions which arise in everyday legal business. This idea reappeared in the 1688 version, especially where Böckelmann is blaming the students’ failures on the untimely introduction of textual criticism. Huber also, in his own words, says much the same in the latter part of the Dialogus when he is stressing the need for practical lawyers. As above, this is re-introduced in an abridged form in 1696. On pp 46–47 Böckelmann argues that compendia are used to teach physics, ethics and theology and that everyone knows they are necessary at the early stages. This is said elsewhere and perhaps this is the reason for its exclusion. Finally, on p 58,
Böckelmann says that Crusius prefers teaching textual emendations to disputing, which he and Huber regard as essential, as can clearly be seen from their publications. Why those lines are removed is difficult to see. Crusius does not lose any significant passages nor, in effect, does Huber.

2.4 Comment on the passages added in the 1688 edition

The 1688 Praefatio is the same as that of 1684, except for the addition of 11 lines justifying the use of compendia — an idea which Huber had expressed in his address to the students in his Positiones of 1682.

Let us first consider the gains made by Crusius. These consist of several shortish passages, some linked to additions to Böckelmann’s speeches. First are two lines on p 17 repeating the *compendium/dispendium* issue which had been introduced on p 6 by Böckelmann. Here Crusius declares that compendia are a *damnum* (loss). This use of *damnum* is picked up, in an insert, by Böckelmann on p 17 when he declares that Crusius is using *damnum* instead of *dispendium* to avoid a *παρανομώσεια* (an illegal insult). These two inserts are clearly linked and were probably introduced to stress Noodt’s use of *damnum* in his inaugural oration. There are also 8 lines inserted on p 12, when Böckelmann remarks that although Justinian forbade the writing of commentaries on the *Pandects* and *Codex*, he wisely permitted paratitla as essential for beginners. With these lines added, the preceding statement that Justinian realised the need for beginners to have a simplified introduction is somewhat emphasised and provides an improvement on Huber’s statement in A9 which was removed from p 36.

With pages 13–16, a lengthy passage is accredited to Böckelmann, although, in fact, it is taken almost entirely from Huber’s *Specimen philosophiae civilis* of 1686, which appeared two years after the first edition of the Dialogus, 1684. It was reprinted in the Opera Minora in the Praefatio (pp 7–11) to the Institutionis Reipublicae Liber Singularis. Here Böckelmann’s (Huber’s) arguments deal with the fact that compendia are an important aspect of teaching and learning. The teacher must be able to reduce his knowledge to a condensed form, as must the student. Böckelmann then proceeds to argue that the classical epitomes did not, in fact, harm the great authors of the ancient world and probably stimulated students to read the originals as indeed happens with modern summaries. This passage is inserted in a section arguing that the ancient epitomes differ from modern compendia. The former are mere abridgements, the latter an analysis of facts. At the conclusion of the inset, Böckelmann refers to Julius Caesar’s desire to provide a ‘compendium’ of Roman law. This passage, p 16, is taken from Huber’s inaugural oration of 1665.

Pages 20–22 include a substantial passage by Böckelmann with two interruptions by Crusius. On page 20 Crusius’ speech declaring that Böckelmann is misunderstanding him loses 5 lines [A3] but continues to assert that modern scholars are not agreed on paratitla. Hereupon Böckelmann again argues about *paratitla* and *indices*. Much of this section of the Dialogus, especially the words in italics in the Latin, are borrowed from Aegidius Menagius’ *Amoenitates Iuris Civilis*. (The last few lines provide a link to Crusius’ interrupted speech.) Here again, Crusius is saddled with views not of his own making. Possibly weight is added to the argument here by reference to Menagius. Böckelmann himself does not seem to have any opinions on the matter.

38 See further on the significance of *damnum* Chapter V. 1.3.2.
39 See Noodt *Corrupta jurisprudentia*, p 621 and English translation ft 31.
40 See English translation p 13 ft 37.
41 See English translation, p 16, ft 43 and ft 44.
42 See English translation, p 21 ft 53.
The additions to Crusius’ arguments are largely link words to help the debate change direction. Likewise, Huber’s arguments from the 1684 edition are virtually unaltered. There is, however, one curious alteration. In the 1684 edition, Huber consistently writes of himself in the first person. So, too, in the 1688 version with the exception of three occasions towards the end when he refers to himself in the third person.43

3. 1696 — A POSTHUMOUS EDITION

The 1696 edition of the Dialogus as included in the 1696 reprint of the Digestiones differs somewhat from its predecessors. In fact, the 1696 Digestiones differs somewhat from the 1688 version. It was printed posthumously as is indicated on the title page by the insertion of the words dum vivet, in the reference to Huber as Supremae Frisionum Curiae Ex-Senator and further it was revised and corrected in various places by the author’s son, Zacharias. In the Praefatio Zacharias says that the revisions were based on notes by his father. It is impossible to tell in how far these revisions and additions are to be credited to Huber or to his son but we shall assume that in general they reflect the views of Huber himself.

The four lines on page 585 referring to the social sacrifices to be made appeared in an extended form in 1684 where they were attributed to Böckelmann. They were removed from the 1688 edition but reappear here as spoken by Huber himself.44 On p 602 two short additions are made to the 1688 paragraph on p 26 dealing with examining candidates. They state that those who have not followed Böckelmann’s method but “declaring themselves to be textualists and despising systematica” are found to be ignorant of the foundations of law “without which certainly no one can practice as a lawyer”.45 Here, too, it appears that an idea removed from the 1688 edition is being re-introduced.

Otherwise there is only one other point to note. On p 601 the words Quis non contra videt quod Crus. De Instit. Justiniani are added. It would appear that this was done after the rest of the sentence was set, for the words quod to object intrude as an incomplete line leaving half a line open after object before the sentence continues with si quis abhorreat . . .. There is a full stop after object because the typesetter presumably did not understand the sentence.

4. 1724 — THE BUDER EDITION

Finally, in 1724, there appeared in Jena from the officina Hartungiana a collection of essays and orations De ratione ac methodo studiorum iuris illustrium et praestantissimorum iuris consultorum selecta opuscula conquisivit et praemissa praefatione adiectoque indice in gratiam studiosorum iuris. The editor was Christian Gottlieb Buder (1693-1763), then librarian at the Academy of Jena. The book was aimed at easing the burden of law students struggling to master a twisting labyrinth and vast ocean of disorganised

43 See 1684, p 72, replicebam, changed to 1688, p 41, replicebat; 1684, p 79, negerebam becomes 1688, p 46, negeret Hubenus; 1684, p 107, “Ego vero dissentio inequant”, . . . 1688, p 60, reads “Ego vero dissentio ille” . . .
44 Omittenda sunt enim omnes voluptates, relinquenda studia delectationis, ludus, iocus, convivium, sermo etiam pene omnium familiarium deserendus iis quibus sit animus ad hanc facultatem enitendi. (For all pleasures must be given up, the pursuit of amusement must be abandoned, games, jesting, drinking parties, even conversation with all one’s friends must be forsaken by those who have the intention of excelling in this study.)
45 i) seque Textuales esse praedicantes, systematica contenentes
   ii) sine quibus cetero nemo potest agere jurisconsultum.
information. To guide them through the labyrinth they needed an Ariadne’s thread, to bring them safely to port over the vast ocean a guiding star.\textsuperscript{46} These essays and orations were to help point the way.

It is with Ulric Huber’s \textit{De ratione docendi et discendi iuris} that we are here concerned. However, also included in the Buder edition are three of Huber’s Orations — numbers IV, V and VI taken from the \textit{Auspicia Domestica} of 1682.\textsuperscript{47} These orations also feature in Huber’s posthumous \textit{Opera Minora} but that only appeared in 1746. The Buder edition of the \textit{Dialogus} is to all intents and purposes a reproduction of the 1696 version.\textsuperscript{48}

5. CONCLUSION

So here we have four editions of the \textit{Dialogus}. The last two are of no vital significance, their variations, with one or two exceptions, being little more than typesetters’ whims. It is the 1684 first edition and the 1688 \textit{Digressiones} edition which are indicative of Huber’s thinking on the question of teaching and learning the law. Coupled with his didactic orations a picture emerges showing Huber the professor wrestling with the problems which faced both the teacher and the taught. He does not attempt to produce a rigorous set of rules. This would have been contrary to his usual intellectual approach which was sometimes inconsistent. It was his customary methodology to divide his arguments into points — his theses for disputations, his \textit{Positiones}, his \textit{Digressiones} show this clearly and the same approach is to be seen in the \textit{Praelectiones} and the \textit{Heedensdaegse Rechtsgeleerdhety}. In the case of the \textit{Dialogus} an orderly progression of arguments is vitiated by the demands of the dialogue format.

Speakers alternate but the comments of one may well not relate to those of the previous speaker. Moreover, several diverse points may be made in one speech. Towards the end, when Huber is holding the floor, there is a greater line of argument. This loose construction lent itself to additions and excerpts without much difficulty and, as we have seen, Huber happily added passages from his other works. Thus there seems to be no coherent policy behind the alterations.

From what has been said above it should be clear why the 1688 edition was chosen for translation. It was the basis for the two posthumous editions, it was more accessible than the first edition and was the result, one imagines, of some second thoughts. It is those παραλοποιομένα, those previously omitted ideas, that argue a degree of revision. Be this as it may, the 1688 \textit{Digressiones} edition is the version chosen as the basis of this project.

\textsuperscript{46} See Buder \textit{Opuscula}, p [2].

\textsuperscript{47} One may ask why \textit{Oratio II} was not included. Could it be that Buder saw it merely as a precursor for the \textit{Dialogus}?

\textsuperscript{48} There are copies of both the 1688 and the 1696 editions of the \textit{Digressiones} in the library of the University of Jena. Thus if they were available to Buder in 1724, he presumably had a choice and selected the 1696 edition as being the latest and including Zacharias Huber’s additions.
PART II

A Learned Discussion
On the Method
Of Teaching and Learning Law
In the form of a Dialogue
(with some additions to the earlier edition)
by
Ulric Huber
1688

Latin text with English translation
PRÆFATIO
Summam Diatribæ exhibens.

ULRICUS HUBER
Auditoribus suis S. D.

Unc dialogum initio feriarum estivarum calamis effusum vobisque promissum serius exhibeo, quia rursus eum, mutato consilio, abjeceram; ut sit, ea que cum voluptate scripsisse, absoluta minus placere. Sed quia postitum ejus illâ præviâ pollicitatione nimirum innuerat, alienique à meo consilio sermones de eo cedebantur, non si non esse integrum mibi, supprimere editionem: nihilque potius esse credidi, quam ostendere, nihil in eo à nobis actum esse, nisi ut sententiam, de re ad utilitatem vestram pertinentem, juxta alios innocuâ libertate dicearem. Si argumentum presumere vultis; est hec Colloquium in horto Clarissimi Böckelmanni apud Lugdunum Bataviæ ante complures annos habitum, cui occasio serit ejus Colleca Cruvius vir egregius, qui fatis acrioratione Compendia Juris civilis in pravis scholis adhiberi solita inestabatur; eorumque loco studiosos, inde statim ab ingenti auditorii, legere totum jus antiquum obscurasque difficultates & aenigmatas conferendo, conciliando, emendando, interpingendo, omnis autem artis instrumento solvere volebat. Quas rès Böckelmannus non nisi ab ilis, qui prius universum jus paratillari modo prompte valideque dibisset, tentari suadebat. Ratioes eorum diversis vicibus commutatas agitataaque, non sineunctionibus aliquando.
PREFACE
Providing the main points of the discussion.

ULRIK HUBER
To his students GREETINGS

This dialogue which poured from my pen at the beginning of the summer holidays and which I promised to you, I am now presenting somewhat later, because, having changed my plan, I had again cast it aside as happens when that writing which one dashes off with verve is less satisfactory when brought to a conclusion. But because my intention concerning this had become exceedingly well-known, thanks to that previous promise, and because gossip inconsistent with my intentions was going the rounds in that regard, I realised that I was not at liberty to suppress publication. And I believed that it was preferable to show in this regard that I had done nothing other than voice, with harmless freedom in the presence of others, an opinion on a matter which pertained to your interests.

Now, if you wish to learn the tenor of this dialogue in advance – this was a discussion that took place, several years ago, in the garden of Professor Böckelmann near Leiden. An opening for this was provided by Böckelmann’s distinguished colleague Crusius who, in rather bitter language, used to inveigh against the compendia on the Civil Law that were habitually used in private lessons. And, in their place, he wanted the students, right from the first lecture, to read the Old Law in its entirety and to resolve the difficulties and enigmas encountered by comparing, reconciling, emending, punctuating and by all the other techniques of the art of criticism. Böckelmann recommended that only those who had first got to know the overall scope of the law readily and well by the paratitlar method, should tackle such issues. You will see that their reasons were discussed and weighed up turn and turn about, sometimes

The asterisk * and the dagger † indicate the beginning and end respectively of passages which appear in the 1688 edition but not in the 1684 edition.

A1, A2 etc. indicate where passages in the 1684 edition have been removed from the 1688 edition. The Latin text and the English translation are to be found in Appendix A.

1 Internal evidence based on the year 1670 for the publication of Huber’s Digressiones would appear to date the Dialogue in July or August of 1671. Feenstra, Böckelmann, ft 70, but see Commentary Chapter VII where the whole issue of dating is discussed.

2 The garden which was supposed to provide the setting for the Dialogue was situated some distance outside Leiden beside the Old Rhine at Hazerswoude. Böckelmann bought this property in 1676 and the deeds of transfer are dated 25 April and 27 June, 1676. According to the Acta of the Senate of 14 July 1679 (Bronnen Leidsche Universiteit III, p 342), it was decided to hold a convivium piscinorum extra urbem ad quod Nobil. D. Böckelmannus praedium suum concessit, ibique celebratum (a fish lunch party outside the city for which purpose the noble professor Böckelmann made his property available and it was held there.) Is this the occasion of the Dialogus? See the Chapter VII.

3 For Böckelmann, Crusius, Rusius and Wijngaerden see the Chapters V and VI.

PRAEFATIO.

jocisque, sicut erant homines liberi oris animique, salva
tamen dignitate, videbitis, & de meritis singularum exi-
slamabitis. Me quoque tandem vocaverunt in partes, nec
aliud à me dicitum, nisi quod rationes docendi discernendae
juris variar, inde à Justiniani aevò recensuerim, atque ex-
inde, quæ mihi præstantissima videretur, collegerim; de-
nique usum absfumique criticæ, quæ vocant, in jurispru-
dentia demonstraverim. Postremo, rogante Hadriano Wijng-
gardenio, qui nobis aderat, atque tum scholas domesticas
Lugduni habere instiuebat, totum studii jurisdi ci curesum,
sicut ego illum studiois præeundum censeo, simplici oratio-
nis filo dimesium. Donec Boelmannus prolato epheme-
ridum literaturam libello, has disceptationes abrumpit, ea-
que occasione de instituto illorum diariorum sive novellarum
paucis inter nos aëtum. Non ignoro quam exigua laudis
redactum fuit patrocinio Compendiorum sit expeñandum,
et si nemo paulo prudentior usu illorum abstinat, iimo qui re-
prehendunt, sepe contentus utantur, nihil tamen proficiat,
si maxime cuncta illorum vitia, quæque illis sumnum studi-
diorum collocant, frequenter vixerit, tam non decretur, qui
dignationem nescio quam, sicilicet, in compendia derivat-
bunt. At vos legite satis, & nostrum sequimini, quod heic
dabitur, confessum. Si illum fœriori lego, vos bibiscis prensibent,
qui methodum discendi hoc pretex summarunt, nullas sa-
xisceo, praebent, quodcum buias gravitate veroque fru-
ściu conferri possideat.
with jibes and jokes, as befits men of free speech and free thought, but nevertheless maintaining their dignity, and you will evaluate the merits of each argument. At length they also called me in to take sides, but I said nothing except to review the various methods of teaching and learning Law, from the time of Justinian and then conclude with what seemed best to me. Finally I pointed out the merits and demerits of the art of criticism, as it is called, regarding jurisprudence. Eventually, at the request of Adrianus Wijngaerden, who was with us and had himself already begun to give private lessons in Leiden, I spelled out, in a straightforward statement, the whole course of legal studies, just as I reckon they should be undertaken by students\(^5\). Until at length Böckelmann, producing a booklet\(^6\) containing learned newsletters, interrupted this debate and so, on that occasion we briefly discussed the practice of those journals or news-sheets.

* I am not unaware how little credit is to be expected as recompense for the defence of compendia\(^7\), even if no one, with even a modicum of practical sense, refrains from using them; indeed, those who find fault with them often use them quite earnestly. However, you will gain nothing if you vehemently criticise all their faults especially, and those who confine their entire studies to them. Nevertheless, there will be no lack of those who will obviously attribute some or other worth to compendia. But do you read them, if you wish\(^8\), and follow our advice which will be given hereafter. If those who put you off this method of learning on such grounds, will provide you with any more rigorous plan, they will not, I know full well, provide you with one which can be compared with this in weight and true benefit.\(^†\)

\(^*\) Non ignoro . . . posse videatur.

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\(^5\) See pp 46-58.

\(^6\) Böckelmann produced a copy of the Journal des Sçavans. The articles referred to (see p 58) appeared on 18 January 1666 and 30 August 1672.

\(^7\) This idea appears in Huber’s address to the students in his Positiones, 1682. It does not feature in the 1684 edition of the Dialogus, only in the 1688 edition.

\(^8\) The 1684 text places legite sultis after inter nos actuam i.e. after the reference to the news-sheets, implying read the news-sheets “if you want to”. The 1684 text concludes with ‘et vulte’, ‘and so farewell’. For the 1688 version, see the Latin text and the translation.
from the *Digressiones* 1688
Æpe mihi venit in mentem, Auditores Ornatissimi, ambigere, qui fiat, ut cum ad Artes studiorum facultateque doctrinæ opus est Anticefforibus in scholis illustribus atque in Academias, adeò pauci ad eam rem administrandam idonei reperiantur, quique reperti sunt tam raro auditorum Meeenatumque expectationi satisfaciant; maximè, cum, ut hodiè res sunt, Academicæ functiones iùsque paulo feliciora tradita, nec honoribus suis neque commodis, quibus, ut ajunt, aluntur artes, carere videantur; adeoque parum absit, quin id praestent, quod olim Marco Tullio in summâ votorum suffìcì legimus; ut in otio cum dignitate vitam sibi transfigere liceret. Verum hæ rationes non faciunt, ut difficile sit, re diligentius expensà, causas reddere, quæ Professiones Academicæ tam paucos habeant sibi pares, â quibus cum aliquo gloriae publicæque approbationis fructu excerceantur. Nam primo omnium, ex immensâ multitudine adolescentium, qui ad capiendum ingeniæ cultum mittuntur in Academias, fatis confat, esse pacíficos, quos æquos co ùsque Jupiter amaverit, ut ingenio memoriamque valeant ad ejusmodi apparatùm eruditionis acquirendum, quem ad docendas artes literarum fìcimus esse necessarium. Quorum autem ingenia quandoque sufficerint, horum voluntatem fere ab ea studiï intentionis, sine qua excellens doctrina haberì nequit, remotam esse videmus. Ut autem sint, quibus ò naturæ vis & patientia laboris aedificatur, his plurimumque fortunæ rationes, òve angustæ òve hilarioris, negant tam longam diffendì moram, ut ad arduum docendi munus,
It often occurs to me, most excellent students, to wonder how it comes about that when there is need of professors for our illustrious schools and for our universities to teach the humanities and the skills of learning, so few suitable men are found to carry out this task and that those who are found so rarely satisfy the expectations of the students and their patrons; I am especially surprised since, as is the situation today, those academic functions when performed somewhat more successfully, lack neither the honour nor the profits by which, as they say, the arts are nourished. And it is almost as if they were examples of what we read was once the greatest wish of Marcus Tullius namely that he should be allowed to live his life with leisure for literature and with honour. But these arguments do not explain (as it is difficult to do, even when the matter has been weighed up rather carefully) why the Academic profession attracts so few competent persons to undertake it and win some glory and public approval. For first of all it is well known that of the great number of young people who are sent to universities in order to develop their natural talents there are very few whom benevolent Jupiter has so loved that they have sufficient talent and memory to acquire the foundations of that sort of education which we know is necessary for teaching the liberal arts. Moreover, we see that of those who sometimes have the ability, the desire to make the effort to study is lacking and, without this, first class knowledge cannot be achieved. On the other hand those who have the natural ability and dedication to hard work, generally, because of financial considerations – be their circumstances constrained or comfortable – are denied a long span of time for learning, so that they can mature, by the lawful steps of study, to the arduous task of

1 The Illustres Scholae were colleges to prepare youths who had been through the Latin schools for a university. These schools concentrated on improving the standard of Latin (and Greek), philosophy and history. The professors usually gave private lessons at home but also public lectures which the citizens could attend. In short, the Illustres Scholae provided much of the instruction of a university but without the ability to confer degrees. One of the most eminent was the Athenaeum of Amsterdam, founded in 1632 with Gerardus Johannes Vossius (1577-1649) as its first rector. After March 1645 Albertus Rusius lectured on law. In 1877 it became the University of Amsterdam. So too the Illustrious School of Utrecht became the University of Utrecht in 1636. Some schools e.g. Deventer and Dordrecht never became universities. See Van Miert, Illuster Onderwijs pp 25–41, especially p 32 ff.

2 Huber is here arguing that the professors of his day are to be likened to those Romans who, having made their mark in service to the state, are able to pursue such a way of life that they either continue to enjoy their service to the state but without danger (in negotio sine periculo) or to enjoy leisure to study coupled with ‘dignity’ (in otio cum dignitate). This is a direct reference to himself and to his return to academic life in 1682 after 3 years at the Hof van Friesland. The sub-title to the oration on Roman Law which he delivered on his resumption of the professorate, 27 April 1682 reads: Qua exponit quibus rebus otium suum apud Academiam sit occupaturus. (In which he explains in which ways he will employ his leisure at the University) Opera Minora, Utrecht, 1746. Pars II, p 62.

The concept that leisure (otium) is to be spent in literary pursuits features frequently in Roman thought. The above comparison, with its reference to Marcus Tullius’ greatest wish is probably drawn from Cicero’s Dialogi Tres de Oratore, 1.1. where he clearly says that his hopes for a studious old age were frustrated by the prevailing exigencies of political life. Seneca, Ep. 82.2 says otium sine litteris nons est, (leisure without the liberal arts is death). Compare also Cicero Pro Sestio § 45 (98) Il quod est praekestimissimum maximeque optabile omnibus suis et bonis et beatis cum dignitate otium. (That which is most excellent and most especially to be desired by all sensible, good and fortunate men is leisure (for letters) coupled with respectful excellence).

3 Aequus Jupiter (benevolent Jupiter). Jupiter was the chief of the Roman gods. He had many attributes, being initially rural but rapidly, as Jupiter Optimus Maximus, becoming the protector of Rome and the state. He was also the protector of the family and determined the course of human affairs. He foresaw the future and events were the outcome of his will.
De Ratione docendi & discendi

nus, per legítimos studiorum gradus mature fecere queant. Denique ex it, quibus omnes hæ opportunitates confluent tam generosi copiam faciunt, bona pars, vel fati, vel Judicii aut opinionis errore deflectunt à viá rectá seque itineri committunt, quo nunc quam ad verum doctrinae faciam tum atque penetrare pollunt. Id autem sepe mirari fuit, quod, cum omnis difficultas in perceptione memoriaque rerum, qua in singulis diéciplinis traduritur, consilere videatur, in ordine modoque discendi atque docendi tanta varietas & conuultio ac inde proficiendi impedimentum, bonis mentibus objiciatur. Cum hac de re non ita pridem, quod ad Jurisprudentiam attinere, inter aliquot Juris Studiosos orta effect disputatio, laudantibus, ut sit, singulis suorum Preceptorum rationes, impetus me cepit, idque tum præme tuli, fore ut in scriptum redigerem, melique Audito-ribus traderem, argumenta Colloquii, quod olim multi cum Johanne Friderico Bökemanno et Georgio Cumrado Cru xo Antecefloribus Luduno Batavis, super hocipio negotio intercesserat. Cum Bökemanno familiariter Heidelbergo in honestissimâ studiorum æmulatióne jucundóque amicitiae commercio vixeram. Cru xius in Academia Franekeranâ Wiltenbacho nostro operam dederat, dum ego illic rudimenta Professionis Historicae deponerem. Atque deinceps arctior inter nos consuetudo invalu erat, cum ad accipienda doctrinæ titulum in Franekeranam ille se con tulit. Digressem eram ferii æstivis in Batavos, nec committendum putabam, quin Lugdunum ad homines amicitiae tam Veteres candidolique visitarem. Peracto apud Bökemannum præsi congressus officio, multus inter nos fermo de rebus antiquae jucundissimæque consuetudinis Palatine fuerat; donec Cru xius interventus ad promissu de rebus obvis coioqua ternoem avertit. Quæ tandem in-
teaching. Finally, of those, where all those favourable conditions provide the means for so honourable a plan, a good number are turned aside from the straight road, either by fate or by an error of judgement or expectations, and they commit themselves to a course by which they can never mount up to and penetrate the inner sanctuary of knowledge. But it often enters one's mind to wonder, when the only difficulty seems to consist in perceiving and remembering the facts which are taught in individual disciplines, that such great variations and confusion in the order and method of learning and teaching and hence obstacles to making progress are put in the way of the motivated students. Since, not very long ago, a discussion arose among certain law students on this very question with reference to legal studies, with individual students quoting the methods of their professors, as it happened, the urge seized me (and I kept the idea before me) to reduce to writing and present to my students the arguments raised in a conversation which had previously taken place on this very topic involving me, as well as Johann Friedrich Böckelmann and Georgius Conradus Crusius, both professors at Leiden.

I had lived on friendly terms with Böckelmann at Heidelberg, in honourable rivalry in our studies and in pleasant, friendly exchange. Crusius had studied under our Wissenbach at the University of Franeker at the time when I was there as a young professor of History. Then our social contact became closer when Crusius betook himself to Franeker to receive the title of doctor. I had gone for my summer holidays to Holland, and I did not think I should omit a visit to Leiden to see longstanding and sincere friends. When I paid my compliments to Böckelmann at our first meeting, we talked much about the good old days of our friendship in the Palatinate, until Crusius entered and turned the conversation into a general discussion of immediate affairs. Then, at length,

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4 See Epp. 1.41 (11 September 1657) where Huber wrote to his father that he has almost composed his oration for his inaugural at Franeker. Its title was De bona mente sive de sincero genuinae eruditionis amore. The oration was delivered on 30th November 1657 (O.S.). See Feenstra BGNR Franeker, no. 129, p 48; Veen Recht en Nut, p 38.n.13, p 58.

5 1656–1657. See the Commentary Chapter IV.1; Veen Recht en Nut, pp 45-57; p 269 (ft. 14) (Epp III.14); p 271 sqq.

6 Crusius registered as a student at the University of Franeker on 29 August 1662 and again on 17 September 1669. He took his doctoral degree on 22 September 1669. His promoter was Prof. Taco van G lens. See Postma and van Sluis Auditorium Academiarum Franekerensis, p 441.
Juris, Dialogus.

terrumpens Bökelmannus; sunt, inquit, amici aliquot firmiores, vestriisque, ni fallor, moribus egregie convenientes, qui prandum mihi apud puçinam mean condixerunt; Rogo, comites vos & convivas, & si libet, confabulones praebetis. Annuentibus nobis, rhedam ejus penilem, quam habebat more beatorum hominum, conférinamus, breviqve itinerе villam ejus urbanam ad antiquum Rhenitutus ingressi, convivas illic, scaphæ recens aedificios offendimus. Inter quos, præter Wijnardenium Auditorium olim meum, neminem mihi notum reperiebam. De apparatu & tralatitiis epularum solennibus fabulisque nihil referam; sed mensibus sublatis, animique à sedentarii fatigatione, per horum ambulando, recreatis, accidit, ut nobis quatuor; nam Wijnardenius se adjunxerat, sub platano quadam conscientibus, fermo per ambages ad inquisitionem de flatu Academiae, studioque juridici modo methodique deduceretur. De flatu Academica frequentiisque sedenter illi & magnificè loqui, nec obscura mirari se meas rationes, quæ fecissent, ut tam illustri theatro me subduxissent, tandem, ut erat hominum candor & liberalitas, videre volebant, eo factum esse, ut ipsis locus tanti honoris & emolumenti patuisset. Inde Crucius de meis Digestionibus, quas superiori anno de Praelectionibus ad Institutiones Justinianae exerxissem incipere, probabat earum institutum, et si nonnulla viuum mihi effecer in illis collocare, quæ ab iphis sententiæ judicioque abhorrent; de quibus indicabat, se per literas mecum agere confirmuisse, nifi nunc faciendum mihi videretur, ut coram de illis familiariter dïceptaremus. Ego non recüere, sed Bökelmannus & Wijnardenius intercedebant, eo quod ite locus, & congréssu ad disputaciones de opinionibus juris, sententiaeque discrepantibus parum idoneus neque factus & institutus videretur. Atqui, regerebat Crucius,
BOCKELMANN interrupted and said: “I have some agreeable friends who are, unless I am mistaken, very congenial to you. They have engaged themselves to lunch with me at my riverside garden. I ask both of you, if you please, to give us the benefit of your company and conversation”. When we agreed, we climbed into his sprung travelling carriage which, being a prosperous citizen, he kept available and after a short ride we entered his country house on the banks of the old Rhine and met up with our fellow guests who had recently been conveyed there by boat. Among them I found no one known to me except Wijngaerdens, a former student of mine. I shall say nothing about the table setting or the formal courses of the banquet or the conversation but when the tables were cleared and, being tired of sitting, we were refreshing our minds by a stroll through the garden it happened that while the four of us (for Wijngaerdens had joined us) were settling at the foot of a certain plane tree, the conversation developed in a roundabout way into an in-depth discussion about the state of the universities and the manner and method of studying law.

On the state of the university [of Leiden] and its numbers they spoke confidently and proudly and they clearly expressed their surprise at the reasons which had induced me to refuse an appointment in so illustrious an establishment. On the other hand, such was the candour and affability of these gentlemen that they admitted that by my so doing, a position of great honour and remuneration had been laid open for them.

Then CRUSIUS began on my Digressiones, which in the previous year I had extracted from my lectures on Justinian’s Institutes. He approved the concept of those even though I had decided to include therein some items which were offensive to his views and judgement. Regarding these Crusius indicated that he had decided to discuss them with me in a letter unless it seemed good to me that we should forthwith tear these issues apart in a friendly fashion. I did not refuse but Böckelmann and Wijngaerdens intervened on the grounds that the place and that sociable gathering did not seem really suitable or designed and intended for disputes about legal opinions and opposing views. “But”, CRUSIUS retaliated,
4. *De Ratione docendi & discendi.*

non erat, quod scholasticas argumentationes de magistralibus controversiis aut profundis legum fensibus ac antinomis, expectaretis. Neque meum, nec *Huber* ingenium animique voluntas ad ejusmodi contentiones, hoc præsertim tempore convivalis jucunditatis inclinabat. Sed agite, quando ita videtur, discrepantis nostris, eti humanioribus atque ad litteras politiores spectantibus abstimamus; de communibus tamen studii colloqui nihil vetat, quid enim potius sit, quod si hab hac platan, quæ mihi ad dialogos literatos confecerat videtur, agamus, non venit in mentem. Nihil abnuere cæteri.

Quare *Crusius*, Haud facile dixerim, mi *Hubere*, pergit, quam mihi volupe fuerit, animadvertere e tuis *Digressionibus*, te non effe ex corum numero, qui systemata nobis & compendia Jurisprudentiae, quæ nihil quam totidem dispensia sanctissimæ artis sunt, omni die obtrudunt & secundum ea juventutem sibi commissam instituunt an corrum-punt. Verum id mihi praeter expectationem accidisse fateor, quod in omnibus quatuor libris observationum illarum humanorum, non incidi in ullam speciem emendandi textus vitiosos Juris nostrui; cum tu ignorare non posis, dari adhauc plurima loca, quæ in turpibus scripturae mendis hærent; & videmur jure quodam nostro expectare, dum Tu illud studium crícos jurídicas jam pene fit & iqualore ob thúrum & oblitteratum, inter paucos alios excolas, atque in ufu hominemque prístinum reducias. Cujus instituti propósitique nulla me vestigia in hilce tuis *Digressionibus*, quæ nihil alius fere, quam Observationes Juris Humaniores, ut ipse quidem eas appallæt, continent, reperisse, non potui quin ægre ferre. Necio enim quid taciti argumenti hocce tuum de criticis silientium, in tali opere, pra æ ferre videatur, non effe tibi consilium, hanc docendi juris viam infiltere, quæ per examen omnium veteris Jurisprudentiae locorum in emen-
“don’t expect scholastic argumentations on the controversies of the masters or on profound legal perceptions or antinomies. Neither my nature, nor Huber’s nor our mental desires are inclined to arguments of that kind, especially at this time of convivial pleasure. But let us discuss our differences since it seems a good idea, even if we avoid the humanities and matters referring to classical literature. However, nothing prevents our speaking about our common scholarly interests. For I cannot think what is better for us to do under this plane tree which seems to me to be sacred to learned debate”. The others did not decline.

And so CRUSIUS proceeded. “Oh, my dear Huber, I cannot easily say how agreeable it has been for me to notice from your Digressiones, that you are not one of those who daily push at us systematic summaries and compendia of jurisprudence, which are nothing so much as dispendia (squanderings) of that most sacred science, and it is in using these, that these persons instruct, or rather injure, the young men entrusted to their care. But I admit that I did not expect that I should, in all four books of your literary observations [on the law], not come across a single instance of emending the faulty texts in our law. Since you cannot be unaware that there are still very many passages which are not resolved because of disgraceful errors in the transcribing, we expect, as of right, that you should be one of the few to cherish that study of legal criticism which has already been almost covered over and blotted out by rust and filth and that you should restore it to its former use and honour. I could not but take it ill that in this Digressiones of yours, which contains almost nothing other than Literary Observations on the Law, as you yourself have entitled it, I found no trace of such a plan or proposition. For I do not know what tacit argument this silence of yours on textual criticism in such a work is presenting, except that it is not your plan to institute this method of teaching law, which consists in the emending of corrupt texts by means of an examination of all the texts of ancient jurisprudence

Institutes) which he declares was the source for his Digressiones. These were lectures given in the year before the Dialogue and the reference is possibly to as yet unpublished lecture notes, given in conjunction with his disputations and collegia. The first part of the Praelectiones (on the Institutes) first appeared in print in 1678. For more details see Feenstra BGNR Franeker, p 50, nos. 136 and 137, 140-142, p 62, nos. 179-181 and the references there cited.

14 For a comment on such “friendly” arguments, see Peter Stein in “Legal Humanism and Legal Science”, Tijdschrift, 54 (1986), p 305: “One reason for the obvious distaste that many practitioners felt for the academic humanists was their rudeness and acrimony to each other. Jurists are trained to disagree, to argue on opposing sides, but they are trained to refute the opposing side by the force of their reasoning and the weight of the authorities they can call on rather than by the strength of their invective. . . . Since a lawyer may be taking one position today and a different position next week, he must avoid being personal. The humanists accepted none of these conventions and they hurled as much abuse on each other as they did on Tribonian or Bartolus.” Stein was writing of the 16th century. His remarks apply equally, if not more, to the 17th Century. However the theologians far exceeded the academic humanists when it came to virulent attacks on their opponents.

15 In the second part of the Digressiones which was added in the 1688 edition, and is not linked to the Institutes, textual criticism does feature, eg Pars. II, lib. I cap. xxiv, p 551.
Iuris, Dialogus.

emendatione textuum depravatorum definit, ac ita nobis antiquam Artem nitori suo genuino integritatique restituit. Nam si hoc in iis meditationibus, quae pertinunt ad politiores litteras cum Iurisprudentia conjungendas, faciendum non putasti, quando & ubi fas sit hoc æ tepraetolari, mihi quidem sperare difficile est. Eaque res tanto minus expe- etata mihi contingit, quod jam olim, cum adhuc in genere Historico veriarere, criticis emendandi conatibus non abiti- nueris, si quidem recordor, te in differentiationibus, quas edi- disti de Temporibus ante Cyrum observasti, nec non corre- xistis vitae in locis quibusdam Diodori Siculi atque Orosii, quae nec cum ipsis nec cum aliis incorruptis rerum gestarum monumentis convenire judicabas. Deinde vero cunctis bona- mentis amatoribus optimæ spei signum extulit videbaris, in oratione, quam habuisti, cum ex Eloquentia & Historia- rum Cathedra foemenito in Iuridicam transire. Id enim unice in univerfa Oratone illa agere videris, ut conjuncti- nem politioris criticæque litterature cum Juris prudentiæ, itu- dias inculcaris. Prone de gaudo, hanc occasionem mihi ob- latam esse, quia confliti hujus occasionem de te ipso cognos- cerem, sperans futurum, ut quidvis potius quam inuituri adeo praecari mutationem in causa tibi fuisset intelligam.

Duce res sunt, ita regerebam, Clarissime Cruft, ad quas responsum debo; Prima quod tibi mihique gratularis, me potius edidisti Digestiones à Praelectionibus Iustiniensis, quam systematicum Institutionis Imperatoris, Compen- dium; Alterum, quod in Digestionibus meis ipse tum de criticis observationibus, quae huius operi in primis convenire viderentur, fefellerim. Quamquam autem contenu- tus esse poteram eæ laude, quam mihi in invidiam systema- tum & compendiorum adscripti, habeo tamen rationes, quae nec haec in parte tibi penitus adfentiri possum vel dc-
and which thus restores for us this ancient science to its true splendour and integrity. For if you did not think that this should be done in those thoughts which concern classical literature to be joined to jurisprudence, it is difficult for me indeed to envisage when and where it will be right for this to be expected from you. I was quite expecting this to feature, because previously, when you were still involved with historical studies, you did not refrain from attempts at critical emendation. If indeed I remember rightly in the dissertations that you published De Temporibis ante Cyrum (On the times before Cyrus)\(^\text{16}\), you observed and also corrected flaws in certain texts of Diodorus Siculus and Orosius which you judged did not accord with themselves nor with other uncorrupted records of past events. And then in the oration that you delivered when you transferred officially from the Chair of Rhetoric and History to that of Law, you seemed to put out a most hopeful signal to all lovers of good learning. For to an exceptional degree in the whole of that speech you declared that you would emphatically impress on students the link between polite and critical literature and legal science.\(^\text{17}\) And so I rejoice that this opportunity has come my way so that I may learn the reasons for your policy from you personally in the hopes that it will turn out that I understand anything other than that, in your case, there has been a change regarding that very excellent practice.''

I replied as follows: “Dear Professor Crusius, there are two points to which I ought to reply. First, that you are happy for yourself and for me because I published the Digressiones a Praelectionibus Justinianis rather than a systematic compendium of the Imperial Institutes. Secondly, that in my Digressiones I disappointed your hope of critical comments which would seem to be especially appropriate to such a work. Although I could be content with that praise, which you attribute to me on the grounds of my [supposed] dislike of systems and compendia, I have, however, my reasons why I neither can nor ought to agree fully with you in this regard.”

\(^\text{16}\) The Tractatus de Temporibus ante Cyrum first appeared in Huber’s De genuine aetate Assyriorum et regno Medonum disputationes VII, Franeker, 1662. A slightly different version of this work appeared in 1663. The Tractatus, in an altered version, is included in Huber’s Institutiones Historiae Civilis, Franeker, 1692, 1698, 1703. See Feenstra BGNR Franeker, p 48 f, nos. 130 and 131, p 92 f, nos. 274–278. See Huber’s Institutiones Historiae Civilis p 31b for a critical comment on Orosius; ibid, p 34a for a similar discussion of Diodorus Siculus.

\(^\text{17}\) The reference here is to Huber’s inaugural address, of 19th September 1665, when he formally assumed the chair of Law at Franeker. It was entitled Oratio inauguralis, habita Franekerææ cum ex ordinaria Eloquentiae et Historiarum cathedrae solemniter in Iuridicam deducentur, ex historia iuris romanæ utriquiæ studiæ conjunctionem exhibeunt. See the Commentary Chapter IV.3., Feenstra BGNR Franeker, pp 49-50, nos. 133 and 134.
De Ratione docendi & discendi.

beam. Paranti de hoc instituto sententiam meam pluribus verbis exponere, Bokelmannus, comprehensa leniter manu mea; Quin tu, mi Hubere, quod ad hoc caput attendas, inquit, huic homini cede suas partes; nam id ego meliori juris vindicare mihi debeo, ad cuius invidiam vel contemptum, hoc orationis Crucianæ pars, si quid inde contemptus invidiaque potest oriri, in primis redundat. Novinum nos inter nos Crucianus & ego, atque libertatem oris animique ejus, utpote Zutphanenfus ego vicinus Westphalus, & jam Collea familiarìque amicus tam bene persequam habeo, ut nec ego cauñam irascendi habeam, quod coram instituta mea vituperat, nec ille sit ægere laturus; si pari libertate rationes ejus refellam; libentius id Te communi amico praefente & arbitro facturus, quam si cum iolo ipso vel seorlim apud ignotos aut minus intelligentes faciendum foret. Aequum Bokelmannus petere videbatur, ideoque & cum defidero meo celi respondendo Cruciano transiendum putavi, donec illi de compendio & syllebatibus absoluisset, id unum stipulatus, ut quam æquitatem animi praecerret Bokelmannus, hanc utque in orationis progressi fideliter praefaret. Utraque blanda cum risu annuente.

Si quid mihi, perteit Bokelmannus, fuccependum habe causâ foret, non immerito quieris possès, sparsos jam pridem nimis odioflos in vulgus rumores & pene jam in dictiorum abiusc; compendium Bokelmanni nihil esse quam dispersium, forte an etiam conquererit, nisi eventus me compendiumque meum aboloveret, omnemque dolendi cauñam publici aplausus frequentiæque gloria preciderit; nam fas est, opinor, magnifice loqui adversus contemnentes & caullumias invidientium compelcere jactantia? nec scio, an non brevi continuo auditorem meorum flagitationibus, de compendio meo typis publicis evulgando, morem gerere de-
As I was preparing to expound and expand my views on this practice, BÖCKELMANN, pressing my hand gently, said “Why do not you, friend Huber, surrender your rôle as far as this topic goes to me? For it is I who have the greater right to defend myself, as this part of Crusius’ speech is in particular overflowing with envy and contempt of me, if indeed any contempt and envy can arise therefrom. Crusius and I know each other, as he is a man from Zutphen and I am a neighbour from Westphalia and for some time a colleague and close friend, I know his frankness of word and thought so well that I have no cause for anger because he finds fault to my face with my practice, nor will he be resentful if I rebut his arguments with equal frankness. I shall do this more freely with you, a mutual friend, being present and acting as arbitrator, than if it had to be done with Crusius alone or somewhat apart in front of ignorant or less understanding persons.”

BÖCKELMANN’S request seemed fair enough and so I gave way and I thought that my desire to reply to Crusius should be left over until they had come to a decision about compendia and systems. I made one stipulation, namely that in the course of the debate both should steadfastly display that fairness of mind that Böckelmann displayed. Both nodded with charming smiles.

BÖCKELMANN began. “If there were anything in this case which should anger me, I could not unjustly complain that already exceedingly hateful rumours have been spread among the common herd and it has now almost developed into an epigram that “Böckelmann’s compendium (epitome) is nothing other than a dispendium (squandering)”. Perhaps I would also have grounds for complaint if the outcome did not clear me and my compendium, and if the glory of public approbation and support did not remove all cause of my grievance. For it is right, I think, to speak proudly against those who speak contemptuously and to suppress with high praise the calumny of the envious. And I rather think that within a short time I ought to gratify my students’ continuous demands that I publish my compendium in print.

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18 See the Commentary Chapter V.2.3.
19 For further comment on Compendium and Dispendium see the Commentary Chapter V.1.3.2 and Böckelmann’s Praefatio to his Compendium p[23].
20 According to Ahsmann-Feenstra BGNR Leiden, p 61, no. 32, the first edition of Böckelmann’s Compendium Institutionum Justiniani was published in Leiden by Felix Lopez in 1679. It was very popular and was followed by numerous other editions. However at the time our Dialogue is supposed to have taken place (July or August 1671) it could only have been in draft form and used in private lessons. This tends to argue against the 1671 date. Böckelmann is here talking of publishing shortly. However, it will be remembered that the Dialogue was first published in 1684, and by then the Compendium was certainly in print.
Iuris, Dialogus.


Quando res eo deducit esse, aëbat Crusius, age, non disïplicet conditio, quid enim iucundius, aut faciulus mihi, quam agere cauam, quæ tantopere ad animum meum pertinent, & eloqui apud amiciiimos homines, quod jam olim me coquit & versus sub pectore fixum! Nihil enim minus agitur in hac disïpceptione, quam de causis corruptæ jurisprudentiae, quorum ego principem maximeque in oculos incurrentem hanc compendiariam docendi rationem effe, non verear profiteri. Credo, non vocabitis in controversiam, Artis nostræ gloriae à patrum nostrorum memoria vehementer esse diminutam. Quis enim nostrum fine dolore animi potest comparare nomina studiaque eorum, qui superiori século juss illufrarant, cum his qui hodie familiam inter jurisconsultus ducere creduntur? Vere dicere possum, Juris Artem his diebus nihil quam supervacuam atque alienam ab omni
But till now, dear Professor Crusius, I have received nothing [from you] but destructive remarks and the utmost derision and mocking concerning compendia and the systematic method of teaching law which we are using and I have not been able to decide properly whether it is your intention to eliminate all kinds of compendia and systems, or whether there is something in my little book which displeases you and which you want changed to a policy of more rigorous teaching? But if we decide to deal with this question, I think you must explain the whole of your view on this type of textbook and say how you think one must go about teaching youth. Then, since you are assuming the rôle of plaintiff and I am upholding that of defendant, the situation will not arise where the case for the defence is begun before the indictment has been appropriately, specifically and clearly stated and brought to a conclusion, if indeed we have adopted from our authors of systems these three steps in a proposed indictment. Thereafter I shall, as best as I can, raise the counter arguments and, if it seems good to you, we shall in that way submit the case to these two arbitrators.

When that point was reached, CRUSIUS said: “Come on then, the proposal does not displease me, for what could be pleasanter or easier for me than to argue a case which is so close to my heart and to say before my most amiable colleagues what for a long time already torments and, fixed deep in my heart, racks me. For in this debate nothing less is being discussed than the reasons for the decline of legal science, and I am not afraid to state that the chief and most obvious reason for that is this method of teaching by compendia. I’m sure that you will not dispute the fact that the glory of our discipline is much less than it was in the time of our fathers. Which of us can, without mental anguish, compare the names and scholarship of those who elucidated the law in the previous century with those who today are believed to head the legal profession? I can truly say that in these days the science of law appears as nothing other than empty hair-splitting, far removed from the seriousness of the subject.”


O Tite! Si quid ego adier, curam levasse,
Quae nunc te coquit, et versat in pectore fixo
Equis errit pretii?

(Oh Titus, if I can help in any way, or lighten the care Which fixed deep in your heart now torments and racks you What will be my reward?)

These words from Ennius’ Annales, 10.340, were addressed by a shepherd to Titus Quinctius Flaminius, consul BC 198, who was waiting anxiously to attack Philip of Macedon at Cynoscephalae. They appear at the beginning of Cicero’s De Senectute, 1.1 and are there addressed to Titus Pomponius Atticus.

22 This is a reference to Gerard Noodt’s inaugural lecture De causis corruptae jurisprudentiae, which was delivered in Utrecht on 12 February, 1684, Opera Omnia 1724 Leiden. See the Commentary Chapter VI.2.2.1. van den Bergh Noodt, p 161 ff; Alismann-Feenstra BGNR Leiden, p 178, no. 427.

23 Cf. Noodt’s inaugural oration p 616, . . . cur, ubi priora tempora nominibus tot excellentium jurisconsultorum inclangunt, nonnullum potissimum obscurum atque ignobile, vix parumum lumine et gloria illustretur. (Why, when earlier times were celebrated by the names of so many eminent jurists, are our times in particular dark and undistinguished, and illuminated by the light and glory of only a few?)
De Ratione docendi & discendi

omni non solum elegantia doctrinâque, sed & à communi ufu preferre subtilitatem. Quam nobilissimae disciplinae contumeliam non utique ipstius inkeptae, sed inceptiae non adsequentium ego quidem imputandam cenice. Quid enim ciff, quod impediret nos ad candum Artis perfectionem eniti, modo eadem contentionie viaque procederemus? At nunc studioji juris beatos fe valdeque eruditos credunt, si brevia, qua venditantur, Artis compendia vix animo comprehenderint, & definitionem partitionumque summam & actio-

num solennia carmina memoriae mandaverint, arteaque omnia pricinpe & latè diffusam in angustias tabellas pau-
casque & fape ineptas quaestiones coarctaverint. Interim si quis siglurum & notarum aenigmata, si interpunctiones, si
Glossas, si varias lectiones judicer atque discernat, si lacu-
nas librorum juris legumque lapsa, si viatiata, infecta,
luxata detergat & refituat, si Leges, plebisicta, Senator Consula, formulaque actionum concinnet & fugitiva retra-
hat, id omne nimis anxiæ fluentque diligentizæ effic oppinantur. Nec ita vulgus tantum imperita juventutis per inertiam aut
ignorantiam, sed etiam Professores & mercedis aut ambitio-

ne frequentis auditorii in tranvertium aguntur, ut nihil pen-
fi habcant, animos juvenilia credulitate fluxos atque obnoxios
corrumpere, pulcherrimamque artem subvertere & parentum
vota frustrari. Hi sunt, qui fatis esse jactant, si vel etas
quodie horas studiosi libris incumbant; Id enim spatium
temporis sufficere abolvendo penso quotidiano, quod illis
è compendio preceptoris sui secundum ordinem lectionem
privatarum injungitur. Quid denique frequentius auditur,
quam viam illam veterem ac regiam, asperam & prærumpam,
etiam obcuram & multus anfractibus detortam, eoqel jon-
gam ac molefiam effec; illam à paucis, quamquam fedulis
atque ingeniosis vix multâ lucubratione & immenso labore
vinci.
not only from any elegance and learning but also from every-day practice. I indeed think that the contumely heaped upon our most noble discipline is certainly not to be attributed to its inherent triviality24 but to the blameworthy ignorance of those who do not comprehend it. For what is there which prevents our working our way up to that same perfection of our discipline as our predecessors, provided we proceed with the same rigour and along the same path. But nowadays students of law believe they are fortunate and truly learned if they have barely mastered brief (for it is as such that they are recommended) compendia on the subject and have committed to memory the main points of definitions and partitions and the set formulae of actions, and have compressed the chief of all sciences and one with an extensive compass into a few small notes, together with often silly questions.25 Meanwhile, if anyone were to critically examine and distinguish between the enigmas of sigla and marks, punctuation, glosses and variant readings, if anyone were to fill in the lacunae in the books of law and in the individual fragments, if anyone were to identify and restore faults, omissions and misplacements, if anyone were to reconcile laws, plebiscites, senatus consulta and the formulae of actions, and recover the missing words, this is all considered to be excessively solicitous and stupid diligence. 26

Not only are the ordinary mass of inexperienced youths led astray thus by their laziness and ignorance but also the professors by the hope of fees27 or when touting for well-attended classes. As a result they attach no importance to corrupting the unstable and impressionable minds of credulous youths, to subverting a most excellent discipline and to rendering void the desires of the parents. It is these men who boast that it is enough if the students spend a mere two hours daily at their books for, they assert, that space of time suffices for performing the daily task which is enjoined upon them from their master’s compendium in accordance with the programme of private lessons. Finally, what is more often heard than that the old and royal road is rough and steep, even dark and twisting with many curves and bends and therefore it is long and difficult; such a road is successfully traversed by few, albeit they are the hardworking and talented, but only with much burning of midnight oil and immense toil.

24 Cf. Noodt’s inaugural oration p 616 . . . videri supervacuam atque alienam ab omni non solum doctrina atque elegantia sed a communi quoque non ac vita, subtilitatem praefere. (. . . that it seems to present empty subtlety and be completely removed not only from all learning and elegance but also from practice and everyday life.)

25 Cf. Noodt’s inaugural oration. This passage merits direct citation from p 619 . . . ita se valde enditos beatosque existimant, si quae brevia Artis compendia vix comprehenderint; et definitionum ac partitionum actionumque solemnia carmina memoriae mandaverint; Atteneque late porrectam, in augustas tabellas, pascasque et saepè ineptas quæstiones coeptaverint. (Thus indeed they think that they are truly learned and fortunate if they have barely mastered short compendia of the science and have committed to memory the formal words of definitions, distinctions and actions. They have compressed a widely extending science into short notes and a few and often silly questions.)

26 This is a very much abbreviated version of a long passage in Noodt’s inaugural oration p 619 which deals more fully with each of the problems associated with textual criticism.

27 Cf. Noodt’s inaugural oration p 619 . . . venum multi aut in inertia aut ignorantia aut spe mercedis et ambitione frequentis audienti ad se transvere apudurur; ut nihil peni habeant . . . animos juvenilis endulitate fluxos atque obscurios corrumpere, in primis parentum vota et republicae subsidia frustrari. . . . (But many professors, either from laziness or ignorance or the hope of gain or the desire for well attended classes, are so perverse that they think it of no importance . . . to corrupt the unstable and impressionable minds of the credulous youth, in particular to frustrate the desires of the parents and the interest of the state.)
9 Iuris, Dialogus.

vinci. Manc autem compendiariam, planam, simplicem, rectam, omnibus patere, ac ne segnibus quidem recordibusque inviam aut inferabiliem esse, eaque ad jurisprudentiam brevissime certissimeque perveniri. Ego vero censeo, plures illa nostra via praeclamam scientiam obtinuissi, quam qui vulgarem & compendiariam inicere, qui etiam tum mihi, cum in Portum fium pervenerunt ac ipsera confecuti sunt, naufragium fecisse videntur. Scilicet, fallit ambiguitas vocabuli; ea fletatio dicitur, ea mora est, & quod compendium vocatur, Sapientia damnun est. Quid sitantoperer Compendia expetant, ea privatum legit & habeant Studiosi, Antececessores publice privatimque altius spirent; & positis his in Institutionum narratione totius operis five ollibus five membris, post deinde aptā & diligenti & accurata Pandeatarum & Codicis interpretatione, tanquam nervis ac thoris masculum illum prudentiae vigorem confringant pariter atque intendant. Verum quia plerisque pernuit tam præfantis disciplinæ, eæ angustiis inclusa Jurisprudentia est, quæ quibus ipsis, quæ tam eximiae disciplinae deinceps futurum arbitramini? Atque utinam exempla deessent huic tam justo metui? Quid Livium immittit præter Annæi Flori, quod Dionem Cassium, præter Xiphilini epitomen? Si Polybius, si Trogum Pompeum, si alios non contraxissent aut exerpsissent studiosi homines, fortasse integris uteremur, neque in antiquarum rerum memoriam tanta hiatus pateret. Eloquentiam videamus, quid cæm perdidit, nonne compendiaria, per quam eloquentiae laudem affeclant, qui nec dum benè loqui didicerunt? Quid multis? ipsum Papiniannum, Paulum, Ulpianum, quid abitur, aut accidit, nonne Compendiaria Justiniani? Quod si illa veterum extarent scripta, quantum ad rem litterariam conferrent, quantum ad publicum, quis ignorare poterit; M m m m qui
On the other hand we hear that the road with compendia is smooth, simple and straight, open to all and not inaccessible and insuperable even for the lazy and unintelligent and by it one comes most quickly and surely to knowledge of the law. I indeed think that more men have achieved outstanding knowledge by my route than those who entered on the common compendiary route for they seem to me to have suffered shipwreck when they have come to their harbour and have achieved their hopes, for the ambiguity of words deceives them; what is called speed is actually delay and what is called a compendious summary is loss of wisdom. But if it is the students who so greatly desire compendia, let them get them and read them privately. Let the professors aspire higher both in their public lectures and in their private lessons. And having set up as it were the skeleton or limbs of the whole work in a detailed exposition of the Institutes, let them then afterwards by an appropriate, careful and accurate interpretation of the Pandects and Codex, as it were the sinews and muscles bind together and at the same time extend the virile strength of legal science.

But because most students dislike such an excellent programme, legal science is, for that reason, confined within narrow bounds. As a result what do you yourselves think will be the future of such an attenuated discipline? Would that examples of this most justified fear were lacking! What destroyed Livy but the epitome of Annaeus Florus; what destroyed Dio Cassius but the epitome of Xiphilinus? If learned scholars had not abridged or excerpted Polybius, Trogus Pompeius and others, perhaps we would be enjoying them in their entirety and so great a lacuna would not lie gaping in our records of ancient history. Let us consider rhetoric; what has destroyed it? Surely, it is that compendiary study by means of which those who have not yet learned to express themselves clearly, aspire to the praise of eloquence. What need of many words? What was it that destroyed and cut down Papinian, Paul and Ulpian but the compendiary summary of Justinian? No-one who realises

28 See Böckelmann’s Praefatio to his Compendium passim; the Commentary Chapter V.1.3 and plates VIII and IX.
29 This passage from Scilicet to damnum est does not appear in the 1684 edition. Cf. Noodt p 621. Scilicet, fallit vos ambiguitas vocabuli, quae festinatio dicitur, mora est, quod compendium vocatur, sapientiae damnum est. (Indeed the ambiguity of words deceive you; what is called speed is delay, what is called a compendious summary is loss of wisdom.)

30 Cf. Noodt’s inaugural oration p 621 plane legat et habeat illa but Noodt advises the students (not the professors as here) to spirare altius (aspire higher).
31 The passage from et positis to intendant does not appear in the 1684 edition. But compare Noodt’s inaugural p 621 quin positis exarratone Institutionum totius operis sine ossibus sine membris, post deinde Pandectarum et Codicis lectione apta, diligentia, accuratia, tamquam nervis ac thoris, masculum illum prudentiae vigorem constringat pariter atque intendat. (but having set up as it were the skeleton or limbs of the whole work in a detailed exposition of the Institutes, let them then afterwards by an appropriate, careful and accurate interpretation of the Pandects and Codex, as it were the sinews and muscles, bind together and at the same time extend the virile strength of legal science.) Here, too, Huber takes words which Noodt directs to the student and applies them to the Antecessores. Note Huber replaces the lectione of Noodt with interpretatione. The rest of Crusius’ speech is an abridged version of Noodt p 621, Sed quid dissimulam to luci restituta sunt. Crusius/Huber omits a passage criticising Justinian which leads into the remarks about the benefits obtained from discovering the fragments of Ulpian, Paul etc.

*† Scilicet . . . damnum est.
*† et positis . . . intendant.
De Ratione docendi & discendi
qui intelligit, quantum potuerint erudita praefare ingenia, postquam illa Theodofiani Codicis, illa Licinii Rufini, Ulpiani, Pauli, & Caii fragmenta luci reftituta sunt. Hæc co pertinent, Viri Clarissimi, ut veras corruptae jurisprudentiae causas, simul quibus viis ea constituere, his & florentem facile retineri & omiffam reftitui posse, intelligatis. Atque hæc quidem summa fuit eorum, quæ Cruüius, majore copia verborum pro instituto suo, differebat.

Ad quæ Bokelmannus: Satis fecisti, inquit, Candidissime Cruüius, postulatione nontræ; neque mutatum controversyfic nostræ statum, ab eo, quod inde ab initio profellus es, animadverto. Proinde hæc eto summa quaestiti nostri, reftene Tu corruptæ collapsæque jurisprudentiae causas assignaveris hanc systematicam seu compendiariam institutionem, quæ nunc in Scholis Juridicis utimur, & cujus me secatorem autoremque, denique, sic enim tibi placet, Reum effe profiteor, siquidem maleficium id oportet effe non tralatium, quod inertia, avaritia ac ambitionis macula deforme, corrumpente jurisprudentiae causam praebuerit, ac etiamnum præfert. Denique, id animadverterendum erit, an ita faciendum fit, quemadmodum tu præcepiisti, ut si quis omnino sibi necellarium putet ejusmodi compendium, quod definitiones partitionisque rerum, quæ sunt in Arte Juris, actionumque solennia tradat, illud sibi privatis habeat ac legat; Antecessores autem publice privatimque ne se se ad talia demittant; nihiloritant, idque vix, in Institutionibus enarrantis. Ubi vero ad Pandectarum & Codicis interpretationem transferint, procul habitis id genus brevioris, ipsos veteres integros & illibatos aggreditantur. Ego ita exstimo tibique consentio, Cruüius, non effe perfectum jurisconsultum, qui se veteribus, hoc eft, ipsis Pandectarum & Principum Constitutionibus per se totique
how much learned thinking has been able to advance after those fragments of the Theodosian Code, of Licinius Rufinus, Ulpian, Paul and Gaius were brought to light, can be unaware how much these ancient writings would confer on literature, how much on society, if they were still extant. This all points to the fact, my learned friends, that you should understand the true causes of the corruption of legal science and also that by the same means as it was established, our legal science can easily be retained where it is in good condition and be restored where it has been neglected."

And this, in fact, was the essence of what Crusius said at great length, as was his custom.

To this BÖCKELMANN replied: “You, Professor Crusius, have said enough for our initial statement of the case and I notice that the basis of our dispute has not been changed from that which you stated right at the beginning. Then let these be the chief points of our enquiry. Are you right in attributing the cause of the corruption and collapse of legal science to this instruction by means of the systems or compendia which we now use in the law schools and of which, I admit, I am the supporter and promoter, and thus, if you are agreeable, the defendant in the case? Indeed that offence ought not to be carried forward from year to year, because, aggravated by the taint of laziness, greed and touting for popularity, it has provided the cause of corrupting legal science and even now provides it still. Finally, it will have to be investigated whether we must act exactly according to your recommendations so that if anyone thinks that a compendium of this kind is absolutely necessary for him because it provides the definitions and partitions of the topics which are encountered in the science of law, as well as the formulae for actions, he should acquire this for himself and read it privately. But the professors should not sink to such, either in public lectures or private lessons, except perhaps, and that only occasionally, in treating of the Institutes. But when they pass on to an exposition of the Pandects and the Codex, keeping that kind of summary at arms’ length, they should tackle the ancient writings in their entirety and undiminished.

Now this is what I think and I agree with you, Crusius, that a jurist cannot be fully educated if he does not devote himself
**II**

**Juris, Dialogus.**

que legendis evolvendisque non detat, sed nego id esse tentandum, priusquam paratitatis notitia omnium librorum juris antiqui, expropmta memoria judicioque comprehenfat sit. Nec arbitror ejus fendentiae te fore, qualis Pandectae Principiumque Constitutiones auditu primo ab adolescentibus & disciplinae juridicae ignaris intelligi posseunt. Nims enim manifesta omnium qui jus didicerunt, quique medio in curi defecer, vel qui defunctorii id aliquando inspexerunt, experientia te refutaret. Infinita rerum actionumque humanarum varietas superans etiam Graecae, nedum Latine Linguae divitiae, fecit, ut antiqui Artis hujus conditores, aliarum more disciplinarum, nativos plurium verborum usus ad diversas abstrac tasque significationes transverterint. Quis fine eorum, ut vocantur, Artis terminorum pravia notitia, quibus referata sunt veterum nostrorum scripta, gravissimas & difficillimas eorum comminationes intelligat, quis species factorum ab illis subtiliter involuteque subducas, si verba necum singula percipiant, memoria judicioque subigere, nedum explicare & applicare posset. Nonne id perinde foret, ac si declament (que te comparatio delecat) antequam Latine loqui didicileant? Ne dicam eos, quibus summe rerum differentia, perfonarum necesstitudines, obligationum vincula, successionem judiciarumque ordo non innotuerunt, eos intricatissima de his rebus disputaciones veteribus occurrentes nihilo magis intellecturos, quam quilibet nostrum enigmata vel arcana mathematicum, quibus nuncum imbuti fuerimus, perciaperet. Necio, quae illa tua Crysti, aliorumque paucorum interepies, ut omnibus in universum comprehendis adeo sitis infestis, quibus nullanquam aetas, nullus autcor erudiendi juvenstem carere se posse credit. Ipsae Inflimiarius jura populi Romani haud altere se tradi posse judicavit, nisi primo levi ac simplici viae, posse deinde dili-gen-
to the reading and unravelling of the ancient writings, that is the actual Pandects and the Constitutions of the Emperors in their entirety, but I say that this is not to be attempted before a summarised knowledge of all the books of ancient law has been understood, and committed to memory for easy recall and assessment. And I do not think that you will be of the opinion that the Pandects and Constitutions of the Emperors can be understood at a first hearing by adolescents who are moreover ignorant of legal learning. For you would be refuted by the exceedingly clear experience of all those who have studied law but have dropped out in mid-course or who have at some time looked into it cursorily. The infinite variety of topics and of human actions, exceeding the riches of the Greek, much less of the Latin, language, brought it about that the ancient founders of this discipline, as was the custom in other disciplines, applied the original use of many words to different and abstract meanings. Without previous knowledge of the technical terms (termini Artis) as they are called, with which the writings of our ancient authors are packed who would understand their most weighty and very difficult treatises? Who could commit to memory and assessment, far less sort out and apply, the types of acts introduced subtly and obscurely by them, if he does not even understand individual words? Surely it would be (and I know you’ll like this comparison) just as if students were practising declamations before they had learned to speak Latin. Let me not say that those to whom the major classification of things, the relationships of persons, the bonds of obligations and the order of succession or of trials are unknown, will no more understand the intricate debates on these matters which occur in the old writers, than any one of us would appreciate the enigmas and secrets of mathematics in which we have never been steeped.

I do not understand this intemperate attitude of yours, Crusius, and of a few others. Why are you so hostile to all compendia in general? At no period ever did any teacher of young men believe that he could do without such. The great Justinian\textsuperscript{32} considered that the law of the Roman people could only be transmitted to posterity by him, if individual topics were covered first in a light and simple way and then thereafter by a

\textsuperscript{32} The following passage and several subsequent passages refer in summary to the Emperor Justinian’s views on education as expressed primarily in the \textit{Constitutio Omnen} as well as the \textit{Constitutiones Deo Auctore} and \textit{Tanta}. Huber does not cite Justinian directly but adverts to his statements, sometimes using the same words, sometimes paraphrases.
De Ratione docendi & descendi

gentissimâ atque exactissimâ interpretatione singula comple-
ceretur. Quin cum prudentissimus Imperator commen-
tarios ad Pandectas Codicumque sub falsi peñâ feribi vetuerit, 
Paratilia tamen, id est, singulorum titulorum summam & 
compendia, quibus non posse carere diffentes intelligebat, 
illis sulpeditari permittit: Contra quâm vos, præcis hit 
jeiectisque compendiis, tyriones vestros ad ipfa, que vocat Cæ-
far, immensa volumina commentanda productis. Porro 
quid ego hic de Aristotele, Cicerone, Quintiliano alii-
que hominibus doctissimis auctoritates & testimonia profe-
ram, quid de hoc & superiore seculo narrém; cum nihil sit 
manifestius, quam id egisse omnes à compendiis ut inciperent 
aliterque in ulla studiorum disciplinâ facere folium esse nemi-
nem. Tu adoleñentes nullis, inquam, preparatos initis 
gravisìma juris antiqui volumina vis aggredi? Sic Me-
dicinae admovendos doce confellim totos Hippocratem atque 
Galenum evolvere; Philosophos Aristotelem atque Pla-
tonem ediscere, Rhetorices Historiæve studiós impenà 
veteris eloquentiae rerumque gestarum monumenta feraturi, 
Sine dubio pari, quâ nos, infamiâ dabis insignitos artifices 
compendiorum Historiae universalis & Systematum Rhetor-
icorum. Nemo pœîus de politiore literarû meritus erit, 
quam Johannes Gerardus Vossius, qui de omnibus huma-
nioris doctrinæ partibus compendiæ atque sytemata fecit, 
etiam de Arte Historica, quam ante cum nemo in Artis 
formam redigi posse præsumerat. Tibi quoque Theologi 
facere doctrinæ corruptores videbuntur, qui compendiæ & 
Systematisbus rudium adoleñentum animos ad diffuam re-
rum fãcrarum notitiam introductorum atque etiamnum in co-
dem instituto perpetuarunt. Quid mihi adevérûs hanc neces-
fitatem de Livio, de Trogo, de Dione, de Polybio nar-
ras, quaï breviarìs illi nobiles Auctores interitum adiíñent.
most diligent and precise interpretation. *Moreover, although that most sagacious emperor forbade, under the penalty for falsity, the writing of commentaries on the Pandects and Codex, nevertheless he permitted them to be provided with paratitla\textsuperscript{33}, that is summaries and compendia of the individual titles, for he realised that students could not do without these. Unlike you who, flatly refusing and rejecting compendia, lead your beginners to studying those “boundless”\textsuperscript{34} (as Justinian calls them) volumes.† Indeed, why should I here provide examples and evidence from Aristotle, Cicero, Quintilian and other most learned men? Why should I tell of this and the previous century? For nothing is more obvious than that everyone has used compendia as a beginning and that no one is accustomed to do otherwise in any programme of study. That’s why I say ‘Do you wish the young, without any initial preparation, to attack these most weighty volumes of the ancient law?’ Thus you would say, ‘Teach those who are to be trained in medicine right from the start to read Hippocrates and Galen in their entirety; teach philosophers to commit to memory Aristotle and Plato, and rhetoricians and students of history to examine in detail the boundless records of ancient rhetoric and ancient achievements.’\textsuperscript{35}

Without doubt you will label with the same ill repute as us, the distinguished authors of the compendia of universal history and the systems of rhetoricians. Do you say that no one will have deserved worse of the liberal arts than Gerardus Joannes Vossius\textsuperscript{36} who drew up compendia and systems of all aspects of the humanities, even of history which previously no one had thought could be reduced to the form of a discipline. To you also those theologians will appear as corrupters of sacred learning who have introduced to the minds of untutored youth the widespread learning in sacred writ by means of compendia and systems and even now they continue with the same practice. Why do you cite to me, in opposition to this necessity, Livy, Trogus, Dio and Polybius as if those noble authors had gone to their deaths because of summaries?

\*\*† Quis cum . . . commentanda prodeuis.

\textsuperscript{33} See Constitutio Tanta § 21.
\textsuperscript{34} Latin immensa, Constitutio Omnem § 1, ex tam immensa legum multitudine (from such a boundless multitude of laws).
\textsuperscript{35} Cf Oratio IV pp 95–96 Quis logicam, quis physicam aut moralem scientiam ex ipso Aristotele adolescentibus hodie tradendam putant, quis Medicinam doet in Academis ex Hippocrate vel Galeno . . . (who would today consider teaching young men logic or physics or ethics from Aristotle? who in the Universities teaches medicine from Hippocrates or Galen . . .?)
\textsuperscript{36} This eminent scholar’s name is Gerardus Joannes Vossius, not Johannes Gerardus Vossius as in the text. See further Rademaker Life and Work of G.J. Vossius.
Iuris, Dialogus.

Quid habent simile Compendia, de quibus nos loquimur; cum is, quibus antiqui Scriptores coartati sunt? An nos Digesta Codicemve contrahimus, ita ut Livins à Floro Dion à Xiphiino, Trogus à Justinio contracti fuerint Adeone Tu dividere nuncis compendia Notionum & regularum; quibus perceptis, Ars quaeque faciliis intelligi posset; ab epitomis, quibus ipsi liber angustà formà describuntur & exhibentur? Quanquam ego ne quidem studium faciendo tales epitomas damnare sulpineam, quibus sapientiis simos Viros intelligo ufos esse, multique etiamnum maximo cum fructu utuntur.

Etiam, me aut omnia fallunt, aut omnigenæ lectionis memoria definit in compendiariam rerum dictorumque notabilium, quæ legendo audiendoque percurrimus, intelligentiam. Quæ si meditando ruminandoque subiecta scripto comprehendam, verbiisque suorum Auctorum expressa consignataque fuerint, quæ præfior efficaciorque proficiendi, animoque res pulcherrimas imprimendi methodus excogitari posset, ego qui dem non intelligo. Etiam vero judicium, quod in omnium rerum humanarum doctrinae que generale longe maximis sciensus esse momenti, hoc modo accerrime validiiffeque exercetur & confirmetur. Quin etiam qui à fœ lecta percepisse aliam trahere & inculcare cupiunt, si, quæ memoria intellecuique complectuntur, ea in compendium dictonis redigere fuisque auditoribus succintè ob oculos exhibere non posse, quoque discipuli audita secum ipsi colligere & contrà recollere animoque recondere quæant, neueri quem res eadem latius explicare & ad usum applicare poterunt: Adeoque si qui in eo preceptorum auditoriisque gloriae ponunt, quod compendiarii non sunt, cædem operi licet; ad docendum diffendumque, pene dixeram, ineptos fæicateantur. Ego quidem nihil prius studiose, qui valido

M m m m 3
A Dialogue on the Method of Teaching and Learning Law

What do the compendia about which we are talking have in common with those summaries into which the ancient writers were compressed? Do we summarise the Digest and the Codex just as Livy was summarised by Florus, Dio by Xiphilinus and Trogus by Justinus? Do you not know how to distinguish the compendia of concepts and rules, by learning which a discipline can be more easily understood, from epitomes, where those actual books are copied and presented in an abridged form? Although I, for my part, would not even condemn the work of creating such epitomes and I know that wise men have used them and many even now use them with the greatest benefit.

37* For either I am completely wrong or my memory of all kinds of studying is reduced to a compendiary understanding of notable facts and comment, which we skim over in reading and listening to lectures. If information has been reflected upon and mused over, if it has been committed to writing, and expressed and recorded in the words of its authors, I, indeed, do not know what more expeditious and efficacious method of proceeding and of imprinting the most important ideas on the mind can be thought out. Also truly, judgement, which we know to be of the greatest moment in every kind of human activity and learning, is by this method most keenly and most effectively exercised and established. Moreover, if those who wish to pass on and inculcate into others what they themselves have read and learned cannot reduce what they have comprehended in its entirety in their memory and understanding to a concise wording and present it succinctly to the eyes of their students, the students also will not be able to remember what they have heard, reflect on their notes and lay it up in their minds and neither masters nor students will ever be able to explain those things fully or to apply them in practice. And so if any masters or students take pride in the fact that they are not workers with compendia (compendiarii), then they may, by the same token, confess that they are incompetent in teaching and (I had almost said) in learning. And indeed, before all else I urge my students

*↑ Etenim... putaverint (p 16).

37 The following lengthy passage (marked * to †, Etenim me aut omnia fallunt, (p 13) to supprindendum perdendumque putaverint (p 16) which was absent from the 1684 edition but which was added to the 1688 edition, is taken almost entirely from Huber’s Specimen philosophiae civilis, 1686. This passage was repeated in its entirety in Huber’s Opera Minora (1746) in the Praefatio p[7ff] to the reprint of Institutionis Republicae Libri Singulairis (see Feenstra BGNR Franeker, nos 219-220, pp 75-76). However, a section of 22 lines, pp [8–9], is omitted. It comes between orationis ut ebatur and Minrum est equidem. Sec p 14. Veen, in his footnote 63 (p 159) to his Exercitia says that this passage is adopted from the 1684 edition of the Dialogus. It actually does not feature in the 1684 edition. A careful collation of texts, however, suggests that it was first written for the Specimen in 1686. Later, in 1688, sentences and a paragraph relevant to Aristotelianism and Cartesianism were removed and the rest, with a linking sentence or two, was inserted into the 1688 Dialogus. In the Dialogus Huber is putting his own words into Böckelmann’s mouth and the Specimen provides evidence of this.
De Ratione docendi & discendi

peremptoriæ, ut ita loquar, difficere volunt, auctoru[m], quam compendia facere scriptorum, qui pleniora manu rest ipsis seculi necessarias tractant. Horatius, si unquam aliter homo quiquam sapientem rationem putavit, idem moner, Quicquid, precipies, esto brevis, inquit, nec metuit doctrinæ ierilitatem. Namque ubi cito dicta perceperint animi dociles, tunc omne supervacuum pleno de pectore manat, ut idem adhæverat. Quin doctissimos homines, maximos effe compendiorum, neque maiores ullos, quam qui bibliothecæ ambulantes vocantur, oportet, argumentumque praefantia huic instituti vel maxime præbet, quod ab omni antiquitate, quanto quisque minus ineptus sapientiæque videtur esse consummatoris, tanto majorem in dicendo scribendoque compendii habet rationem, ut olim Laconis & Homericus Neitor, qui 

magni fuere et maioribus iocibus, compendio sed efficacissimo rationis utebatur. Quod autem, Optime Cruis, ab eiusmodi Epitomis, insignium aliquot scriptorum clades laconaeque, summo cum orbis literati detrimento, caufam accepistis quereris, an auguraris, Mirum est equidem, hanc rationem non modo non deterruistis veteres a compendio eiusmodi faciendis & publicandis, sed eodem etiam, tot seculorum experiunt, tam et inde pesem oriri non fuisset convictos. Nam ut aliarum artium historiarumque epitomatores antiquos silentio præteream, inter Jurisconsultus ipsolque gravissimæ sapientiæ conditores non modo Hermogenianum epitomam scripsi fœle conflat, verum etiam, Paulum inter auctores Pandeatarum antefignanum Alfini Varus quadraginta libros Digestorum in epitomen re degniæ, idemque Involutionem fecisse de libris decem Labeonis posteriorum, inscriptiones excerptorum in Digestis loquentur; quæ tamen iplä opera principalia postquam erant excerpta, nihilominus salva integraque ad ætatem utque Justiniani,
who stoutly and resolutely, if I may say so, wish to learn, to make summaries of
the writers who deal over lengthily with material that it is necessary for them to
know. Horace\textsuperscript{38}, (indeed expressing the opinion of all wise men) gave the same
advice ‘Let whatever you teach’, he said, ‘be brief’ and he did not fear that his
words would fall on stony ground. For, as he himself avers, ‘when impressionable
minds grasp what is said concisely then everything that is unnecessary runs off
from the full mind’. For it is right that the most learned scholars should be the
greatest workers with compendia, and none more than those who are called
\textit{βιβλιοθήκας ἐμφυτως} (walking libraries) and it especially provides a justification
for the excellence of this practice that throughout all antiquity the more fittingly
and wisely a man appeared to speak and write, the more account he took of
brevity, in speaking and writing, as of old did the Spartans and Homer’s Nestor,
who used \textit{παυρα μεν ἀλλὰ μάλα λιγεος} (few words but spoke very clearly)\textsuperscript{39}.

Concerning your complaint, most excellent Crusius, or your guess, that the
destruction of the works of certain outstanding writers or the gaps therein, a
great loss to the world of letters, is caused by epitomes of this kind, is it not
indeed amazing that this reasoning not only did not deter the ancients from
composing and publishing epitomes of this sort but that these same ancients, with
the experience of so many generations behind them, were not convinced that so
great a bane arose therefrom? Now, to pass over in silence the ancient
epitomisers of the other arts and of history, it is agreed that among the jurists and
the actual founders of our most venerable jurisprudence not only Hermogenian
wrote epitomes but also Paul, one of the chief sources of the \textit{Pandects}, is said to
have reduced the 40 books of Alphenus Varus’ \textit{Digest} to one epitome; and
Javolenus did the same for the 10 books of Labeo’s \textit{Posteriores}, as is evident from
the inscriptions to the fragments in the \textit{Digest}. And we see that these original
works, after they were epitomised, nonetheless survived unharmed and intact,
right until

\begin{center}
\textit{Ars Poetica} 335 et seq.
\begin{flushright}
Quiquid praecipies, esto brevis, ut cito dicta
Percipiant animi dociles teneantque fideles
Omne supervacuum pleno de pectore manat.

Be brief in all your precepts: you will find
An epigram sticks in the hearer’s mind
While a long-winded lecture will be leaking
Out of his head, before you’ve finished speaking
\end{flushright}
\end{center}

\textcite{Horace, Ars Poetica} 335 et seq. Böckelmann cites these lines in his \textit{Compendium Institutionum Justiniani}, Amsterdam, 1710, at the end of his introductory \textit{Methodus Institutionum Imp. Justiniani}, [p 14]. Huber cited them in the \textit{Praefatio} i.e. address to the students, in the \textit{Positiones Iunii} 1682 and also in the \textit{Praefatio} of the \textit{Institutionis Reipublicae Liber Singulantis}; see Feenstra BGNR Franeker p 67, nos 191-196.

\textsuperscript{39} See Homer, \textit{Iliad} III, 214. However, this describes the words spoken by Menelaus, not Nestor. Nestor was known for his wisdom and eloquence. Menelaus for speaking briefly but effectively. See also \textit{Oratio} II, p 68.
Iuris, Dialogus.

Iliniani, qui omnia suppresse, ut volunt, per annos quadringentes & amplius, ex iisdem titulis capitum in Pandectis, remanissent videmus. Quanquam si autenticis scriptoribus componendorum instituto praecipue poterat, id ab ejusmodi metuendum fuisset epitomatoribus, qui doctrinam laudique universae opinionis veteris illos prolivioreque auctores, quos contrahebant, omnium hominum reputatione superabant. Ego vero nihil errare me putem, si Labeonis & Alfeni Vari scripta ab usu temporum Pauli & Iavoleni remotiora, ex quo à tantis viris contracta in oculos hominum reducita sunt, frequentius libentiusque à studiosis, quam prius, lecta fuisses dixer. Vulgaria quidem ingenia folis epitomis ut contenta fuerint, neminem tamen, qui studia ad animum pertinerent, extitisse credo, qui non è lectione componendorum ad ipsa veterum illorum majoraque scripta videnda & exploranda inflammaretur. Neque fane quod Hilligerus & Vinnius Donelium nostrum, alius Thuanum, feiplum Messerayus, alique multi alios hodieque contraxerunt, ullum adhuc periculum imaginari possum, quo ipsi Auctores illi è manibus hominum doctorum excul- tiantur minorique pretii, quam alias unquam, habebatur. Quin si quem id genus scriptorum compendia, diffendi voluptate afficiunt, aliter evenire non potest, quam ur, qui praefantiam operum illorum, quasi per transeuntiam vis- derint, in ipsa uique penetralia intimoque receffis & latifundia progrebs & exspatiai velint. Ceterum, quid inter antiquos aliquot præcipui scriptores, quorum adhuc integra compendia extant, (Iuris heic alia ratio est) grave detrimentum passì sunt, id ipsis epitomis accepto ferendum esse credam, ubi quæ causa populos omnes nationesque in Europae sedibus suis excitavit, urbesque & regiones ita evexit ac immutavit, ut plerumque ne nomina quidem superiunt, hanc.
the days of Justinian who suppressed, as they say, all the writings of jurists of the
past 400 and more years. However, if the use of compendia was prejudicial to the
original writers, surely the same fear would have threatened these epitomisers
who in the opinion of all men far exceed in learning and generally acknowledged
merit those ancient and more prolix writers whom they epitomised. I would
think I would in no way be wrong if I were to say that the writings of Labeo and
Alfenus Varus which were comparatively unrelated to the practice of the times of
Paul and Javolenus, by whom they were excerpted and re-introduced to scholars,
were thereafter read more often and more readily by students than previously.

In fact, although mediocre intelligences may have been content with the mere
epitomes, I am sure that there was no one with a love of learning who, after
reading the compendia, would not have been filled with a desire to see and
examine those actual longer works of the old writers. Now because in our day,
Hilliger and Vinnius have summarised our Donellus, someone else has done
Thuanus, Mezerayus has summarised his own work and many others have
done likewise, still I cannot conceive of any danger because of which those
authors would be discarded by scholars and would be considered of less value
than under other circumstances. Indeed, if compendia of that type of writer fill
anyone with the desire to learn, the only result can be that those who see the
excellence of these works as it were through a barred gate should wish to
proceed right to their centre and innermost recesses and to wander freely
through their broad expanses. But, I would believe that where some outstanding
ancient writers have suffered grievous harm, yet the fact their epitomes (the case
of law is different) have survived intact is a point to be added to the credit of
those epitomes. For I have discovered that the barbarian invasions which drove
all the peoples and nations of Europe from their homes, which so overturned and
changed cities and regions that generally not even their names survived,

40 Huber made “compendia” of his own works. The second edition of De Jure Civitatis, 1684,
Franeker, was summarised in his Institutionis Reipublicae liber singulatis which was first published in
Specimen Philosophiae Civilis, 1686. The Specimen contains excerpts from Aristotelian and Cartesian
philosophy and other writings for the benefit of students. Likewise, the Praelectiones (1678–1690) are
summarised in the Positiones Juris, 1682, and Hecodynamie Rechtsgeleertheit (1686) in the Beginsselen der
Rechtleunde (1684). See Veen Exequita, p 142 ff; ibid Recht en Nut p 183 ff; Feenstra BGNR Franeker p 75,
no 219-221; p 76, nos 222-224; p 94, no 280; p 73, nos 209-210.
De Ratione docendi & discendi

hanc ad libros manuscriptos abolendos minuendosque apud gentes barbaricas, jure bellii in humana divinaque omnia grandissantes, non suffecisse cognovero; aut si alii Autores, quorum nulla suae compendia, clementius habitos esse magisque integros, ad nos pervenisse, compertum est; siue eadem belli clade cum tanta fuerit involuta, siue Christiani veteres religiosae infestgentilis sapientiae monumentis, quod belli incendium evaserat, id imprudenti zelo piace in tempore supprimendum perdendumque putaverint. Ne Justiniani quidem Caesaris propitium in Corpore Juris contrahendo tam mihi reprehensione dignum quam necessarium fuisset videtur, si in modo contentionis rectam viam tenuisset. Nisi tu putes Julii quoque Dictatoris consilium eadem notae cenotia prosequendum, quod ille Romani juris, sua jam tum magnitudine laborantis, compendium publicare decreverat. Ego vero magis Hubero nostro adfense-rim, qui in oratione, quam modo laudabas, inaugurali, non putat esse nefas iracdi Marco Bruto, quod nimirum crudo fer-vitii odio & impropriae furtinatione falso eterrimi conatns fru-ctum humano generi studioque Juris intercepri videat. Etenim quanto cultius Justiniano Julii Caesaris ingenium, quanto melior & doctior Tribuniano fuit Trebatius, quant-o beatiora florentis Romae quam Jacentius & Galliae oppref-sa tempora, tanto concinns ac eruditus Iulianum pra-Justinianoe compendium extitissit. Verum, te arbitro, Crusi, ist quo gratulemus Julii Caesaris manibus qui posuimus, omnes infames fatum, quod clarissimi nominis memoriam compendii Juris titulo non dehonestavit.

Progredebatur in acrora Bokelmanni oratio, quando CRUSIUS, Necio, inquit, an vos orationis meæ fentiam reffect ab omni parte acceperest, Ego utique non omnem prorsus utilem compendiiordem damnavi, duntaxat id mc
were not cause enough to destroy and reduce the manuscripts which were encountered by the barbarian tribes as they ravaged all things human and divine by right of war; for we know full well that some authors of whose works there were no compendia, were treated quite indulgently and came down to us fairly intact. This was even the case whether everything was swept away by the same cataclysm of war or by the early Christians who, hostile on religious grounds to the records of pagan wisdom, thought in their ignorant zeal and pious madness that what had escaped the ravages of war should be suppressed and destroyed.

And not even the Emperor Justinian’s plan to abridge the body of law seems to me to have been deserving of censure but needful, if only he had kept to the right track in his policy of abridging. Unless you think that, because the dictator, Julius Caesar, had decreed that there should be provided a Compendium of Roman law which even then was suffering from its great bulk, his proposal should be marked with the same ignominy. Truly, I rather support our friend Huber here, for in his inaugural address which you have just cited, he expresses the view that it is not wrong to vent one’s anger on Marcus Brutus for, because of an excessively simplistic hatred of servitude and unfortunate haste, he is depicted as having sabotaged the benefits of a project which would have been most advantageous to the human race and to the study of law. For in as much as Julius Caesar’s natural talents were more cultivated than Justinian’s, in as much as Trebatius was more upright and learned than Tribonian, and in as much as the period when Rome was at her peak was more fortunate than when she was laid low and oppressed by the Goths, so a compendium by Julius Caesar would have been more polished and learned than that of Justinian. Presumably, Crusius, in your view, we should congratulate Caesar’s departed spirit (on his unpropitious destiny) because it did not dishonour the memory of his great name with the label of a legal compendium.”

Böckelmann’s tirade was becoming more and more acrimonious when Crusius interrupted. “I do not know”, he said, “if you have rightly understood the purport of my speech in all respects. I have certainly not condemned absolutely each and every use of compendia, but only in as much as

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41 See Suetonius Caesar § 44. Nam de ornanda instruendaque urbe, item de tuendo ampliandique imperio plura ac maiora in dies destinabat . . . ius civile ad certum modum religere atque ex immensa diffusisse legum copia optima quaerere et necessaria in paucissimos conferre libros . . . . (For he [Caesar] designed further and greater works for enhancing and enlarging the city, likewise for safeguarding and extending his dominion . . . .)

42 Huber’s inaugural oration (Oratio inauguralis) was delivered on 19 September, 1665. For the various reprints see Feenstra BGNR Franeker, p 49 ff, nos. 133, 134.

43 On Julius Caesar, Brutus and the proposed Digest compare the following passage from Huber’s inaugural oration of 1665. See Auspica Domestica Oratio V in Opera Nova pp 108-109. See Feenstra BGNR Franeker pp 49-50, nos 133-134; pp 65-67, no 187; pp 96-97, no 286.

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Iuris, Dialogus.

me nolle dixi, ut Antecessores illis explicandis operam data-
rent, Studioi vero quominus ea domi haberent legerent-
que, non interfessi.

Bene recordor; ait, Bökelmannus, cum tu modo,
indignabundus; Quod si tantopere compendius deletantur,
aebras, studiosi, habeant ea privatum ac utantur, ut libet.
Non obscura significans, gratiorem tibi fore studiorum
viam, quae fine compendiis, tanquam bona mentis remo-
ris, veteres ipsos incontinenti aggregarentur. Et sic, noli
dilimulare, Cruuf, qui fecitam tuam fequentur, de nostra
methodo sentient ac in vulgus opinantur; meum Compen-
dium, dicunt simpliciter, esse dispensium studiorum, quod
ad uos vix fugiens felicitet, damnium esse dicebas. Sed
uolo id agunt, ut studiosam juventutem ex auditorio meo,
tanquam ad Scylla vel charybdis, ut in Cebetis tabulâ fenex ille
facit, qui pueris vitam ingredientibus rectam viam praemon-
strat, quâ ad veram sapientiam pervenire quaeant. Sed bene
habet, quod rationes veltræ ad fœnus communi abhorrent &
prejudicio generis humani damnantur; nec minus primo
intuitu, quam experientiâ docente, liquent in hoc esse com-
paratas, uti rudes & infirmos animos studiosorum multitudi-
dine ad varietate rerum onerent; duorumque alterum, aut
defertores studiorum efficiant; aut cum magno labore serius
ad id perducant, ad quod leviore viâ duči, maturius per-
duci potuissent, ut sapientissimus Imperator de hac ipsta in-
stitutionis discrepantia loquitur. Idque te ipsum Cruuf,
non possi negaturum, quin tibi sit eveniat; quando fatis
conflat, te hanc ipsam ob causam, duntaxat In institutio-
nibus, eadem viâ definitionum atque partitionum, velis
nolis, procedere cogi, alioquin omnibus a primo limine
deferturis auditorium tuum. Adeone vero facilis tibi vide-
tur hae compendiorum doctrina, tam humilis, ut Professô-
N n n n rix
I said that I did not want professors to devote their efforts to expounding compendia, but I have not protested against students having them and reading them at home.”

BÖCKELMANN replied: “I remember perfectly well that just now, full of indignation, you said: ‘If students are so greatly delighted by compendia, let them get them and read them privately, as it pleases them.’\(^44\) You were clearly showing that in your eyes it would be a more acceptable course for students were they to approach the old authorities directly without compendia, as if these were an impediment to the right attitude. And so it is. Don’t pretend, Crusius, that those who conform to your school do not have their views about my methods and do not voice them openly. They baldly say ‘\textit{meum compendium esse dispendium studiorum}’ (that my compendium is a waste of study time).\(^*\) You, seeking to avoid \textit{παρονομασία} (an unlawful insult) are in the habit of calling \textit{dispendium damnum} (loss)\(^†\). This they do assiduously in order to lead the keen students away from my classes, as if from Scylla or Charybdis almost as does the old man in Cebes’ table when he points out to youths on the threshold of life the right road by which they can come to true wisdom. But all is well because your arguments do not accord with the general perception and are condemned by the judgement of the human race, not only at first sight but also when taught by experience, and they are clearly in accordance with the following ‘that these methods burden the unformed and unstable minds of students with a multitude and variety of facts and achieve one of two results: either the students abandon their studies or with great labour they eventually reach the point to which they could have been led sooner by a less arduous road’, as the most wise Emperor said about this very problem in basic legal education\(^46\).

And I think, oh Crusius, that you will not deny that this is what is happening to you; since it is well known that, at least in your lectures on the \textit{Institutes}\(^47\), you are for this very reason compelled willy-nilly to proceed by the same road of definitions and partitions, otherwise all your students will desert your lectures right at the start. And does this teaching by means of compendia seem to you so easy, so trivial that

\(^*\) \(\textit{Quod tu... dicebas.}\)

\(^†\) \(\textit{Plane legat et habeat illa.}\)

multitude of commentators thereon, which led to great waste of trials and to general confusion. So much so, indeed, that Julius Caesar, among his special concerns for organising the State, reckoned that this disease was to be cured only by a great and bold remedy. Indeed, he had decreed that of the infinite mass of laws and arguments, all those that were unnecessary were to be set side and all the most excellent were to be put together in a few books, as was done many generations thereafter by Justinian. Had not Caesar’s unfortunate and, in this respect, undoubtedly inauspicious death befallen him, he would have achieved this within a few months with incredible benefit to posterity. As for me indeed, Brutus, enjoy your moral stance and as much as you like, blame the Ides of March on the Roman people. However, you considered your own immortal reputation rather than the benefit of the world, . . . Oh, how would legal science have benefited from the wonderful service of the Great Dictator! How much more cultivated was the talent of Gaius Caesar than that of Justinian (may his most imperial spirit pardon me). How much better and more learned was Sulpicius than Tribonian. How unlike to some Dorotheus or Theophilus were Scaevola and Trebatius, how much more blessed were the times when Rome was flourishing than when it was laid low and oppressed by the Goths. How much more elegant, more well-structured and more learned (the force of Truth wrests the admission from me) would Julius Caesar’s \textit{Compendium} have been by comparison with that of Justinian!

\(^44\) See p 9; cf. Noodt’s inaugural oration p 621. \textit{Plane legat et habeat illa.}\n
\(^45\) On the use of \textit{dispendium} and \textit{damnum} in connection with learning from compendia see commentary, Chapter V.1.3.2. This clause from \textit{quod tu... dicebas} did not appear in 1684, allowing the paragraph to read more logically without the intrusion of ‘You . . . loss’. This is probably an addition made as a result of Noodt’s use of the term \textit{damnum} in his inaugural oration \textit{Corrupta Jurisprudentia} (p 621).

\(^46\) Cf. \textit{Constitutio Tinta}, § 11.

\(^47\) See the \textit{Series Lectionum} of February 1671 and of September 1671 (\textit{Molhuysen Bronnen Leidse Universiteit} III p 234*, 236*); there are no \textit{Series} for the years 1672-1676; Crusius taught the \textit{Institutes} in 1671 and presumably in 1672. He died in 1676.
De Ratione docendi & discedi

rīx vocis officio non indiga vel digna fit? Mišeret me conditionis tūx, qui, licet invitus ad tam humile scholē ministerium, ex parte faltem cāque infīmā te demittere fīs coāctus; quod tamen ante nos, quotquot Jurisprudentia claros & admirabiles postēritati fecit, gnāviter instituerunt. Denique, non possim fātis mirari, qui šāt, ut in re tam obviā, tam prostrātī víri undique doctīsīmī tam rarō satis-facere possīnt exēptātiones desideriōqve studiōfēre iuventūtis, cujus quidem judicium universā conspirāntis, in hōc gene-re nullo modo sperndendum esse, communis famē experim-entis jam pridem abunde compertum est. Sed mittamus judicia studiōforum, quanquam his arbitris parum abett, quin tĕnt āta fortunāque Professōrum; compendia ipsā, si placet eorumque indolem consideremus, an ea tantam facilitatem vilitatemque præ fector, ut Professōribus indigne fit, ea privatim adolescentibus interpretari. Nam de publicis prælectionibus concedo tibi, non esse facientum, ut in iis compendia, vel fystemata, vel quicquam, præter antēa juris monumenta, celebretr. Verum no-ītae, ut olīm vocabantur, summae institutiones, quibus privatim excercēmus adolescentes, brevīaria, fīct vox fō- nar, effē deuent, paucisqve dictis universi juris fundamen-ta complectī regulāaque tradere, quibus judicum in difficilioribus rerum argumentis controversiīque regatur. Quod nec fine obseruētate aliquā collocari, nec fine inductione usus & exemplorum intelligi, nec omnino fine Interpretis ope confilioque perfici potest, ut ego & Huberus & Wyngardinus, & quicunque non gaudent insulā philautiā à communi viā recedere, fæteuntur; fēse in quam, non mo-dico tempore, continua laboris intentione, fundamentales Institutionum Pandēclarumque regulas & regūlae rerum, quibus instructi leges ipsās cum fructu evolvere possēnt, bene
it neither needs nor is worthy of the honour of a professor’s voice? I pity your position for, albeit against your will, you have been compelled to lower yourself to such an inferior educational occupation, in part at any rate and that the meanest part. However, before us, all those whom jurisprudence rendered famous and worthy of admiration by posterity, undertook this work with zeal.

Finally, I cannot adequately express my astonishment as to how it comes about that in so obvious and so common a matter, most learned men far and wide can so rarely satisfy the expectations and desires of young students, who’s

But let us pass over the opinions of students, even although it is actually on their judgements that the fate and fortunes of professors rest. If you please, let us consider the compendia themselves, their nature and whether they are so easy and exhibit such trifling value that to explain them privately to young students is unworthy of professors. For as regards public lectures, I grant you that in them there is no question of compendia or systems or anything but the ancient records of the law being taught. But our summae institutiones (introductory courses) as they were formerly called, by means of which we drill our young people in private, ought to be brevioria (abridgements) just as the word implies and ought in a few words to embrace the basic principles of all law and to convey the rules by which justice is regulated in more difficult arguments and controversies. Even this cannot be done properly; it cannot be understood, without introducing usages and examples and, in short, it cannot be achieved without the aid and advice of a teacher, as Huber, Wijngaerden and I, as well as those who do not, because of foolish self-love, take pleasure in abandoning the common practice, will admit. They acknowledge that in no short time and with continual mental effort they learned well and soundly the fundamental rules of the Institutes and the Pandects and the κριτηρία (means to judge cases), and having mastered that, they could read the actual laws with profit.

48 Cf. p 1 where those sentiments are voiced by Huber.
bene videoque didicisse. Non quod ego, vel quiquam
sanus homo studiosos tum grandi temporis spatium ab ipsius
legibus liberatus veteris prudentiae exclusus velimus. Po-
positiones compendiorum vel imprimis ad hoc comparata sint
oponeot, ut indices legum praetent perpetuoque studiosos
ad fontes remittant, ne quicquam de principiis juris crede-
re in animos inducant, nisi quod est Textibus ipsius clare fo-
lideque probatum videant. Qui vero in id sedulo incum-
bibit, ut summarias positiones illas Artis universae, cum le-
gibus allegatis quotidian memoriam conferat eaque judicio distinguat me-
lorique infigat, hunc ego non unius alteriusve horae spatii
sed magna parte diei noctuque vix posse defungi certus
& expertus sum. Quod velim, habeas, Cursus, ad folum
fromma tuum, quod me, felicit, insignium volui; nec
enim me fugit, quid hac de re in invidiis cuilibet meae
sparsum sit, quia auctor fuisse studiosis, bene habere, si
vel binas ternasve singulis diesbus horas studis privatim me-
que compendio impenderent. Hac, felicet, est mollis illa
Bökelmanni disciplina, quâ juvenis affectum fibi fre-
quentiamque conciliat, ut invidia criminatur. Sic est ratio
mea, Cursu, res hominumque civili considerare & expendere
judicium, consilia machinalique adhibere, quibus exitum
cuique negotio convenientem sperare licet; non nec
non saltem, infinita, sublimia, loci, non quare vias
in terris secundum signa fiderum, ubi lapides monumenta-
que ob oculos extant; non inculcare studiosis grandia, ma-
nificia dicta, sed ufu causae & inania rebus, demeret non Herc-
ulis cothurnos aptare pueros, quod tu in oratione modo
effusâ, si quis unquam alias, fecisse videris; Id agens, ut
qui reciter studia legum attingunt, mole doctrinae, quam
portare non possit, ut Justinianus ait, obruantur, repu-
diatis cum supercilium primâ eruditionis elementis, quibus
NNNN2 juvenes
It is not that I or any other sensible man wish the students to be excluded for a long period of time from the actual laws and books of ancient jurisprudence. The propositions of compendia ought in particular to have been drawn up with a view to providing summaries of the laws, and to directing students constantly to the actual sources; they should not lead them to believe anything about the principles of law except what they see clearly and truly supported by the actual texts. He who will diligently apply himself to this, so that he makes a daily practice of comparing the summary propositions of all jurisprudence with the texts cited, differentiating between them and stamping them on his memory, such a student, I am sure from experience, will not achieve this within a period of one of two hours but will scarcely be able to complete it within a great part of the day and night.

Crusius, I would wish that you would add this to that false jest of yours with which you, indeed, wished me to be branded. Nor am I unaware of what has been spread abroad in this regard to create jealousy of my method, as if I had been responsible for telling students that ‘all is well if they spend two or three hours daily on private study with my compendium’. [A1] This indeed (as jealousy alleges) is Böckelmann’s easy method by which he wins over to himself the goodwill and attendance of students. But, Crusius, this is my method – to consider and assess situations and people by everyday standards, to apply advice and strategies whereby one may hope for an appropriate outcome in each case, not to buoy students up with false hopes; not to speak of vague, infinite and sublime matters nor to seek paths on land by the signs of the stars when landmarks and beacons exist before one’s eyes, not to hammer into students’ minds lofty ideas, marvellous to say but empty and inane in practice, finally not to equip schoolboys with the high, theatrical style of Hercules, as you seem to have done in what you said just now, if anyone ever did otherwise. When you do this, the result is that those who have recently come to the study of law ‘are overwhelmed’, as Justinian says ‘by the weight of the material which they cannot support’ since with your arrogance the basic elements of the initial study are swept away. It is these elements which underpin and support the

49 Cf. Huber in the address to the students (Praefatio, in fin.) to the Positiones.
50 Cf. Constitutio Tanta § 11.
De Ratione docendi & discendi

juvenes suffulti possint graviora & perfectionis scita legum suffertare, ut iterum faneissimus Caesar.

Incendebatur Böckelmannus, quando Crusius, Nato, inquit, in impulso, quod ajunt, fujictus excitas, & necio, quod paxto, parum aequo, quin Majestatis violatae reum apud Caesaris tribunal agere me vellem videaris. Atque ego, magne compendiorum Patrone non magnorum, non omnium, quae de fymtematibus vestris in animo fuere, simul unque spiritu effuitivi; nec omnio, Tu, quae modo in hanc rem à me dicta sint, responsumibus tuis consecisti. Concessi ego, si memini, Antecedentes in Institutionibus explicandis non male facturos, si prima Juris fundamenta per definitiones divisionesque exequerentur; In Pandectis non arbitrabar id expedire. Quod antequam latius prosequar, non possum silentio praterire, quod Tu compendiariæ Institutionis vestrae speculium Imperatoris authorities actu tum jam tertium prætendis, quæ paratilla quæ secundum libros suos componi permittit Justinianus, vestra forent Compendia. Scito, quando fie in animum inducis, errare tevehementer. Erudire te potui Johannes Leunclavius (in prologo de prisco paratitlorum usu ad Collectiorem Constitutionem Ecclesiasticarum Baltamonis) qui mentem Justiniani de ratione docendi Juris per paratitla, docet hanc esse, ut liceat, quernvis ad titulum adnotare, quae alii in Titulis ac locis illum ad titulum pertinentia reperiantur. Hic priscus scilicet, germanusque paratitlorum usus. At vero quid ei simile traditum a nostris paratitlorum hoc exo scriptoribus? ait Leunclavius, quorum tu videlicet errorem fequeris. Idem fames à Cocta Vir solo Cujacio minor (in summaris ad ix. prior. tit. lib. 1. decretal.) idem Carolus Annibal Fabrotius. (in not. ad d. Constit. Ecclesiæ.) qui Cujacium, quid paratitla sint, ignorante non dubitat adfirmare; quod
students ‘so that they can undertake the weightier and more perfect knowledge of the law’, to cite the Emperor yet again.”

Böckelmann was getting worked up when CRUSIUS said “Certainly, you are stirring up a storm in a teacup, as they say and I do not know why you almost seem to require me to defend a case of Majestas violata (treason) before the tribunal of Justinian himself. But, oh Great Patron of not-Great compendia, I have not blurted out at one time and in one breath everything that was in my mind with regard to your systems, nor have you, in your answers, covered everything that was just now said by me in this regard. I did concede, if you remember, that professors, when explaining the Institutes, would do well, in teaching the basics of law, to follow a system of definitions and divisions. I do not think this is advantageous in the case of the Pandects. [A2] *But before I proceed further, I cannot pass over in silence the fact that now for the third time you extend the specious shield of imperial authority over your method of teaching by compendia, as if the paratitla which Justinian allowed to be composed for his books were your compendia. Know well that when you suppose thus, you are mightily wrong. Johannes Leunclavius could teach you. See his views about the original use of paratitla in the prologue to the Collection of Ecclesiastical Constitutions by Balsamo. Leunclavius says that the following was Justinian’s intention on the method of teaching law by paratitla, namely that it was permissible for anyone to add notes to a title referring to those places in other titles and fragments which are found to pertain to that particular chapter. This indeed was the primary and true use of paratitla. “But what similar to that has been produced by our contemporary writers of paratitla?”, asks Leunclavius, and you indeed seem to be following their error. Likewise Janus da Costa, a man second only to Cujacius, says the same (in his summaries of the first nine titles of Book I of the Decretals), as does Carolus Annibal Fabrotus (in his notes on the said ecclesiastical constitutions). He does not hesitate to declare that Cujacius did not know what paratitla were and this opinion the learned scholar

*† Quod antequam... velle videbaris (p 22).

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51 See Constitutio Tanta § 11 quibus iuvenes suffulti possint graviora et perfectiora legum scita sustentare. (Supported by these (i.e. the four books of the Institutes) the young students may be able to undertake the more weighty and more perfect tenets of the law.)

52 The idiom excitare fluctus in simpulo (to stir up waves in a ladle) appears i.a. in Cicero De Legibus 3.16.36.

53 Crusius is arguing that Böckelmann is here for the third time justifying his compendium on the basis of Justinian’s paratitla. The first time he makes this assertion is on pp 11 and 12, the second on p 17.
Iuris, Dialogus.

Aegidius Menagius Vir Cl. ad omnes qui Paratitla scripserunt, extendere non dubitat. Quare defines Imperialii praecepti auctoritate tam humile institutum, cuiuste laudatorem profiteris, docendi fuit è compendiis, extolle-re praeconioque non suo exornare. Bene habet, replicare Bokelmannus, quod me cum Budaeo, cum Cujacio, cum tot eruditissimis etiam in ipso genere politioris liter-ature, hominibus, comparare sultines, in non pudenda inf-icitia, quid paratitia Juviniano significent. Verum si meop-positis in harere non pateris auctoritatibus, ego me tuis nihil magis obligatum fentio, quominus ipse meis oculis, quid apud Juvinianum paratita fuit, percipiam. Verba Caelaris hæc sunt, Sufficit, per indices tantummodo & titulorum substiltatem, que nuncupantur, quaedam admoni-toria ejus facere in præsat. de concept. Digest. Interdicit Imperator commentarios fieri, permittit facere singulorum indices capitum, substiltatem titulorum, admonitoria quae-dam. Nihil me omnia & senibus ipse communis fallunt, Indices titulorum nihil sunt alius, quam breves rerum decla-rationes, quæ singulis capitis tractantur; neque simplices indicinae, fed etam admonitoria, quid res singulae fide vel-int, idque per substiltatem verborum, hoc est, tenue mlevemque expositionem, quam prorie substiltatem esse non ignoras. Quo pacto summaria nostrana compendiaque melius & expressius designarentur, expecto dum ratione vel aucto-ritate probes. imo nec hoc velim obliviscaris, ut hæc verba tuis juris fugitives, hoc est, è fede fuæ remotis, quorum adnotationes paratitla vis esse, tam bene convenire docecas, quam nostris ea summariis sine Compendiis, exactè con-venire probavi. Quod autem ad vocem attinet, can, sine notare velis, quod praeter vel quod juxta titulos adicitur, quod utrumque praepositionis significatio præfert.
Aegidius Menagius does not hesitate to extend to all who wrote *paratitla*. And so why do you not cease to extol, on the authority of an imperial order, and embellish with someone else’s commendation, so humble a practice, as teaching law by compendia, which you claim to eulogise?"

"It is good", replied BÖCKELMANN, "that you continue to compare me with Budeus, with Cujacius and with so many men who are also most learned in polite literature itself, and also pardonably ignorant of what *paratitla* meant to Justinian. But if you do not allow me to cleave to the opposing authorities, I feel that I am in no way bound to your authorities in that I myself perceive with my own eyes what *paratitla* are in Justinian. The emperor’s words are as follows: ‘Let it suffice to make certain comments on it [the Digest] by means only of indices and clarifying notes (*subtilitatem*) on the titles. These are called παράτιτλα (*paratitla*).’ See the preface on the purpose and plan of the Digest. The emperor forbade commentaries to be written, but he permitted indices to be made of individual sections, also clarifying notes to the titles together with certain comments. Unless I am totally mistaken and even common sense deserts me, the indices to titles are nothing but short statements of the material which is treated in the individual sections; they are not mere listings but also comments as required by the individual topics and this is done by fine definitions of words, that is by a precise and uncomplicated explanation which you are well aware is the strict meaning of *subtilitas*. I am waiting until you prove by reason or authority by which term our summaries and compendia would be better and more clearly described. On the other hand I would not like you to forget this so that you may teach that these words conform to those ‘fugitive’ laws of yours, that is those removed from their proper places, which notes you consider to be *paratitla*, just as well as those I have proved precisely conform to our summaries or compendia. But however, as regards that word παράτιτλα (*paratitla*) I shall not quibble if you wish to indicate that it means that which is joined to a title in addition (*praeter*) or which is added alongside (*juxta*); the significance of the prefix παρά allows of

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54 Much of this section of the Dialogue (p 20, especially the words in italics) in the 1688 edition is borrowed from Aegidius Menagius (Gilles Ménage) 1613-1692. The citations are taken from Book I, chapter XV, *Quid sint Paratitla of Menagius’ Amoenitates iuris civilis*. This first appeared in Paris in 1664. It was later reprinted in 1677, 1700, 1725 and 1738. In discussing what *Paratitla* are, Menagius cites the *Constitutio Deo Auctore* and the *Constitutio Tanta*. He follows this by citations from Leunclavius’ (1533-1593) notes on Balsamon’s *Collectio Constitutionum Ecclesiasticum* and Janus à Costa’s (1560-1637) *In Decretales Gregorii IX summarius et commentarius*, Paris, 1676. This entire section was added to the 1688 edition and Huber appears to have borrowed sentences and phrases verbatim from Menagius. For more on Menagius’ *Amenitates* see p 61 and footnote 130, and Chapter VIII.31.

55 The reference here is to the *Constitutio Deo Auctore* § 12 the words of which have been reproduced almost verbatim. The same sentiment is expressed, but in slightly different words in *Constitutio Tanta* § 21.
De Ratione docendi & discendi

in non magno discrimine ponam. Ego vero, Crusiui, nullo modo id agebam, ut de vocis hujus notazione litigarem: sed utrovis modo eam interpretari velis, mihi ad rem ipsam progredi fatis videtur. Nimis alte modò intonabas, quando me contempti Caesaris reum peragere velle videbaris. Quamquam ego te Böckelmann meliore jure, si non hoc totum ineptum est, læx dignitatis Caesarae deferre posse, Nam si omnino libellus aliquis prima institutionis ad inchoandam Juris disciplinam opus est, quæ vos agit infra, ut alud compendium quaeratis, quam Caesar ipse Jus-

thinianus composuit & Juventuti follicite commendavit? Quis neget, hunc effe contemptum Caesaris institut, quis neget fieri non posse, quin detrimentum studia tyrorum capiant, si alius discendi principiis, quam ipsius Jurisprudenciae conditoris, imbuat? Quid aliud neoterici compendiorum Suafores & Autores agunt, quam ut pubem Academiam spolient illo notabili honore, quem Justinianus tam magnifice illius imputat, cum ait, Digni tanto honore tantaque reperti felicitate, ut & initium vos & finis legum eruditionis, à voce principali procedat? Quam vero illud est, quod Studiosis hac perversi methodo eripitur, quod qui Justinianum veteresque Juris Autores adiduo legunt, eorum dicta fententiaque sibi familiares redditas, semper & ubique non modò in Scholis, sed etiam in foro laudare & allegare possum, multo certè luculentius & efficacius quam regulas itorum compendiorum, quibus fecì vulgus Can-
didatorum, si diis placet, magnificare solent. Denique, certitudo fentientiarum Juris non potest haberi ex hodiernis fysystematis, cum autores eorum alii ab alius ex ædibus differenti, & quod ex uno didiciis, si ad alium te transferas, iterum sepe dediscendum sit. Ex adversò, qui folos veteres fechtantur, quicquid didicerunt, immutabili auctoritate ad ex-


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CRUSIUS said: “But I was in no way concerned about arguing over the meaning of this word but which ever way you wish it to be understood, it seems to me better to proceed to the actual issue. Just now you sounded off mightily when you were trying to accuse me of denigrating the emperor. Although, if it weren’t completely stupid, I could with more right accuse you, Böckelmann, of insulting the dignity of the emperor. For if there were at all any need for some beginner’s text-book to introduce the study of law, what madness drives you to seek a compendium other than that which the emperor Justinian himself composed and solicitously commended to the young? Who will deny that this is contempt for the emperor’s instructions, who will deny that this cannot be done without the studies of beginners suffering harm if they are imbued with basic principles of learning other than those of the founder of the legal discipline, Justinian himself? [A3] What are the modern advocates and authors of compendia doing other than depriving the young university students of that distinguished honour which Justinian so magnificently ascribed to them when he said that they should enter on their studies ‘being found worthy of so great an honour and of such great happiness that both the beginning and end of your legal education proceeds from the mouth of the emperor’? How valuable is that which is being stolen from students by this perverse method! For those who carefully read Justinian and the ancient legal writers can always and everywhere cite and adduce their statements and views, thus rendered familiar to them and they do so not only in the law schools but also in the court, and certainly much more authoritatively and effectively than they do the rules of those compendia on which the common herd of candidates, if they are lucky, are accustomed to pride themselves. In conclusion, certitude regarding legal opinion cannot be got from present day systems since the authors differ (δις δια πάσων) one from the other and what you have learned from one, must often be unlearned again when you betake yourself to another. Conversely, those who assiduously follow only the ancient writers trust that whatever they have learned will with immutable authority continue steadfastly till their...

56 This passage from ‘For if there were . . .’ to ‘. . . commended to the young’ (Nam si omnino to Juventuti sollicite commendavit) and the following passage from ‘what are the modern . . .?’ to ‘. . .they trust . . .’ (Quid aliud neotes haud confidunt, p 23, are taken almost verbatim from Oratio IV p 90–91.

57 See Pro-œonii Imperatoriam majestatem § 3 in fin.
Iuris, Dialogus.

extremam usque seneçam in doctrina scholaram usuque fori perferveraturum esse confidunt. Præterea, ex eo, quod Tu ipse confessus et professus es, illa compendia, stylo scribenda esse brevi atque concisa, fieri non potest, quin eorum, qui talibus adsciecunt, ingenium atque oratio sterilitate et necicio quam contrahant ariditate, per quam adolescentes, quos maxime decet ubertas et florid dicendi copia, degenerant et corrumpuntur. Notum est etiam, qui Juris studium feliciter exercere volunt, eos amoenitates historicas humanioresque litteras, cum eo coniungere debere, quemadmodum fieri oportere Te ipsum facio et alios semper esse retinarem et modo mihi contendenti ullo esse largitum. In tuper, Ars ipsa juris eam methodo pervertitur aliumque induit habitem, quam a Juris conditoribus accipit et quam habere debet. Repletur novis Principiiis terminisque, ut ajunt, semibarbaris atque fictitiis definicionibus et partitionibus in systena scholasticum deformatur. Quæ refit, ut studiis inde ab initio novis immixi fundamentis, in progressu et in ipsa praxi rationes decidendi non tam ex limpidis antiqui juris fontibus, quam ex lamis et lucinis, e praepetis regulisque systematicis petere conficerint. Quis non abominetur hos compendiorum fructus et specimina!

Respiranti Crusio, Mirari equidem licet, Crus, respondet Bokelmannus; quod cum hac ratione tibi gravissima valideque videantur, in prima oratione tua nihil est nisi modi miferecris, sed abrupta severitate nihil quam nigrum theta compendiis inurendum putaveris; quo nihil omnium temporum hominumque eruditorum exemplo, judicioque magis adversum poterat fingi. Unum, fateor, adiaceras, quod me fugirefellerentem; Indignabundus, si quis omnino compendiis delestatetur, ægre concefleras, ut ea privatis...
extreme old age both in the teaching of the schools and in the practice of the
court.

Furthermore, from what you yourself have acknowledged and openly avowed
to the effect that such compendia must be written in a brief and concise style, it
is inevitable that the linguistic facility of those who use them will acquire a
sterility and some aridity by which these young people who ought especially to
have a rich and florid style of speaking are spoiled and corrupted. It is also known
that those who wish to study law successfully ought to combine with it the
pleasures of history and classical literature\textsuperscript{58}. I know that at other times you
yourself have always attested as to how this ought to be done and recently you
conceded this to me without argument. In addition the actual discipline of law is
ruined by the compendiary method and takes on a garb other than that which it
received from the founders of the law and which it ought to keep. It is filled up
with new principles and, as they say, semi-barbaric terms and it is twisted by
fictitious definitions and partitions into a scholastic system. As a result students
relying right from the beginning on these new foundations are, both in their
studies and in practice, accustomed to draw the grounds for decisions not from
the clear sources of the ancient law, but from bogs and swamps\textsuperscript{59}, that is from the
precepts and rules of the systematists\textsuperscript{60}. [A4] Who does not abhor these
consequences and evidence of the use of compendia!’’

As Crusius was drawing breath BÖCKELMANN replied: “Crusius, one may
indeed be surprised that, since these reasons seem to you weighty and valid, you
have not introduced anything of this kind in the first part of your speech, but
with abrupt severity you have judged that the only thing to do with compendia
is to brand them with a black \(\theta\)\textsuperscript{61}. Nothing more hostile could have been
conceived as a precedent and a judgement at any time or by any scholar. I do
admit that one thing you added escaped my rebuttal. You were mightily wrathful
if anyone was in any way delighted by compendia but you reluctantly conceded
that students might have them and read them in private;

\textsuperscript{58} See Huber’s inaugural oration passim and the Dialogue p 51 ff. I cannot find evidence that
Böckelmann endorsed this view. Rather the contrary if the Praefatio to his Compendium is any guide.
\textsuperscript{59} The metaphor of drawing knowledge of the law either from clear streams or from befouled and
muddy puddles is presumably originally drawn from the Constitutio Omnenm § 2, where it is written of
the Institutes that they are \textit{ab omnibus turbidis fontibus in unum liquidum stagnum contrivatas} (drawn together
from all their muddy sources into one clear lake.) A similar idea, \textit{mutatis mutandis}, is used elsewhere by
Huber, e.g. in his Inaugural Oration p 115 and p 118 and by Böckelmann in the Praefatio to his
Compendium. The metaphor also appears on p 46 of the 1684 edition.
\textsuperscript{60} The passage from ‘‘. . . it is inevitable . . .’’ to ‘‘. . . from the precepts and rules of the systematists’’ (\textit{fieri
non potest in consensusinit}) is taken almost verbatim from Onatio IV, p 90.
\textsuperscript{61} \(\theta\) (theta) stands for \(\theta\alpha\nu\sigma\nu\rho\nu\tau\sigma\zeta\) — death, condemnation, mark of censure. It was used by the Greeks on
their voting tablets as a sign of death.
De Ratione docendi & discendi

Tim haberent ligerentique studio, et erum juxta Pandectas atque in Codice nihil ejusmodi usurparent. Sicut in omni hac disputatione, Cruçi, pro tuo potius quam pro communi rationis capta differis, ita nihil imprudentius, nihil ad discendi docendique juris ordine alienius adfirmari potuit, quam in Institutionum explicatione compendium Artis usi venire posse, in Pandectis & in Codice non esse serendum. Quis non contra videt, si quis abhorret at novitius syste matibus, eum quod ad Institutiones attinet, in promptu habere Justiniani compendium, quod Imperator, rem ad hunc ulum parati & prescripti juventut, intel leximus. In Pandectis autem & in Codice, cum seiret aliquid esse necessarium, quod summan eorum librorum doctrinam exhiberet, industrice Professorum commilit, ut paratila, id est, singulorum titulorum summarias expositiones (hunc vocis fenfum, velis nolis, jam mihi concedere debes) in ulum discipulorum componerent. Quid autem Te movet, Cruçi, ut secundum Institutiones methodum finiendi partielique tandem aliquomodo ferre quas? cre do, quod intelligis, studiosos sine talibus adjumentis cum fructu in Juris oceanon non posse verfari, nisi, inquam, notiones rerum necessarias & summa doctrinex esse praefum ferint. Si jam in Institutionum libello, quem Cæsar publicavit, elementa omnium capitum, quæ in Jure tractatur, extant, nihil intercede, quominus utendum sit tuo consilio; atque itatim, ubi Institutiones perceive furent, integros Pandectarum Codicisque libros aggregi & ingenio memorialque subigere liceat. Quod si facile pars a qua totius Artis in Institutionibus Caesaris intracta manerit, manifestum est, carum rerum initia nihil magis ignorari possit, quam que in Institutionum libellis ab Imperatore collocata sunt. Non exspectabis, opinor, ut tibi demonstrem, quot nobi-
however they were to use nothing of this kind anywhere near the Pandects or in the case of the Codex. In this whole discussion, Crusius, you are arguing in defence of your own notions rather than for those of general understanding, and so nothing more ignorant, nothing more out of keeping with the system of learning and teaching law can possibly be said than that in explaining the Institutes a compendium on the subject can be used, but in the case of the Pandects and the Codex it is not to be tolerated. On the other hand, who does not see that, if someone strictly avoids these newfangled summaries, he has at hand as far as concerns the Institutes, Justinian’s compendium, which we know that the emperor prepared for this purpose and prescribed for young students. Furthermore, since he knew that in the case of the Pandects and the Codex something was necessary which would highlight the most important learning of these books, he entrusted to his hardworking professors the task of composing for the use of their students paratitla, that is summary explanations of the individual titles62 (you must now willy-nilly concede to me this meaning of the word).

What brings you, O Crusius, to be able at last and to some extent, to accept the method of defining and making partitions as in the Institutes? I am sure it is because you realise that without such aids students cannot make way with profit on the vast ocean of the law; that is, I say, unless they have first mastered the essential concepts of the material and the chief κριτηρια (criteria) of the subject. If the basic points of all the chapters which are treated of in law are already present in the little beginners’ book, the Institutes, which the emperor published, I do not protest against following out your plan, and letting students, as soon as they have grasped the Institutes attack all the books of the Pandects and the Codex and master them by their talent and commit them to memory. But if, unquestionably, easily half of the whole subject remains unaddressed in the Imperial Institutes, it is clear that the first principles of that material can no more be ignored than what was included in the little beginners’ books of the Institutes by the emperor. You will not expect, I am sure, that I should point out to you how many

62 See Constitutio Deo auctore § 12. sed sufficiat per indices tantummodo et titulorum suptilitatem quaedam adnuntiari eiu suae. (But let it suffice to make notes thereon only by means of indices and explanations of titles.) See further Constitutio Deo Auctor § II, section 2.
Iuris, Dialogus.

nobilissima difficillimaque Juris capita sunt, de quibus altum in Institutionibus silentium; Nihil facišus erat, ni superf- vacuum & apud homines, quibus hæc in numerato sunt, ſædišus foret. Nihil eſt igitur, quod instantem Te rurſus audio; ſufficere in usum preparatorio ἐdoctrine Institutiones à Justiniano reliquiæ; non sufficiunt, inquam, Sed ad Pandectas intelligendas, ejusmodi libellus æquè neceffarium est. Præterea, inanis columna impingitur meo ad Institutiones compendio, quas id ageretur, ut juventutem per illud ab ipso Justiniano abduceremus. Nam meum Compendium (non pudet hunc titulum præferre, licet alium speciosius prætextere possem) Auditoribus meis aliter uſi eſſe non potefl, quam si Institutiones Caſaræaſ juxta eas con-
tinuo legant eandemque methodum premanet; ico-
que tantum abeſt, uti contemptus inde juventutii ad-
versus Auſtores Artis ſubnæcī quæat, potius ut auget co-
rum honorem venerationemque, dum à dictatis nostris ad
eos, tanquam ad Principales auïtoritates, continuo remit-
tuntur. Ceterum, hoc mihi Sacratissimi Caſari manes
 largientur, id etiam vos mihi, ut dicam, largiæmini, non eſſe faciendum his diebus, ut methodo, quam ille quon-
dam praefcriptus, in omnibus adæsum præcieere inhaer-
reamus. Nam quod Ille primò omnium voluit, ulla
studioſe ultra femeſtri spaſium in Institutionibus detinе-
tur, quæſo, quam hæc res hodie facultatem haberet. Fa-
tor, Institutiones femeſtri spaſio explicari poſſe; ve-
rum quis veſtrum de ingenio memoriaque füa tantum fi-
ducie conceperit, ut unà deambulatione, ſe argumenta
Institutionum ἢ poſſidere ſentiat, ut ſuper illud fundamentum totam Digestorum molæm adiſtruere poſſe confi-
dat. Accedat, quod nemo negare poſtell, expedientes ste-
is, uti mutationes, qua universæ Europæ moribus indi-
cipli-
most noble and most difficult chapters of law there are, about which there is complete silence in the Institutes. Nothing is easier if it were not unnecessary and boring for men to whom this information is common knowledge.

Therefore, there is no sense in the remark, which I hear you reiterating, namely that ‘the Institutes left us by Justinian are sufficient for use in preparatory teaching’. ‘It is not sufficient’, I say. To understand the Pandects, a book of this kind is equally necessary. Moreover, a groundless accusation has been levelled at my compendium on the Institutes, alleging that it was written in order to lead youth away from Justinian himself. For my compendium (and I am not ashamed to attach this title to it, although I could adorn it with another more glorious title) can only be of use to my students if they constantly read the imperial Institutes together with it, and apply the same method. There is no question of contempt for the authors of the law being implanted in the young students because of the compendium, rather it increases honour and veneration for them, since the students are constantly referred by our lessons to these authors as being the principal authorities. But the spirit of the most sacred emperor will grant me, as you also will grant me, as I would say, that these days we must not go about things in such a way that in every particular we stick precisely to the method which he formerly prescribed. For what he wished above all was that the students should not be detained more than a semester on the Institutes. I ask what chance do we have of this today? I admit, it is possible for the Institutes to be completed in a space of six months but which of you has conceived such great faith in his own ability and memory that in one brief run through he feels that he is master of the arguments of the Institutes in such a way that he can confidently erect on its foundation the whole massive structure of the Pandects?

In addition, which no-one can deny, it is necessary to explain to students how the changes which in the customs of all Europe

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63 Here, where Huber is using Böckelmann as the mouthpiece for his own ideas, he is ignoring the fact that Böckelmann’s Compendium was first published in 1679. See Ahsmann-Feenstra BGNR Leiden, pp 61-64, nos. 32-44. Moreover, the allegation that Böckelmann’s Compendium was written to lead students away from Justinian is clearly groundless as a glance at the text will reveal a plethora of marginal references to the Institutes, the Digest and the Codex. Further, at the end of the Praefatio to the Compendium Böckelmann writes . . . nec satis intelligi posse, nisi conjungatur cum Caesaris Justiniani Institutionibus et legibus passim ad marginem citatis et a nobis aliisque intra privatas parietes explicari et examinari solis. (the Compendium cannot be understood adequately unless it is used in conjunction with the emperor Justinian’s Institutes and laws (i.e. Codex) cited here and there in the margin and usually explained and discussed by me and others at private lessons.) Huber also in his Positiones provides copious references to the Corpus Iuris (and to contemporary authorities).
De Ratione docendi & descendi

cliplinam Iuris invecta sunt, Iustiniani regulis admiscantur, Nullis aliquo quin Artium studiorum meliore jure factis, cum illud quam Jurisperitis applicari poteat. Adolescentes in scholis multissimos fieri, qui nihil eorum quae in usu haberemus, audirent & discunt. Quae ratio sola sufficit ad probandum, quod Iustiniani compendium non revpra alius manuale eadem operarum methodoque legendum. Jam porro id prae ceteris in objectionibus tuis mirari me subit, quod hac docendi descendique methodos incertitudinis in ratione studiorum arguatur. Nam si, quod res est, diure fas sit, non uno mihi experimento compertum est, maxime in Examinibus Candidatorum Iuris, eos, qui diversa a nobis vias precipue fecerant, in Colloquis & dissertationibus Artis, adeo fluctuantes, ne dicam, ignorantem fundamentorum Iuris esse repertos, ut miseratione potius, quam diversae sententiae invidiæ convitioque digni judicarentur. Enimvero si nihil alium descendendum quae studeremus, quam hujusmodi compendia brevibus verbis in formam systematis, ordine tamen Caesareo redacta, metuendum est, ne non ficciores atque aridi, ficta alia, Crui, obiectio tua dictabat, fierent studioi. sed quid tibi vis, ergone credis, ita nos Compendii deletari, ut in his Iustiniani eos audiore omnem suos labores ordiri atque coniurare velit? ut periculum sit, ne ad horum exemplum orationem stylique contrahant & exhaerant? Ego vero, antequam studiori, de juris scientia eptyve compendio cogitent, ita eos omnino animos inducere volo, ut lectione bonorum auctorium comendique imitatione & affidatis styli exercitii amantatem ingenii ubertatemque orationis ita comparent, ut in habitum illis abeat, atque deinceps, ubi jus studenter & hac ipse compendia t tract, ne illa quidem amoeniora penitusillos omittere, sed laxamentum in ipsa studendi
have been introduced into the discipline of law are fused into the rules given by Justinian. The satirical comment that ‘youths in schools become very stupid because they hear and learn none of those things we have in daily use’\textsuperscript{64} can be applied to no students of the humanities more rightfully than to law students. This argument alone suffices to prove that another manual to be read in the same way and using the same method does not supplant Justinian’s \textit{compendium}. Further, it now occurs to me to wonder that before all else in your objections, this method of teaching and learning is accused of lack of sound knowledge in the case of the students. For if, as I may rightly say is the case, I have found by more than one experience, and especially in examining students for the degree of candidate of law, that those who have hurled themselves headlong along a road, different to mine, have been found in seminars and legal dissertations to be so doubtful about, let me not say ignorant of, the foundations of law that they were judged to be worthy of pity rather than to be scorned and reproved because of their different opinions.

\textit{[AS]} Now, if we were to argue that nothing must be learned and taught other than compendia of this sort which have been reduced in brief terms into the form of a system while, however, maintaining the order of the \textit{Institutes}, should we have to fear not only that the students would become dry and arid\textsuperscript{65} (as, Crusius, your other objection alleged) but (as you wish and as you therefore believe) that we are so enamoured of compendia that we want our first year\textsuperscript{66} law students (\textit{Justiniani novi}) to commence and to conclude all their efforts on them? As a result would there not be the danger that they would abridge and impoverish their spoken and written style on the model of these compendia? But I, for my part, wish that before the students think about the science of law and the compendia thereof, they should so completely train their minds that, by reading good authors and by copying the same and, by the assiduous practice of good style, they should acquire a happiness of expression and a richness of oratorical style so that it becomes a habit with them and finally when they study law and work with these actual compendia I advise them not indeed to relinquish these more elegant writings\textsuperscript{67} completely but to seek in them a relaxation by way of variety in their actual studies.

\textsuperscript{64} Petronius, \textit{Satyricon}, 1. This same idea is also expressed by Tacitus and Quintilian. See also Huber \textit{Oratio II}, pp 64–65. Van Eck in his \textit{Praefatio} to Böckelmann’s \textit{Differentiis}, p LVII, quotes the same extract.

\textsuperscript{65} Cf \textit{Oratio IV}, p 93.

\textsuperscript{66} Justinian wished the first-year students to be called New Justinians (\textit{Justiniani novi}) instead of the silly and ridiculous name of \textit{Dupondii} (two as pieces) which had been given to them previously. The ‘as’ was a valueless coin as was the two ‘as’ coin. See \textit{Constitutio Omnem}, §2. \textit{Caius audientes non volumus vetere tam frivolo quam ridiculo cognomine dupondios appellari sed Justinianos novos nuncupari.} (And we do not want the students of this [first year] to be called by the old nick name \textit{dupondii} (tuppenny pieces), which is both silly and ridiculous, but they should be referred to as ‘New Justinians’). \textit{Justiniani novi} may also be translated as ‘Justinian’s Freshmen’.

\textsuperscript{67} See Huber’s references in the \textit{Praefationes} to other works e.g. the \textit{Digressiones}. 

\textit{A Dialogue on the Method of Teaching and Learning Law} 26
27 \textit{Juris, Dialogus.}

varietate querere suadeo. Adde, quod \& ante dixi, compendia illa \textit{systematum}, \textit{esse} tantum \textit{indices}, secundum \textit{quos textus Juris}, quibus nihil uberius, nihil amoenius, \textit{inquiri} \& \textit{legi} possunt atque etiam omnino debent. Quae ratio facit, ut in \textit{Pandectis}, inquam, \textit{absoluta necessaria sit \textit{hoc} preparatio paratilis}, eti nihil \textit{Justiniani Institutionibus addere velles}; \textit{qui}dem \textit{manifestum est}, non modo univerfam methodum in illis \textit{esse} difficilem \& obscuram, verum etiam singulos titulos \textit{fine} directione comprehendi alienus methodici, neque perdici neque doceri posse; Quamobrem Caesar ipse \textit{differt} voluit, ejus \textit{generis indices \& summas capitum describi}, \textit{quas utique breves atque consifis \textit{esse} debere}, negotii ipfius natura \textit{fatis} indicat; nec metuit Imperator illud \textit{prætextum} corrumpenda \textit{eruditionis \& eloquentiae pericum.} Ex his credo, jam \textit{prosumi posse}, quid ad illam objectionem, \textit{qua per \textit{hanc} methodum prædicti volebamos communicationem \textit{Juris cum literaturâ humanae}}, fit respondendum. Non contineri in hoc genere compendiorum observationes \textit{dgregionesque Historicas \& literarias} fatemur, impediri prohiberique negamus; nec unquam effamus hortari studiosos \textit{ad hanc conjunctionem variae Eruditionis cum Arte Justiniana}. Denique, nihil magis de eo laboramus, quod tu etiam, Cruili, \textit{præcipue} difficultatis loco ponebas; sìlicet, \textit{his neotericis Institutionum imitamentis, non preferre Themidem suam faciem nativam}, fed ejus formam cultu adfectitio corrumpi. Profiteor equidem, si per \textit{hanc} compendia fieret, ut \textit{Ars nostra terminis}, quos vocant, \textit{exoticis impletur licentiæque finiendi partiendique scholasticâ in alien transierit speciem}, me tam alienum ab illis futurum, quam cuiquam Themidos amantissimo \textit{esse confitentaneum fuit}. Ideoque curatissime id operam dedi, ne quid tale nee quidem com-

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pendio
Add also what I said previously namely that these compendiary systems are only *indices*, pointers in accordance with which the texts of the law – and nothing is richer and more elegant than these texts – can be investigated and read, and indeed so it ought to be.

This is the reason, I say, why in the case of the *Pandects*, a preparation by way of *paratitla* is absolutely necessary, even if you should wish to add nothing to the *Institutes* of Justinian. Indeed, it is clear that not only is the general method in the *Pandects* difficult and unintelligible, but also that the individual titles can neither be learned properly nor taught without the guidance of some systematic compendium. And so Justinian himself explicitly required that *indices* of that kind and summaries of chapters be written, which the actual nature of the task adequately indicates should certainly be brief and concise, and the emperor did not fear the imagined danger that learning and eloquence would thus be corrupted. From this I believe that one can now deduce what should be the answer to that allegation of yours, namely that by this method, you claim, the link between the law and the more polished literature is severed. We admit that, in this kind of compendium, historic and literary observations and digressions are not included, but we deny that they are prevented or forbidden. And we never cease to encourage students to make the connection between the various branches of knowledge and the law of Justinian. Finally, we also nonetheless emphasise what you too, Crusius, point out as a particular obstacle, namely that in these modern imitations of the *Institutiones* Themis does not show her natural appearance but her form is corrupted by extraneous garb.

I, indeed, admit that, if it were the fault of compendia that our subject is filled with exotic terminology, as they say, and is changed to another subject by the scholastic liberty to define and make partitions, I would be as hostile to it as is consistent for anyone who greatly loves Themis. And so I have been most meticulous in my attention to that, lest any such allegation could be raised against my compendium.

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68 This passage from ‘Finally we also nonetheless’ . . . to ‘we see has been done . . .’ (*Denique nihilomagis . . . fecisse videmus* (p 28)) is taken almost verbatim from *Oratio IV*, p 95.
De Ratione docendi et discendi

pendio objectari posset, adeò ut religio mihi fuerit, ullas
in eo ponere definitiones aut divisiones, quae non aut è ver-
bis, aut è mente fententiâque legum evidentur colligi po-
fent. Fuit, inquam, religio; nam superstitionis non debui
dicere, qualcm fuisset futurum ego quidem arbitrator, tinibil
 ejusmodi collocare voluisset, nisi quod totidem verbis à
Iustiniano veteribusque Iurisconsultis prescriptum esset;
tamecti ignorare non potestis, literatissimos superioris ævi
Doctores, Cujacium, Duarenun, Donelum alioque Ju-
ris antiqui et intaminati culturae severissimos candum ini-
tillè viam, quam in nobis tam inique animadvertitis. Dum,
facilet, proprietas rerum à veteribus fusè expostitas neque
femper in finiendi partiendique formam redactas succinèsit
positionibus enuntiant atque declarant, quod omnium Ar-
tium, quæ ab antiquis ad nos profecta sunt, magistros fe-
cìllè videmus.

CRUSIUS; si, quemadmodum Tu, inquit, Bökel-
manne, compendi tui utrum studiosis commendare te nar-
ras, ita vulgo aut à majori parte haberetur, non erat quod
dispensii quicquam in illis esse situm exitimaremus. Sed
per communia faca teflor, an non Auditores tui, tantré-
quentes aquae notabiles, in illa Compendii disciplinâ proram
atque puppim studiorum suorum collocatis, fœque percepistis
illis, egregios esse Jurisconsultos arbitrentur, necque de ip-
fiis antiquâ jurisprudentiae libris evolvensis examinandisque
curam ullum fuücipliant, & an non hsec res ad summum do-
trine Iuridice detrimentum pertinent, adeoque an immor-
tato compendiarium illud institutum, veluti caue corruptâ
jurisprudentia, vituperetur. Quod si Tu, siue nobis fœ-
det consilium, devotam Themis juventutem, ad ipsa ve-
tula Artis penetralia deduces, si exemplo praebes, ipsa
veterum reponfà commentariaque, siue à Iustiniano in
deiormi
so much so that it has become a matter of conscience with me to include only such definitions and divisions as can clearly be derived either from the words or from the intention and purport of the law. I say ‘it has been a matter of conscience’ for I ought not to say ‘excessive scruples’. I indeed think it would have been such ‘excessive scruples’ if I had aimed at putting in nothing except what was written in so many words by Justinian and the old jurists; [A6] even although you cannot be unaware that the most liberally educated doctors of the last century, Cujacius, Duarenus and Donellus and other most rigorous teachers of the ancient and undefiled law established the same method which you so unfairly criticise in my case. Namely they state clearly with succinct propositions the peculiar nature of the material which the ancients expounded at length and did not always reduce to the form of defining and partitioning. This we see has been done by those who taught all the subjects which have come to us from antiquity.” [A7]

CRUSIUS now said: “If, oh Böckelmann, you tell us that you recommend the proper use of your compendium to students and if it were generally so used by most students, there was nothing included in it which we might consider a waste of effort [dispendium]. But I call you to attest (by all that is holy) as to whether your students, so many, as is well known, do not place the beginning and end69 of their studies in learning the compendium and when they have read it, they consider that they are first rate jurists; and they do not make any effort to read or study the actual texts of the old jurisprudence. And I ask whether this does not contribute to the utmost detriment of legal studies and so whether it is not right for that practice of using compendia to be blamed as the cause of corrupt jurisprudence?

But if, as is our intention, you were leading the youth devoted to Themis to the actual inner heart of the subject, if you were setting an example and by a suitable method were reading, examining and comparing the legal opinions (responsa) and commentaries of the ancients, (just as they have been left by Justinian in that rough epitome

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69 Cf Noodt, Comptuta Jurisprudentia, p 619.
Iuris, Dialogus.

deformi illa, quam habemus, epitome relieta sunt, donea
to methodo legere, examinare, conferre inter se, illeque im-
morari, dum plane penultimque intelligerentur; aut si non 
praeberent se intelligendas, vero sensus emendandi conju-
cturis indicare. Equidem, si quod res est, fateri vis, eo
modo, quod amplissimum Jurifconsulti nomen requireret,
qui si deelisset, eti jam vettra compendia tenerent,
agnituros esse crediderim; denique, res ipsa compelleret eos
veram proficiendi viam insitire, neque cessare, donec uni-
versum jus antiquum in memoriam potestatem redigissent,
neque nos profecto pro Jurifconsulti habemus illeque no-
men illud venerabile principe adscriberemus, qui seirem
quandam definitionem, divisionem illeque adhaerentes necio
quas, ac heri nudusve tertius natas questiones excipere at-
quen resolvere posset; nec de aliis, qui nec id ipsum didice-
rint, cum dedecoris publici confessione loquar. Esumvero si
compendiis abolitis, tam egregium mutati consili fructum
capere liceret, credo, tibi ipse nullam visum ira coaam,
quae nobis ad invenuita illa & nomina compendia, peni-
tentiamque pulcherrimi consili, redeandum foret.

BOKELMANNUS: Si nihil aliud a mutatione pene-
tentienteque tueri vos poterit, quam ille speratus sucescet,
credo fidem praefatio meo constiteram. Quod si potes ani-
mum inducere, ut res tibi proponas, sic ut existineat, dabo
operam, ut intelligas, hermites tuos abhorreare abufu civilis,
plenoque vel ostentationis esse vel ineptiarum. Quod utri-
bi vei falem hifice viris Clarissimis persuadam, necefa
erit animadverternus, quonodo parata, quibus studius ex-
culta sit juventus, qua ad perciendam Iuris disciplinam
scholas nostras ingreditur, & an ilani hominibus consiliim
videri polit, ejusmodi auditoribus committere fundamenta
juris paratitaria proprio marte diffendam; nihil autem illis

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which we do have) and if you were working with them until they are clearly and fully understood; or if, when they proved unintelligible, then you were striving to discover the true meaning by emendation and conjectural readings, indeed, if this is the method you wish to adopt, I would believe that, even if the students still retained your compendia, they would by that method perceive what is required for the most glorious title of Jurisconsult and what they themselves lack. Finally the actual situation would compel them to embark on the true road to accomplishment and not to cease until they had mastered and memorised all the ancient law. Thus we indeed would not regard as jurists and indiscriminately give that venerable name to those who can only state and explain a certain series of definitions and divisions and answer some questions, originating yesterday or the day before which attach to them. Not to speak of the other students who have not even learned that. This is an admission of a public disgrace. For if, once compendia were scrapped, it were allowed to pluck the excellent fruit of a changed curriculum, I am sure even you yourself would see no reason why we should have to return to these unattractive and unpleasant compendia and to regrets for a most beautiful teaching plan.”

BOCKELMANN resumed: “If nothing will be able to protect you from change and regrets other than the success you hope for, I am sure that my forebodings will be realised. But if you can bring your mind to grasp the situation as it is I shall see to it that you understand that your words are quite contrary to daily practice and are full of contention and ineptitude.

But so that I may persuade you or at least persuade these professors, it will be necessary that we take note of how the young people are prepared and by what studies they have been educated before they enter our schools in order to take up law studies and whether it can be deemed sensible by reasonable men to give students of this kind the task of studying the foundations of the law, even with paratitla but without any other assistance; and, moreover, to explain to them nothing
De Ratione docendi & discendi

exponere, quam ipsa veterum respondae commentariosque, non quae ex illis faciliorem, sed obscura, difficilia nodosque continentia vindice dignos. Tu quidem de qualitate humani ingenii nihil humile, nihil infra captum rerum maximarum prefumis; nec ego naturae sum accusator: sed ita de felicitate ingeniorum philosophari, ut oculos animumque non advertas, ad eam, quibus.cum res sit, nihil alio est quam splendide nugari. Non est hic locus de mihiem in scholem primaeque institutionis conficiendine queri; sed hoc palam est, novos Justinianaeos, qui se nobis offerunt, plerique rudes esse politioris literatœ, rudes historiae & omnis Antiquitas, rudes Graecæ linguae & proprietatis elegantiaeque Latine, ne dicam Philosophiae, praetertim morales. Nec ego, quæ te perverfitas agitet, ut cauam corrupta Jurisprudentiae vel studii potius Juridici, (nam ipsam, opinor æque adhuc integram esse quam fuistadum) potius non prodideris ignorantiam Romanae Graecæque linguae, quam usum praeparatoriae institutionis. Et quidem de Graeco femone facies prudenter, quod nullum verbum de ejus peritia in Jurisstudioso requirendà protulituri, perinde ac si nihilis magis quam Suecia aut Laponicae dialecticae notitia ad Juricam Civit exercendam pertineret. Quod si paulo ductus Munkero nostro, hac in parte, Delfis, elementarius Doctore, operam navasse; credo, non minus severe in contemplum Graecarum literarum, quam modo in compendiorum & syste matorum Autores invectus fuisses. Nunc autus est Licinium Rufum, Ulpiani, Caji, Pauli fragmenta, Codicemque Theodofianum memorare; Graecum Jus & Basilicos thesaurorum, quibus tot tantique valoris cimelia viri Graeco docti eruerunt, atque adhuc inveigiga pollunt, trifiti, ne dicam pudendo, silentio praeteriifi. Neque teneo, Cris, tam superbum eruditionis vulgatae cenorem &
but the responses and commentaries of the ancients, not those of them that are comparatively easy but the obscure, the difficult and knotty problems requiring attention. You indeed assume that there is nothing lacking about the quality of human intelligence\textsuperscript{70}, nothing unable to comprehend supreme concepts. Now I do not cavil at nature but to philosophise thus about the fruitfulness of intelligence so that you do not turn your eyes and attention to the actual persons with whom we are concerned, is nothing other than splendide nugari [to talk highfalutin nonsense]\textsuperscript{71}. This is not the place to complain about the most wretched condition 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. I do not know what perversity drives you to attribute the reason for the corruption of legal science or rather for the corruption of legal studies (for I reckon the former is still as sound as it ever was) to ignorance of Latin and Greek rather than to the practice of our preparatory education. And indeed you are acting shrewdly with regard to the Greek language, because you said not a word about knowledge of it being required in a law student\textsuperscript{72}, just as if it was no more relevant to legal criticism than a knowledge of Swedish or Lappish dialects. But if after you had been recently created a doctor you had assisted our friend Munker in Delft for a little longer in this regard, I believe you would have inveighed no less severely against the contempt for Greek literature than now you do against the authors of compendia and systems. Now you have dared to mention Licinius Rufus, the fragments of Ulpian, Gaius and Paul and the Theodosian Code, but you passed over in a sad, or should I say a shameful, silence Greek law and the treasure house of the Basilica from which scholars who know Greek, have dug out many jewels of great value and can still discover them. And I do not see you, Crusius, as the proud censor of common knowledge.

\textsuperscript{70} Van den Bergh notes that this is reminiscent of Descartes. See his Noodt p 164.

\textsuperscript{71} In the 17th century, the contemporary disdain for mediæval scholasticism and the methods of the Schoolmen was often expressed by the phrase nugae scholasticæn (‘the useless trifles of the Schoolmen’).

\textsuperscript{72} Van den Bergh. Noodt p 22 writes “Noodt’s main interest was in Latin; he was much less versed in Greek and knew virtually nothing of oriental languages”.
Iuris, Dialogus.

& exaqtem critices, sine ulla Gracarum litterarum notitia. Tametit Grecos Jurisconsultus basilicamque paraphrasis contentus fuisse omittere, vel Interpretibus fidere, quod in re critica fœcimus, quam tutum arque decorum sit; tamen, in quum hujus studii, quod laudas, prospelio, quæ ratione potest alienari ab illa parte Juris Justinianei, quod totum domestica Græce compositum est? denique in antiquis latinarum scriptis, quis unquam sine nedocii Græce litterarum peritië feliciter in exercenda Crisì veritas esset, aut Criticum esse profiteri suffinuit? Sed mittamus Græce permittamurque non tantum Accursiani, sed etiam criticis pace tua dicere; græca sunt, legis non possunt; quoties fæ nobis obtulerint; vel si criticam ne haæcénus quidem omittere placeat, imitemur Illum, qui cum in Ulpiano legisset haec verba, pros epos, sagacitate vere critical, monuit legendum esse, ita; pro se poscit. Sed revertamur ad institutum; Contemplare milium, quædò, Cruè, adolecentes, vix tantum Latinè doctos, ut animi sui senès, quod fatís sit, effereque, Philosophia & antiquitatis & Historia Latina ignaros; adeone te praecceptus amore inquit tu tenet, ut his cum aliquo fruâ erudítissimos & difficillimos antiqui juris commentarios exponi possè flatas? Nolì & experimis, fieri non possè, totum uti corpus Iuris auditoribus tuis illustres; obscuriora & ardua quæque, sine dubio excerpenda sunt, ut digna Interpretis ope, digna publice vocis officio videantur. In his tu adolecentes ita, siue dixi, preparatos cum valido profeclu verlài, sicène Iureconsultos inde fieri possè creditis? Non dices, opinor; sed in tuis auditoribus suppletire videamus humanioris litterae prius, credo, requiri. Quid facies igitur illis, qui non habent eam nec adherre possunt, quemadmodum decimus sibi quæque non repeitur, qui mediocriter, neque cenfeïmus, qui ut deber, hac
and as one who insists on criticism, without any knowledge of Greek literature. Even if you are content to leave out the Greek jurists, the imperial paraphrasis and to rely on the commentators (in matters of criticism we know how safe and fitting that is), nevertheless, I say, on what grounds can the profession of this study that you praise be separated from that part of Justinian’s law that is entirely \(\alphaυτοθεντικως\)\(^73\) written in Greek? Moreover, in the ancient Roman writings whoever was successfully involved with practical criticism or who professed to call himself a critic without at least a moderate acquaintance with Greek literature? But let us pass over Greek and let us, with your permission, allow not only the Accursians but also the critics to say \textit{Graeca sunt, legi non possunt} (it’s Greek and it cannot be read), as often as Greek presents itself to us, or if it does not please us even now to leave out the critics let us imitate the great man, who, when he had read \textit{pro epos} (according to the word) in Ulpian, with his true critical sagacity, recommended that it be read as \textit{pro se poscit}\(^74\) (he demands for himself).

But let us return to basic education. Crusius, I ask you, consider with me these youngsters barely taught enough Latin to be able to express their own thoughts (which may be enough), but ignorant of philosophy, of antiquity and of Roman history. Does your preconceived love of your teaching method so hold you that you think that the most learned and difficult commentaries of ancient law can, with profit, be laid before these students? You know and you have seen by experience that you cannot explain the whole \textit{Corpus iuris} to your students. All the more obscure and difficult texts must without doubt be set aside seeing that they seem worthy of the aid of a professor, and worthy of the function of a public lecture. Do you believe that young men, prepared in this way, as I have said, can handle this material with steady progress and thus can become jurists as a result? I reckon, you will not say so, and in the case of your students, I am sure, you will first require a grounding in classical literature. What will you do therefore for those who do not have such knowledge and cannot bring it to bear, in as much as not one in ten will be found who has been moderately educated and not one in a hundred who has been taught in this regard as he ought to have been.

\(^73\) For \(\alphaυτοθεντικως\) reading \(\alphaυτοθεντικως\). A collation of 168 novels (\textit{Novellae}) were promulgated by Justinian after the publication of the second Code (534 A.D.). Of these novels most are in Greek, 15 in Latin and 3 in both Latin and Greek. 134 of the Greek novels were translated into Latin at some time shortly after they were promulgated but the author is unknown. He appears not to have been a jurist as the translation is faulty. When this text was first made known in the 11th century it was regarded as a forgery but after the Law School at Bologna declared it authentic, it was accepted and known as the \textit{Authenticum}. (The \textit{Authenticae} are excerpts from the \textit{Authenticum} attached to the appropriate section in the \textit{Codex}). See Wallinga \textit{Authenticum} and \textit{Authenticae}.

\(^74\) Clearly the great man, whose identity was known to Huber’s readers, (but is not yet known to me) being unable to handle the Greek \(\textit{προς επος} = \) according to the word, read it as Latin \textit{pro se poscit} and translated accordingly as ‘demands for himself’. Prof J E Spruit suggested to me that the text referred to could be D.11.1.11.5.
De Ratione docendi & discendi

hac parte sit instructus. Non inculeabis tamen illis compendia; domi legant, si velint; Professor altius spiret, Illis figlorum & notarum enigmata, Illa malas interpunctiones emendare ac interpolare, glossas varialque lectiones a textu genuino separare, luxata restituere, vitiatas suae, plebsicta atque Senatus aucta concinnare; fugitiva retrahere lociue suis reddere doceat. Hæc enim visagere Professoribus, hæc tradere spectatoribus suis jubes. Mihi vero quid ineptius quid fanis hominibus indignius videret, nullo modo apparet; siquidem nec adolescentes ita, sicut diximus, institut qui quidam ex iis rebus perciere, nec sique aut, ullus inde fructus ad eos redundare potest. Noli putare, me effe eum, qui spernam vel reprehendam institutus illusiones; sed quod hæc à Professoribus doceri vis adolescentes, antequam paratit a totius juris in illis percepsum sit, superat omnem its titiam; ignoscendi dicenti quod res est. & schapam, schapam. Nec quidquam fanis ratione praeditus terre potes Antecessores hæc rudibus animis incultantes, atque eos qui Compendia talibus praebibunt corrupta juris prudentia ecos peragentes. Quid vultis tandem agamus cum ipsis, qui nihil quam latinum sermonem & fenius communis intellectum habent? ut remittamus eos in scholas atque ad Parentes; an ut detineamus immani sumptu in Academias. ut ipsis nuntiant enigmata, quæ tu dicis? an potius, ut ejusmodi noceam juris in illos transferamus, per quem de causis responderi, cive regere consilium operamque foro navare possint? Atqui hoc cist in potestate compendiorum nostrorum; qui illa tenet memoriam, diffinit judicium, probare po- test legibus, ut nos dicimus Audite nosnos, hi non ineptis præditi ingenios quæ dixi, praebere possint & feliciter omni die praebant. Non ets quod mihi credas adfirmanti, specta Viro Clarissimo è disciplina mea pro-
You will not, however, press upon them compendia which they may read at home, if they wish. Let the professor aspire to greater things. Let him teach the riddles of sigla and notae. Let him teach them how to emend and how to interpolate faulty punctuation, to distinguish glosses and variant readings from the genuine text, to restore dislocations and to emend corruptions, to reconcile plebiscites and senatus consulta, to retrieve fugitive texts and restore them to their correct positions. For this is what you wish professors to do, this is what you bid them to hand on to their disciples. But it is in no way clear to me what can be more senseless, what more unworthy of intelligent men. If indeed young men are taught as we have described, they cannot gain anything from this teaching and, if they could, no benefit would redound to them from it. Do not think that I am one who spurns or finds fault with that system of teaching but the fact that you want young students to be taught this by the professors before they have grasped an outline (paratitla) of the law as a whole exceeds all stupidity. With respect, this is the position, I am calling a spade a spade. No-one endowed with any intelligence can accept professors teaching this to immature minds and then accuse of corrupting jurisprudence those who prescribe compendia for these students.

Finally, what do you wish us to do with those who have nothing other than Latin conversation and knowledge of everyday meanings? Should we send them back to the schools and to their parents? Or should we keep them at great expense in our universities so that they may learn the enigmas, which is what you are saying? Or should we rather provide them with such knowledge of the law by means of which they may be able to give legal opinions on cases, to advise a client and to perform diligently their task in court? For our compendia make this possible. He who has committed a compendium to memory knows the difference between the different actions; he can provide the relevant legal texts, as we train our students to do. Those endowed with some intelligence can perform the tasks that I have mentioned and do perform them daily with great success. It is not that you should take what I say on trust. Look at the eminent men produced by my teaching,
ducitos, per omnes Germaniae Belgicaeque republicas spar-
fos, & aude negare, Compendiariam Institutionem esse effi-
cacorem ad utilitatem publicam, illa tuorum siglorum, in-
terpunitionum & conjecturarum demonstratiorum. Quam
quidem ego nunquam, ut tu facis de methodo nostrâ, con-
tempsi, vituperavi; sed, quod toties repetor, sequi debere
paratitkarem Institutionem, fenti, fiadeo, contendo.
Nec credo, quenquam adeo bonâ mentis inopem fore, qui
non mihi potius, quam tibi hae parte fitem fit habiturus.
Inflaire te quidem, atque hoc unum minus inceptâ, in haece,
intelligo, pohtquam illa compendiaria in Academias & Au-
ditoria Juridica introducâ et, juventutem in ea subsistere,
nihil alium sibi proponere, nec ulterius provehere studium
suorum curas. Hoc igitur te quisi, te inculcare & exprobra-
re juventutem nostrâ, etiam verò Professòribus, si qui Au-
dtores se talis fociâ præberent, oportebat; non etiam
detonare contrâ, quod nemo sapiens, aut juris prudens o-
mittendum putat, neque contendere Pandectas sine com-
pendio paratitkari esse docendas. Non ignoro, pluriforme
Juri deditos, ut studia & ingenia sunt, tantum temporis in
haec compendiosâ totius Juris doctrinâ conscire, uti per
fortunas suas integrum illis non sit, alium deinde stadium in-
gredi novoque cursu de ultimâ coronâ denuo certare. Quod
profecto non hujus methodi, sed hominum & seculi esse vi-
tium plurquam manifestum est. Eoque vires eloquentiae &
autoritatis vestre, Cruis, intendere debuitis, ut generosi
juvenes perfecto eruditionis amore novaque cupiditate in-
flammarentur; non ut precipites darentur in cujus-
modi laborem, quo sparsâ tantum infinitâque lectione me-
moriam impende, neque praecipits ullis regulisque universis
foerent frumentque judicii restituidem, quod statuisset in-
nixum fundamentis vagâ legum notitia diffuere, sìaque
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A Dialogue on the Method of Teaching and Learning Law

scattered through all the states of Germany\textsuperscript{76} and the Low Countries, and then dare to tell me that teaching by compendia is not more productive of public benefit than the identification of your sigla, punctuation and conjectures. I indeed have never despised and denigrated your textual criticism as you do regarding my method but, as I have so often said, I feel, I persuade and I argue that it ought to follow on after the paratitular method. I do not believe that anyone can be so lacking in sound understanding that he will trust you rather than me in this regard.

I realise that you were arguing, and here on this one point not unfittingly, that after those compendia were introduced into universities and law courses, the students reckoned that they were the beginning and the end of their studies, they proposed nothing else for themselves and did not have an interest in carrying their studies further. You ought therefore to complain of this, to accuse and blame our youth for this, even the professors if any of them show themselves to be the source of so much folly, but, on the other hand, you ought not to storm against what no sensible person, and no jurist, thinks should be omitted, nor should you argue that the Pandects must be taught without compendia in the form of paratitula. I am not unaware that a great number of serious law students, of varying interests and abilities, spend so much time on this compendious learning of the whole of the law that, because of their financial circumstances they are not free to enter on a further course and to strive in this new course for the ultimate crown of success. Indeed, it is more than clear that this is the fault not of the method but of ourselves and our times. Thus, oh Crusius, you ought to have directed the force of your eloquence and authority to the end that worthy students should be inflamed with a full love of knowledge and a fresh desire to learn,\textsuperscript{77} not that they should be hurled headlong into work of the kind from which they fill their memories with innumerable scattered passages and they do not compose or base the correctness of a judgement on any precepts or universal rules; and thus, as a result, it is inevitable that such a judgement based on no foundation, because of a vague knowledge of the law is not stringent and defeats

\textsuperscript{76} Cf. Böckelmann Compendium Praefatio sub fin . . . testatum faciunt sexcenti Viri Clarissimi qui in hac nostra atque celeberrima Germanorum Academia Palatina, mea metodo non infeliciter . . . usi, fines praemium quod Caesar studiis statuit nostro, Rempublikam suis in partibus administrandam sibi commissam, non prece aut preto, sed virtute et eruditione obtinuere. (Evidence is provided by the 600 eminent men who have not unsuccessfully followed my method in this our most famous Palatine Academy of the Germans and obtained the end and reward which the Emperor laid down for our studies, namely the administration of the state in the sphere entrusted to them – not by pleading or bribery, but with integrity and learning.) Böckelmann then proceeds to list the various and important offices held by his ex-students.

\textsuperscript{77} Cf. Veen Recht en Nôt p 38 ft 13, on Huber’s feelings about an academic career.
De Ratione docendi & discendi

Ut met intentione frustrari necesse sit. Quod si alterutrum à Juris studio abesse oporteat, vel criticam subtilitatem, vel summariam universi Juris notitiam, & si facultatem non habet utraque methodus, quâ conjungatur; age, videamus, utra minore cum incommodo publico adhiberi negligique posset. E conspiratis & syllematibus, ita ut à nobis propoundatur & explicatur, palam est, haberi posse juros prudence, eo cum frustra copiâque, ut ad causâs agendas, scribenda consilia judicandique munus sufficere posset, atque sufficit; clarissimis atque vivis exemplis argumentum undique præbentibus. Vellit nullis compendiis imbuti universalium quidem Artis scientium, qua subnixi prompte & expedite in foro hominumque societate forentur, nunc quæbus perciptiunt, argutione quasdam, observatione &que rerum ad ulium nihil pertinentium, scholæ vulgaturum lectionum coniecturâque plurumque superfluos movent jactantique, & omnino talem sibi doctrinam comparant, que superventiam alienamque à communùs usu vitâque subtilitatem, ut tibi verba tua reddam, præferre videatur. Denique, sic ego, sic omnes, qui jurisprudentiam magis in rerum gravitate, quam in verborum captatione concludere credunt in animum inducimus; ne némim semper comprehenderi totius Juris intelligentiâ valde promteque Jurifconsulûm esse possè; nec aliter sapientissimos antiquitatis & hujus, & superioris feculi Juris Interpretes exitimamè videamus. Quod si tu húc rationibus necum tibi persuaderi pateris, duntaxat hoc admittite, singuli ut sua sibi abvendent, & sine détrectatione, fine communio quisque bona publico favulas manus vocisque miniferum commodet; nec alias alium corruptæ jurisprudentiæ, neque compendia primò institutionis, ut dispendia juventutis proboso accutet.

Cruxius: Ego quidem loculique, ściut volebas, dispu-
itself and its intention. But come, if it is necessary that a law student should lack either a keen critical acuity or a general knowledge of the whole field of law, and if there is no means by which both may be combined, let us see which of the two can be applied and which neglected with the least public detriment. It is clear that, by means of compendia and systems as they are laid out and explained by me, legal science can be learned and with such profit and facility that it can be sufficient to plead cases, produce written advice and perform judicial duties, and it is sufficient as is proved in all respects by very many eminent, living examples. [A8] Your students, without knowledge gained from compendia, never comprehend an overall knowledge of the law, relying on which they may take their place readily and expeditiously in court and in the real world. Your students produce and discuss to no purpose certain subtle disputes and observations on topics which do not at all pertain to practice, unimportant trivia concerning the vulgate readings, and generally unnecessary conjectures and altogether they take to themselves such knowledge as seems (to quote your own words to you) ‘to produce a critical acuity, useless and foreign to everyday usage and to everyday life’.78 Thus I and all who believe that jurisprudence consists rather in the importance of the material than in sophistical word play, think that without a compendiary understanding of the entire law, no one can be a good and efficient lawyer, and we see that the wisest commentators of antiquity and of both of this and the previous century do not think otherwise. But if you do not yet allow yourself to be persuaded by these arguments, at least admit this, namely that each individual should develop fully his own inclination and each, without disparagement or public wrangling, should adapt the service of his hand and the benefit of his voice to the public good, and that no one should shamefully accuse another of corrupting jurisprudence or arraign compendia of basic instruction as a squandering of youth.” CRUSIUS replied: “To this point, Böckelmann, I have followed you, as you

78 Cf. Noodt’s inaugural oration p 616. Having said that it would appear that previously Roman law was venerated by citizens and by rulers, now Iuris Romani nomen videri supervacuam atque alienam ab omni non solum doctrina atque elegantia sed a communi quoque usu ac vita, subtilitatem praefere. (The name of Roman law seems . . . to produce useless subtlety, foreign not only to all learning and elegance but also to everyday usage and everyday life.)
Juris, Dialogus.

tantem te Bökelmannæ confecutus sum, tametfi plus è verbis meis, quam in ipsis erat, deduxeris. Nam si recte anni
um illis adventitieris, non id mihi consilium fuisse, colligere potuisse, ut uium compendiorum, sicut Te, sicut
ab aliis homibus claris usurpantur, veluti causiam corrupte Eloquentiam traducerem; sed festinamentem nihil quam Com-
pendia quærentium in dicendo, nihil alium in docendo pra-
ferrentium infectatus sum. Quid autem? cenfeco fæciamus
aliquando finem hujus altercationis & rogemus Huberum
ut & ille suffragium uium edere animiqueinentiam & ex-
perientiam exemplum declarare velit; forte an medium ali-
quad consilium, periculos etsi veris sive fictis utrimque vac-
cuum, ab illo suppedietetur. Recte; meherele, regerebat
Bökelmannus: Nifi enim respondendi vices ab illo mihi
commodatas penitus intercipere & consumere velim, temp-
pus est, ut desisti; quod eò jam proclivius accidit, quod
tu, latere male uecto, abscedis, & plus in alio auxilio quam
in propnis viribus fpei collocare videris.

HUBERUS. Ego vero, si plura, de compendiiis & sy-
istematisibus Juris in medium proferre velit, postquam vos
in utramque partem copiosissime hoc argumentum executi e-
fits, mihi ipso vobisque gravis & inepte verbofus haberer.
Nolite à me alius expectare, nifi, ut simpliciter exponam;
quæ fit ratio methodusque institutionis, quam juven-
tuti, cujuus fpei admotus sum, impertiè; atque exinde,
quam partem vestræ contentionis ego probem vel impro-
bem, si res tanti videtur, colligendum relinquam. Enim-
vero non potissum fitis laudare nobilem Cursi indignationem
adversus pravum feculi nostra noftri miorem, festinandi studia ju-
ventutis nihilque ipsis quam Compendiaires Systematum li-
bellos exponendi. Sed hac longa quercula nulloque bono à
nobis iteranda. Permittite mihi, ut repetitam priorum tem-
Pp p p 2 po-
argued your case, as you wished, even if you have read more into my words than was in them. For if you had rightly attended to them you would have been able to gather that it was not my intention to traduce the use of compendia as employed by you and by other well-known men, as the cause of corrupt rhetoric, but I was inveighing against the superficiality of those who look for nothing other than compendia in learning and those who prescribe nothing other than compendia in teaching. What then? I think that we should now make an end to this argument and ask Huber if he would be pleased to cast his vote and tell us what he thinks and what he has found by experience and perhaps whether some compromise solution, free from the dangers, whether real or imagined on both sides, can be supplied by him.

BOCKELMANN responded: “Upon my word, that’s right. Unless I wanted to take up and address in depth the opportunity to reply which was offered to me by Huber, it is time that I stopped. This will be all the easier because, covering your flanks badly, you are withdrawing and you seem to be placing hope in outside help rather than in your own strength.”

HUBER: “If indeed I wished to contribute more to this discussion about legal compendia and systems, after you have both thrashed out this argument most exhaustively on both sides, I would appear to myself and to you ponderous and clumsily verbose. Do not expect anything else from me except a simple exposition of the rationale and method of teaching, the elements which I impart to the young men to whose hopes I am addressing myself, and then I shall leave it for you to gather of which part of your debate I approve and of which part I disapprove, if the matter seems worthwhile.

For, indeed, I cannot adequately endorse Crusius’ noble indignation against the depraved custom of our age that accelerates the studies of our young men and explains nothing to them other than little compendiary books of systems. But this is a longstanding complaint and there is nothing to be gained by my repeating it. Permit me then, reminding you of former times,

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79 The 1684 text (p 60), the 1688 text (p 35) and the 1696 text (p 608) have corruptae Eloquentiae, but Buder, p 70-71, has corruptae jurisprudentiae which perhaps is a preferable reading. At least Buder thought so.
De Ratione docendi & discendi

porum memoriam, diversas docendi discendi rationes vobiscum recenseam, atque exinde, quomodo ad hanc methodum, qua nunc utimur, perventum sit, denique ex omnium viarum comparatione, quae praetantissima sit, animadvertamus. Primo omnium ante Justinianae tempora, ut ipse narrat, cum ad studium Juris abiolvendum quadrinuim omnino definitum effecerat, ulla uius ferebat, ut in iuris sententias versus in millibus, in quos libri de jure scripti, erant distincti, studiose vix sexaginta millia egregie proponentur, reliquis omnibus tanquam ab usu remotis, penitus neglectis, atque ex illo ipso Compendio, adhuc non paucis velut superfacie praerebantur, quod erat Compendium Compendii. Imperator deinde novum Juris epitome ex duobus librorum millibus compositum, methodum studendi hoc modo dispersum est, ut omnium florum librorum institutio quinquennii spatium absolveretur, initio ab Institutionum libellis facto, monitoque, ut ad reliquos libros paratitla quidem praeficerentur, vel ipse leges in latino in Graecum modum vertentur, commentarios autem facere ne liceret Ptolemeus Caesar Leo Philosoplius Compendii Justinianae fecit aliud brevitarium, in quo lecetas leges & Constitutiones in corpore Justiniani vertit in Graecum fermonem, et si non ubique etiam modo tam religiosi observet, quam Justinianae volucrat. Atque ex hoc basilico Compendio, latus ample tamen, rursum idem Leo fecit epitomen, opus meris definitionibus & regulis coelans, praefer aliis, fide manualia, que Constantinus Harmenopolis, Michael Attaliota, Michael Psellus, Antiochus Balsamon aliique plures in notitiae Basilicorum a Suaregio recensci, ipse quoque rursum Leo nis filius Imperator Constantinus Porphyrogenetecse publicaverunt, licet & peculiare Compendium Novellarum editit Julius Patricius Exconful & Anteceffor Constantin.
to review with you the various different methods of teaching and learning law and then, how we arrived at the method that we now use and finally, from a comparison of all ways, we shall see which is the best.

First of all, before the time of Justinian, as he himself tells us,\(^\text{80}\), when a period of four years was absolutely the limit for completing the study of law, it was customary that of the two million lines comprising the books written on law,\(^\text{81}\) scarcely 60,000 were put before the students, all the rest being as it were remote from practice, completely neglected and, even from that abridgement, quite a number were still passed over as being unnecessary. This was a compendium of a compendium. Then the Emperor, having composed a new epitome of the law from the 2,000 books, divided the curriculum of study in the following way, namely that the teaching of all his books should be completed in a period of five years, a beginning being made with the books of the *Institutes*, with the qualification that of the remaining books, paratitla would be composed, or the actual laws would be turned from Latin into Greek \(\kappa\alpha\tau\alpha \pi\omicron\delta\alpha\zeta\) (word by word),\(^\text{[A9]}\) but, it was not permissible to write commentaries. Later, the emperor Leo the Philosopher wrote another epitome of Justinian’s compendium in which he translated fragments and constitutions selected from Justinian’s *Corpus*, into the Greek language, even although he did not observe \(\kappa\alpha\tau\alpha \pi\omicron\delta\alpha\zeta\) (the word by word) translation as conscientiously as Justinian had desired. And from this imperial compendium, which was fairly comprehensive, the same Leo again made a further epitome, a work consisting of pure definitions and rules; besides there are the other \(\pi\rho\omicron\chi\epsilon\iota\alpha\) or manuals which were written by Constantine Harmenopulus, Michael Attaliota, Michael Psellus, Antiochus Balsamon and several others mentioned by Suarez in his *Notitia Basilicorum* as well as by Leo’s son, the Emperor Constantine Porphyrogenitus. So too Julius Patricius, the ex-consul and professor at Constantinople, produced a special compendium of the *Novellae*.

\(^\text{80}\) Cf. *Constitutio Omnem* § 1 passim.

\(^\text{81}\) Cf. *Constitutio Omnem*, 1. *ex tanta legum multitudine, quae in libronum quidem duo milia, versuum autem triies centena extendebatur, nihil aliud nisi sex tantum modo libros a voce magistra studiis accepient*. The Latin text wrongly reads *vices centena* for *tricies centena*. 
Iuris, Dialogus.

nopolitanus; e quibus omnibus factis constat, quae fuerit inde a tempore Justiniani veterum Graecorum ratio docendi difcendique Jurs; videlicet, incipere a Compendiis, atque exinde ad Excerpta basilica, denique proging ad universalum corpus Justiniani: nec eos ita existimasse, dispensandum id esse doctrine juridice, si nemo habiisset quae auctores

numeri sunt, et auctoritas auctoris verba sunt, verba sunt Harmanopuli, si pulchriora, & utiliora maximeque necessaria in libro manuali colligerent. Imo patet ex codem Harmanopulo ceteriique superstitibus, id eos egisse, uti, quae a tempore Justiniani ad fumam atatem plus annis quingentis evenerant mutationes additionisque legalis disciplinae, earum in suis epitomis notitiam studiis impertirentur. Quod rursus vel lim obernari adveros eos, qui his diebus Artem Jurs contaminari violare clamat, si quando aliquid hodiernis Jurs manualibus est moribus institutisque sequentium temporum mutueri adjungique sentiant. Graci Imperatores, & Jurisconsulti, utcunque succesores Justiniani in codem Imperio, minime religioni duxerunt, Illius Jurис prudentiam ad usum suum temporis accommodare; inepotique fœ fore crediderunt, si comendia & manualia fuerunt, quibus adolescentibus summis Jurs positiones tradebant, perinde composita et infert, ac si Justinianus adhuc vivere net nihilique ab ejus atate sufflet innovarum. Nos vero poht alios sexcentos & quod excedit annos, extincto Justiniani Imperio, quis eis haud alter, quam ad lapplendas leges domesticas cujusque populi receptus, non audebimus juventutis notitiae manualiae præscribere, in quibus eos adomnemus, quid de jure vetusto moribus hodiernis obseruamus aut focius? Sed pergamus. Dum ita Graci Jurs scientiam fuis moribus & institutis aptatum excelebant, in Occid. cum Imperio leges Romanæ exulabant & ignorabant; donec:

PPPP 3

Lotba-
From all of the above is evident what constituted the ‘old’ Greek method of learning and teaching law from the time of Justinian to their own day, namely to begin with compendia, and from there to go to the imperial excerpts i.e. the Basilica and finally to proceed to the entire Corpus of Justinian. They did not think that it was a waste of legal teaching if, according to the words of Harmenopulus, τα καλλιστα χρειωθη τε και ανακαινιστα συντεκτενεν (if they were to collect the more noble texts, the more useful and especially the essentials in a manual). Indeed, it is clear from that same Harmenopulus and from the other writers who survive that they did so in order that they might share with their students by means of their epitomes the knowledge of the changes and additions to the legal discipline which had come about from the time of Justinian to their own age – a period of more than 500 years. Again, I would like people to be on guard against those who clamour that these days the knowledge of law is being contaminated and violated whenever they see that something from later times has been included and added to present day legal manuals. The Greek emperors and jurists, as being in one way or another the successors to Justinian in the same empire, thought it in no ways disrespectful to adapt his jurisprudence to the needs of their own time, and they would have thought that they were being absurd if they had composed the compendia and manuals from which they taught young people the propositions of law as if Justinian were still alive and as if nothing new had been introduced since his day. But now, forsooth, after another six hundred or more years, and after Justinian’s empire has ceased to exist, shall we who received his law only to supplement the indigenous law of our various peoples, not dare to prescribe for our young students manuals in which we inform them what of the ancient law is or is not observed in present day customs?

But let us continue. Thus while the Greeks were cherishing the knowledge of law as adapted to their customs and institutions, in the West the Roman law, together with the empire, was banished and ignored until, when Lothar the

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82 This is a paraphrase, not a direct citation, cf Hexabiblos § 14.
De Ratione docendi & discendi

Lothario Saxone Imperatore, quasi posthuminio studium ejus infauraretur. In his initii, prima quidem ingeniorum occupatio fuit eaque sola libros Justiniani evolvere, dare operam, ut intelligenterur, diversos libros legesque inter se conferre, diffidentia conciliare, posterioreque cum prioribus conjungere; cujus rei specimen Inerius in Excerptis Autenticius per Codicem spargendis audax & nobile dedit. Secundum hae principia progreffi sunt homines studiosi ad proponendas Auditoribus suis Summas, ut loquebantur haud abfurdè, librorum Juris, quæ nihil aliud fuere, quæm paratila, quæ Justinianus appellat graecè corrupto vocabulo, idque potissimum ad Institutiones atque Codicem, ut Placentinus & Aso praeverunt. Ita enim existimabant, Codicum postius quam Pandectas iis, quia Institutiones perceperant, essè praelementum, quia recentius in illo jus essè usque in foro certioris & frequentioris, quia gratia Novellarum argumenta singulis in Codice Rubricis Inerius ille subjecerat; quod illorum institutum ad formandos judices causarumque Patronos, id essè, validos Jurisconsultos, non erat, ut magnopere impobretur, utcunque deinceps alter virum fuerit pofteritati. Juxta summas pro tyrnibus Artis, in ulum profectionis scribant glossas, quæ sunt breves interpretationes legum, secundum ordinem verborum, in quo genere facile principem locum tenuit Accursius. Fueret, qui intentione præ alis cura jus Romanum fleterent ad trituras forensem, cujus rei præcipuus Auctor Durandus ille, dictus pater Præctice, laudatur. Postea cum glossandi materia consumpta summarumque statu esse videretur, fecutì Interpretes ingenti apparatu ad commentarios in omnès juris libros legesque scribendose se conterunt; fpreto jam repudiatoque Justiniani præcepto, quod priores, summis atque glossis contenti, cum illæ Caefaris edicto exactè con-
Saxon was emperor, the study of it was restored as if by right of postliminium and it resumed its former position. At the beginning, the first object of talented men was to read only the books of Justinian and to make every effort to understand them, to compare the various books and fragments one with another, to reconcile contradictions and to join the later with the earlier. Irnerius, in his extracts, the Authenticae, scattered through the Codex, gave a bold and splendid example of such work. In accordance with these principles learned scholars moved on to expounding to their classes Summae of the law books as they not illogically called them. These were nothing other than paratitla, as Justinian called them, an unfortunate translation from the Greek, and these were given chiefly on the Institutes and the Codex as Placentinus and Azo had done previously. For they used to say that the Codex rather than the Pandects ought to be taught to those who had mastered the Institutes, because the law in the Codex is more recent and of more certain and more frequent use in court. It was because of this that the famous Irnerius had subjoined the appropriate extracts [Authenticae] from the Novels to the individual rubrics in the Codex.

This practice of theirs to train judges and advocates, that is practising lawyers, was not such as to be greatly criticised whatever else it may thereafter have seemed to later generations. Besides the summae for the beginners in law, for the use of the more advanced students they used to write glosses, which are short explanations of a text, taking it word by word, and in this field Accursius easily holds the first place. There were those whose primary care was to adapt the Roman law to the rough and tumble of the courts and in this matter the famous writer, Durandus, called the Father of Practice, must be especially mentioned. Afterwards, when all the material requiring glosses had been covered and there seemed to be enough summae, the subsequent commentators devoted themselves to writing commentaries, with a vast apparatus, on all the books of the law and on the constitutions, thus they were now spurning and repudiating Justinian’s ruling [prohibiting commentaries] which the earlier scholars, being content with summae and glosses, [had in one way or another observed]. Indeed, since the summae conformed exactly

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83 For more on Summae see Schrage Utrumque Ius pp 35, 88.
84 See footnote 66.
85 The 1684 text, p 67 in med., includes here the words utcumque servaverant quippe. They seem necessary for the sense and I have translated them accordingly.
39 *Iuris*, Dialogus.

congruerent; hæ tam modice ab eo recedebant, ut auctoritatem ejus comiter industriöque euctodire velle viderentur. Sed commentandì signum inprimis extulere *Bartolus de Saxoferrato* & *Baldus de Ubaldis*; aequo exinde copia enormis confiliorum, responsorum omnilque generis commentariorum jurisprudentiam, ad veterem, quæ fuerat ante *Iuvénianum*, incertitudinem, dubitationem confusionemque, fuit ipse prædixerat Cæsar, reduxit atque deformavit; ut non minus ad communes Doctorum sententias quam ad ipsos fontes legum consilia sententiaque exigerentur. His temporibus juventus ad studium Juris accedebat, imbusta, si forte, *Philosophiæ scholarum*, illà spinosà & incivili, à notitia utriuque literaturæ & antiquitatis alienissimà; nec alia ratio Juris studio confiare potuit, ubi dum superiori seculo humanioris literaturæ lux è tenebris ignoraentiae barbariae emerit. Ab eo tempore cum novam faciem induit universa Iurisprudentia, tum ratio quoque descendit atque difcendi juris alia planeque nova invaluit; neque tamen ea sine aliqua varietate. Videntur omnino Juris Interpretæ, qui literas politiores cum Juris scientia conjuxerunt, duorum fuit illicit generum. Quidam intra folios Juris Romanii limites fecerunt nihilque alium agere voluerent, quam ut libros à Justiniano reliçtos illufrarent aut emendarent. Alii faciendam putarunt, ut intelligentiam Juris antiqui cum utù nostrì seculi peritiâque forensi conjungi gererent. Priores inter, familiam duxerè *Cujacius*, *Duarenus*, *Donellus*. Inter posteriores excelluerè *Zalus*, *Alciatus*, *Vignus*; ex ingenti numero Triumviro edidì; fætus est. Sunt etiam, licet nostris, qui non tam jus, id est, scientiam boni à æquö, quam antiquitates & Philologicas observationes libris *Iusliani*is adperfecerunt quales *Antonius Augústinus*, *Budeus* atque *Revarus*. Hi omnes inter
to the emperor’s edict and the glosses departed so little from it, they seemed in a willing and industrious manner to be trying to protect his authority. But Bartolus de Saxoferrato and Baldus de Ubaldis in particular raised the banner for commentating and from then on an enormous flood of consilia, responsa and all kinds of commentaries reduced and debased jurisprudence to the ancient, pre-Justinianic state of uncertainty, doubt and confusion, just as the Emperor had himself predicted. As a result, consilia and opinions related as much to the communis opinio of the doctors as to the actual sources of the law.

In those days, young students came to the study of the law imbued, maybe, with scholastic philosophy, that thorny and obscure study, completely ignorant of knowledge of both literature and antiquity, and this was the only method of studying law, until, in the last century, the light of classical literature emerged from the darkness of barbaric ignorance. From that time, the entire legal discipline both put on a new face and another and entirely new method of teaching and learning law began to thrive, even although there were some variations. In general, the commentators on the law who combined classical literature with knowledge of the law seem to have been of two kinds. Some kept solely within the bounds of Roman law and desired to do nothing more than to explain and emend the books left by Justinian. Others thought that what should be done was to link the knowledge of ancient law with modern usage and the practice of the courts. Among the former Cujacius, Duarenus and Donellus were the leaders. Among the latter Zasius, Alciatus and Viglius were outstanding, it being enough to have cited the leading three of a vast number. There are also, as you know, those who scattered throughout Justinian’s books comments not only on the law, that is the knowledge of the good and the fair86, but also on antiquities and philology; such are Antonius Augustinus, Budaeus and Raevardus. All these

86 See D.1.1 pr. and D.1.1.1.1.
De Ratione docendi & discendi

inter alias industria sue partes operam Arti utilissimam navaret, emendando corrupta Juris antiqua loca; quod tamen neminem cum aliquo laudis succellit videmus aggressum, quam qui copiam librorum veterum, maxime Florentini Pandectae habuissent, aut ubi conjecturis utendum videreetur, qui longo docendi scribendique ufui literisque tam Graecis quam Latinis culti famam auctoritatemque insignem adepti forent. non ignoro fieri potuisse & aliquando contingisse, uti qui neutram horum subsidiorum facultatem haberent, tamen felici quodam conjectura nodum alicujus loci detectissent atque solviissent: cujus rei speciem Dominicus Baudius Jurisconfultus minime equidem Validus; dedit, quando Grotius ab eo monitum se fatetur, apud Ulpiunam in l. 1. §. 45. seq. Unde Vi. pro passides, legendum est: poffedit: praeter quem locum ego non admodum recordor, Grotium in lectionis recepta mutationibus, quælibet lauram; tametsi illam doctrinæ partem merito inter gravissima Jurisconfultorum officiæ reputatbat.

Hoc faciant, adolens Themidis Cujacioris aris,
Ingentique bono nominæ nata Fabri

canebat ipse, cum juvenis furos flores adipseret Infinium,
scit olem Alceiades, ut rebert Plutarchus, magistro praedicanti, se corrigendo Homero parcm effe, Ne tu,
igitur feulu, inquit, es, qui adhuc scholæ des operam.

Res enim est manifesta, neminem hanc studii partem in quâque disciplinâ profiteri posse, qui non omnibus numeris in eâ fit exactus & abolurus, judicioque multa lectione continuâque tractatione rerum, in quibus verfaturus, subâcto limatoque: si quidem non modò callere, sed etiam judicaret suam Artem, & probare, quod ab Artis tuae conditoriibus extat reliquum, sine dubio ad fumum, ut auctoritate, ita scientia peritiaeque faesigium pertingit. Unum in-
scholars, in addition to the other facets of their industry, with zeal and diligence accomplished a task, most beneficial to our subject, namely the emending of corrupt texts of the ancient law. However, we see that no-one has embarked on this task with some degree of success except those who had at hand a number of the old texts, especially the Florentine Pandects\textsuperscript{87}, or who, when they decided to use conjecture, had acquired an outstanding reputation and authority in both Greek and Latin literature from long training and practice in teaching and writing. I am not unaware that it could happen and sometimes has happened that those who had expertise in neither of these skills, nevertheless by a happy conjecture, had identified and solved the knot in some text. An example of this is provided by Dominicus Baudius, a rather second-rate jurist. Grotius admits that he was advised by him, that in Ulpian’s text in D.43.16.1.45 \textit{possedit} should be read for \textit{possides}\textsuperscript{88} (sic). Apart from this instance, I do not recollect at all that Grotius\textsuperscript{89} sought to make his name by changing the received reading, even although he thought that this aspect of teaching is rightly one of the most important duties of a jurist:

\begin{quote}
‘Let others do this, Cujacius, worshipping at the altars of Themis. And the Fabers, names destined for great fame’.
\end{quote}

This he wrote when as a young man he “scattered his flowers” for Justinian. Thus once Alcibiades, as Plutarch\textsuperscript{90} tells us, when a schoolmaster said that he himself was capable of correcting Homer, remarked ‘Oh, how so? You are therefore foolish to still be giving lessons to schoolboys!’ For it is obvious that no one can practise this aspect of a subject in any discipline, unless he is knowledgeable and perfect in all aspects of that discipline and with his judgement disciplined and thoroughly prepared by much reading and continuous handling of the material with which he is dealing. For not only knowing but also judging and assessing that material which was left by the founders of your subject, without doubt extends to the highest peak both of authority and of knowledge and experience. I know that one man,

\begin{footnotes}
\item[87] The Florentine was notoriously difficult to access. For a discussion of the texts available, see Stolte Brenkman p 73 ff.
\item[88] The 1684 text, p 70, reads \textit{pro possidet legendum esse possedit}, as does the 1696 edition (p 612) and the Buder edition (p 76). The 1688 \textit{possides} is a missprint for \textit{possident}. On his debt to Baudius Grotius wrote p 178:
\begin{quote}
Line 1 Nec alius dejici visus est, quam qui possidet. \textit{Lege possedit} . . .
\end{quote}
\begin{quote}
(omitted 9 lines)
Non alii autem quam ei qui possidet, interdictum unde vi competere. \textit{Legendum possident, atque id olim annotavi suggerente Baudio}.
\end{quote}
\begin{quote}
(Nor does anyone appear to be deprived of possession except he who is in possession. . . . The Interdict \textit{Unde vi} is available only to him who is in possession. At the suggestion of Baudius I formerly noted that \textit{possedit} (he is in possession) must be read.)
\end{quote}
\item[89] The 1684 text, p 70, reads: \textit{praeter quam locum non necor Grotiuni in universa florua sparsione ad omnes Justiniani libros, ullam lectionem ab omnibus receptae mutationem, adstruxisse; cum eas doctrinæ partem mento inter graviissima jurisconsulti officina reputaret}. (apart from this one instance I do not recollect that Grotius in his \textit{Florum Sparsio} on all the books of Justinian, made any change to the reading received by all, although he considered that aspect of teaching is rightly one of the most important duties of jurists):
\begin{quote}
The two lines cited above appear in G.C. Gebauer’s Preface to Grotius’ \textit{Florum Sparsio ad jus Justinianum} (Naples, 1777), (and are part of ten lines composed by Grotius).
\end{quote}
\item[90] See Plutarch’s \textit{Alcibiades}, § 7.
\end{footnotes}
Iuris, Dialogus.

intelligo Antonium Fabrum ad hoc institutum sc contulisse natum, annos viginti quattuor, neque manuscriptis inruditum, nec etiam magnopere subnixum collatone veterum monumentorum, quae lectionis suo tempore receptae sidem facere potuerint. Enimvero non adfentior Bachovio, qui cum elementer loquitur, eum appellat hominem corruptum jurisprudentiae natum; tametsi Wischenbachius nother hoc nimirum avide convitium arripuerit, auditoreque suas a lectione conjecuturam ejus graviter dehortari sibi solitus. Id tamen eximium, emendationes ejus esse pleonasque non necessarias, atque ita comparatas, ut ab alius, sicut ipsi fate- tur in praefatione sua, refelli non nequeant. In hac autem ego sum hærefi & libenter, in fluctuationibus juridicis esse duas facras anchoras, quibus non sit utendum, nisi extremam necessitatis cogente: sunt autem hæ meo judicio, confessione antinomie & mutatione lectionis Florentine. Sunt qui hoc mei tollendi difficultates legum appellant viam Regiam; sed quibus Artis fuis honos & integritas cordis curaque est, non poffunt aliter arbitrari, quam hane esse viam militarem solvendi nodos gladio, decus autem Artis prostitutendi ludibrio & ipsam dilacerandi. Nimirum hæ acer- ba dicta Cruitt auribus accidabant, quam uti diuitius ea silentios tranfmittere poffet. Atqui ego, mi Hubere, modo non audebam praefumere, ait, quod nimirum aperte jam profiteris, esse a verso animo aliqua parte studii, quod indut e renatis litteris versis jurisprudentiae delicias fecit, & clarissima nomina superiores feculi eterna posteritatis admirationi consecravit. Imo vero, replicabat ille, nemo praebuit de illo genere, nemò magnificiuit de auctoribus, quorum tu laudem demonstras sentit. Ita enim eximium & semper arbitratus fium, Professionem studii Juris critici, quod in emendandis mutandisque legum dictis conflitit (ita utumur verbo) habendam esse profutigio et

Q q q q
Antonius Faber, at the age of 24, betook himself to this study. He did not have manuscripts nor did he rely greatly on the comparison of ancient texts which could support the received readings of his day.\footnote{See A. Faber Conjectura (Epistula). Faber mentions his age and also writes that his emendations are not essential. \textit{[N}eque tamen \textit{ita} necessarias quin posuist etiam \textit{etiam nefelli ab \textit{is} qui felici 
}ingenio et \textit{maior} eruditione \textit{praediti}. (Nor however are they so essential that they cannot be refuted by those who are gifted with happier talent and more learning.)}

To be sure, I do not agree with Bachovius\footnote{See Bachovius in \textit{Rationalia Fabri.} In his \textit{Ad lectorem} Bachovius launches a vigorous attack on Faber, lambasting both his \textit{De erroribus 
}pragmaticorum and his \textit{Rationalia.}} who, when speaking quite mildly, called Faber ‘a man born to corrupt jurisprudence’, even although our Wissenbach seized upon this excessively heated controversy and used to seriously discourage his students from the reading of Faber’s conjectures. However, I do think that Faber’s emendations are generally unnecessary and such that they cannot fail to be refuted by others, as he himself states in his preface\footnote{Van den Bergh \textit{Noodt}, p 140 ft 89 writes that Huber’s remark \textit{Id tamen existimo, emendationes eius esse plerasque non necessarias atque 
}ita comparatas ut ab aliis, \textit{sicut ipse fatetur in praefatione sua refelli non nequeant,} is directed at Noodt’s comment in the \textit{Praefatio} to Book I of his \textit{Probabilia} (1674). \textit{Probabilia quippe ede 
}instituti opiniones, non dare decreta, nec definire quae sunt ambigua sed quid mihi videatur verisimilium enarrare. (My intention is to give plausible opinions, not decrees, not to determine what is ambiguous, but only to explain what seems plausible to me. Transl. van den Bergh.) However, here it seems that van den Bergh is overprotecting Noodt. It is clear from the context (1688, p 41) that Huber is attacking A. Faber. See Faber’s \textit{Conjectura (Epistula)} as cited in ft 82.} In this regard, however, I am of that school of thought, and \textit{\upsilon \chi \omicron \mu \alpha \epsilon \iota \nu \iota} (and I gladly boast that I am), that in legal questions of doubt there are two sacred anchors which are not to be touched except in dire necessity. These are, in my opinion, the admission of an antinomy and the alteration of a reading in the \textit{Florentina}. There are those who call this method of removing difficulties in the law the Royal Way (\textit{Via Regia})\footnote{See Commentary Chapter V.1.3.1 on Roads.}, but those to whom the honour and integrity of their subject is a care close to the heart, can only think that this is the Military Way (\textit{Via Militaris}) of cutting knots with a sword\footnote{The reference is to Alexander the Great cutting the famous Gordian knot in 333 BC. See e.g. Plutarch \textit{Alexander} § 18. The metaphor of untying knotty problems was introduced in 1684 pp 71-72. In 1688, p 4, it is replaced by \textit{in fluctuationibus juridicis,} presumably because the 1684 mixed metaphor of knots and anchors jars, whereas waves and anchors are natural companions.} and moreover making the glory of our subject into a laughing stock by dishonouring and tearing it apart.

These words fell so exceedingly harshly on CRUSIUS’ ears that he could no longer let them pass in silence and he said: “My dear Huber, I indeed have not dared to take for granted what you now state quite openly, namely that you are hostile to that part of our study which has created the true delights of jurisprudence from reborn texts and has immortalised the most illustrious names of the last century for the everlasting admiration of posterity.”

“No, truly”, replied HUBER, “no one feels more sublimely about that scholarship, no one feels more generously about the authors whose praiseworthy achievements you are describing than I do.\footnote{For more on Huber’s attitude to textual criticism see \textit{Digressiones}, 2.1.24. p 549 f.} For I think and I always have thought that the profession of the critical study of law which consists, as we say, in the emending and changing of the words of the fragments must be regarded as the peak and,
42  De Ratione docendi & discendi

quia complemento doctrinae legalis, fere, sicut Censora
fuit habita, respectu Magistratuum Romanorum. Sed ut
optima quæque pestimo modo corrumpuntur, ita nihil exi-
tiofius artis Iuridicae, quam terneritas & luxuria Crisus esse
mihi videtur. Nam reliqua docendi vitia, sive in methodo
praepositam, sive in conciendi pigritia, sive in ipfa senten-
tiarm perverita confinant, iplos Artis libros intacros re-
linquunt, Critica male exercita leges ipfas corrumpit & fa-
crum Juris corpus violat ac immittit. Ne vero hujiusmodi
infinita oratione previantillum institutum maligne à me
putes arrodi, dicam, quod pace tua fiat, quid in vestro,
Crus, instituto potissimum mihi duplicat. Primum atque
precipuum id esse puta, quod occupavi dicere, vos prima
docendi juris rudimenta ponere in emendationibus, nec
alia credere januam famae patere, quam fi receptas pro-
bataque ab antiquissimis codicibus lectiones falsitatis ac in-
vertatis. Tamen qui ego de antiquis Codicibus loquar;
cum satia conficit, non habere nos alium antiquitatis ve-
nervatione commendatum, de Pandectis saltem, nisi quod ex-
tat, Florentiae, vos, inquam, adolescentem, qui le vo-bis
committunt, initia talibus conjecturis earumque substi-
liam probationibus occupatis, antequam terminus & regulas
artis universae methodica institutione, quam putis impro-
batis, perceperint, quæ re nihil inutilius & à verà docendi
discendique ratione alienius esse potest. Ex quorum genere
non est mirum nasci tales Juris criticos, quales illud vetus
dictum notat, emendandis legisibus neminem se dedere, nisi
qui de legisbus nihil intelligat; quod equidem si de omnibus,
qui in haec provinciæ laureamque ferunt, interpretati sint,
injuriam falsumque esse non negaverim. Enimvero, si quis
in indagandis legum cenibus eiusmodi quid reperiat, quae
tempulenta sed elegantiss ingenii Baudio occurrit, in laudato
modo
as it were, the fulfilment of legal learning, almost like the office of Censor with regard to the Roman magistrates. But as all excellence is corrupted by excess, so nothing seems to me to be more pernicious for legal science than the temerity and excess of a critic. For the other faults in teaching whether they consist in a disorganised order, or a sloppy co-ordination of legal texts or in actually wrong opinions, leave the actual books of the law untouched. Criticism, badly applied, destroys the actual laws, violates and diminishes the sacred body of the law. Lest you should think that a most outstanding practice is being spitefully sniped at by me in a vague speech of this kind, let me say, with your permission, Crusius, what particularly displeases me in your practice. Consider that, first and foremost, is what I have been busy stating, namely that you begin teaching the first elements of law by making emendations and that you believe that the only door open to fame is if you disturb and upset the readings received and supported by the oldest manuscripts. Irrespective of what I say about the old manuscripts generally it is agreed that, at least regarding the Pandects, we do not have anything else endorsed by the authority of antiquity other than what exists in Florence.

You, I say, fill up the first lectures of the young men who entrust themselves to you, with such conjectures and the most subtle proofs thereof, before they have learned the terms and rules of the subject as a whole, by that methodical teaching which you utterly denigrate. Nothing is more useless than this, nothing can be further from the true method of teaching and learning. It is not surprising that from that kind of teaching and learning we get such criticism of the law as was noted in that old maxim, ‘the only one who devotes himself to emending the law, is one who understands nothing of the law’. If this was said of all who have sought honour in this field, I would not deny that it is injurious and false. [A10] For, if anyone in investigating the meaning of the law fell on something of that nature as happened in the case of the drunken but highly intelligent Baudius, in the text from Ulpian’s commentary, which has just been cited,98

*Tametsi quid... Florentiae.

97 Cf. Böckelmann’s Compendium Praefatio p [6 ff] where he discusses the flaws in teaching under the headings “without order, without limits and without reason”.

98 D.43.16.1.43. See p 40.
modo Ulpiani responso, bene se res habet & feliciter! ac-
clamabimus. Nec minus si quid simile vobis haeret, ap-
plaudemus & gratulabimur. Ipsius quoque non minus gratan-
ter, vobiscum, si quid occurrat ejus generis, communi-
caturi.

Tu vero, (interrumpere CRUSTUS) fatis infolenter, dum
præ te fere admirationem. Crisòs, utrum ejus & studiorum au-
toresque nimis adspersanter babes, ut nec beneficiun in Ar-
tem, quod fatere, collatum, sine convictio emendatoris comme-
 morare potueris. Mi Crusi; Huberus subridens; noli in te di-
étum putare hanc delinit, quod de Baudio minime profecto qui
excidit: et si tu quoque, sic notis finnus inter nos, gaudeat
hac parte morum præci Catonis, quam toties libi Baudius
ultró apud amicos adscribit. Sed nec ego Baudii contumeli-
am neque tuam, facillime Crusi, quae in conspec-
étu habui, quam quod ab aliis fere notatum est, ejus-
modi latus ingeniorum, felicioresque divinationes & amena
crisos libentius inter pucula vel a puculis, quam inter oc-
cupationes succedere concenatae. Forsitan inde contra-
étum est, quod mihi sic potius animo sedet, libros juris
evolvere, ut inde regulas & exemplarum agendarum col-
ligam, imitarique cupiam Antonii Mornacii inter alios
multos institutum, qui rarus erat in Doctóribus Accurzia-
nis & Bartolítis, rarus in novitiis Interpretibus commu-
nubique tententius inter fè comparandis; sed ipsi Juris cor-
pori incumbebat, ipfas leges memorii judicioque fugigebat,
& tamen idem rarus in emendationibus censurâque juris an-
tiqui; unam hanc, pulcherrimamque facultatem acquisive-
rat, quibuslibet factorum speciebus applicare textus legum;
exaèl singulis convenientes, omniaque ad usum humane
societatis referre; neque minus tamen idem eloquentiâ om-
nique literarum cultu excellebat, tuaque scripta talibus ubi-

Q q q q 2 que
that is splendid and we will cry ‘congratulations’. [A11] *No less if something similar happened to you, we will applaud and congratulate you. We will also no less readily share with you if any such occurs to us."

CRUSIUS interrupted: “you indeed show yourself to be quite arrogant in your admiration of yourself, you prattle most disparagingly of criticism, of its use and of its students and authors, so that you can mention no benefit to the science which you profess without insult to the emendator.”

“My dear Crusius”, said HUBER with a smile, “don’t think that this was said against you, μη τι χολωθης (don’t be angry) 99 and don’t think that what I said and, in no way μησικακουντι (resentfully) about Baudius, was said against you. Even if, for we know each other well, you rejoice in this aspect of the customs of Cato the Elder which Baudius so often voluntarily ascribed to himself among his friends. But, I did not intend an insult to Baudius nor did I have your φιλεταιρι (friendship) in mind, good-natured Crusius, other than to say what has often been noted by others namely that in this kind of intellectual game the more witty and happier guesses and pleasantries of criticism pop up more freely among the cups or as a result of the cups than by continuously toiling.†

Perhaps from that there has developed my plan, namely I desire to read the books of law so that from them I may gather the rules and instances of practice and to imitate the habit of, among many others, Antonius Mornacius who was unique among those after the Accursian and Bartolist doctors, and unique in comparing the new interpreters and the ‘common opinion’ one with another but he relied on the actual corpus of the law, he committed the actual law to his memory and judgement, and nevertheless he was unique in his emendations of and opinions on the ancient law. He had acquired this one most beautiful facility, to apply the texts of the law to each and every kind of situation matching each case exactly and to refer all to the benefit of human society; and he nonetheless excelled in rhetoric and in all the refinements of ancient literature, and he adorned his writing throughout with such

*† Nee minus . . . concatenatas

99 On μη τι χολωθης see Homer Iliad IX.33. ὁ θεός ἔστιν, ἄνδρα, ἀφραδε οὐ δε μη τι χολωθης. (My lord, this is the right of the assembly. Do not be angry.) Diomedes (Huber) is here criticising Agamemnon (Crusius) and claiming the right of the agora to speak his mind. Agamemnon must not be angry. Diomedes says he opposes Agamemnon’s (Crusius) foolish actions Ἀρείδη σου πρῶτα μοχησομεν ἐφαράκτων, but has the right to speak his mind.
De Ratione docendi & discendi

que decoravit elogius. Nifi me vehementer opinio fallit, hac ratione Iurisconsulti officium melius impletur, quam perpetuis finemque contendendi non habentibus emendandii conjecturis. Maxime, quando ita conjecturalis illa Crisis exercetur, ut propriae opines genus de juris controversiis adjuvetis, rationesque adversantium & obstantia legum argumenta refellatis; quod quidem loco secundo animadvertere cupidiem. Nam si toleranda fine manucriptis est emendandi licentia, duntaxat tam evidens esse debebat, ut minus facile refelli quam addirui & approbari posset: quod de talibus, quae tuendis opinionibus, in quibus Interpretex discrepant, adhibentur, nullo modo licet adfirmare; cujus rei luculentam speciminam dedit Antonius Faber, dantur hodieque similia. Constituimus inde ab initio de singularibus inter nos discrepantissimus haud agere; quamquam tua de articulo fuit. Lege 101. de verb. obl. sententia, pro obligari legendum esse obligare, huc loco nimis pulchre conveniebat. Vidimus & Salmasium de mutuo cum Jurisperitis disputantem eodem genere pugnandi utimur; neque dubium, quin hac licenti invaleat, quilibet Artis imperitissimis idem jus sibi in Infiniam, quod in alios sua notitiae scriptores exercerent, brevissime arrogatur. Quid dicam, ascendites celebrefque diversis autoribus sententias in partes rapit! aperta via esse & patula porta, quam videmus, adscribendis conditoribus Artis sententiae ab eis quo bonoque alienis limis, Republce infeitas plane usurps. Dicam, & emendandi facro artificio distantes faciam Jurifconsultos, nuncem cedem mortis pvnä multandum esse, nisi que more latronis alto confido animalique praeclastionem commissa fuerit; in rixâ qua fiam homicidio, subitis animi motibus, eti culto, sicà, gladio extra ordinem leniorem, quam captivum supplicio adfiicienda. Ergo fas sit, Lapithas & Centauros convivium fortuitis rixis &
[classical] expressions. Unless I am very wrong, by this method he fulfilled his duties as jurist better than by continuously and never-endingly disputing about conjectural emendations, especially when that conjectured decision is exercised in such a way as to support your own opinions on some legal controversy, and refute the reasoning of those who oppose you and any contrary legal arguments.

This indeed I wanted to note in the second place. For if the freedom to emend without manuscripts is to be allowed, the emendation ought to be at least so patent that it can less easily be refuted than it can be constructed and approved. It is in no way permissible to approve this regarding those texts which are used in defending opinions where the interpreters differ. Antonius Faber provided splendid examples of this and similar examples are provided today. We decided from the beginning not to argue about individual points where we differ. However, your opinion regarding fragment, or lex, D.45.1.101, that one should read obligare for obligari, illustrates this argument exceedingly well. We also see that Salmasius when disputing with the jurists on mutuum (the loan for consumption) used the same kind of attack and there is no doubt that, if this freedom becomes established, each and every one, however ignorant of legal science, will soon arrogate to himself the same right regarding Justinian as writers of his acquaintance exercise with regard to others. What I am saying is that the numerous uncertain opinions are being torn this way and that by different writers. As we see the road is open and the gate wide to ascribe to the founders of the legal science opinions which are most inimical to the fair and the good (aequum et bonum), detrimental to the State and clearly contrary to the spirit of law.

Shall I speak thus and shall I produce jurists teaching, by means of this sacred craft of emending, that no killing is to be punished with death except that which has been committed in the manner of a robber, with serious intent and mental determination? And that in a brawl that develops into a killing, from sudden access of passions, even although committed with a knife, dagger or sword, is the punishment to be inflicted extra-ordinem and be one less severe than capital punishment? Therefore, let it be right for the Lapiths and Centaurs, without fear of death, to celebrate banquets bloody with chance brawls.

100 In this 1688 edition the point raised here quod quidem loco secundo . . . is indeed the second point. However, this is the result of editorial pruning of the 1684 edition. In 1684, on p 74, Huber has Alterum quod male me habet . . . (see Appendix A) but this passage is omitted in 1688 and the 1684 (p 76) version quod quidem tertii loco . . . becomes the second part. So too 1697 (p 614) and 1724 (p 80).

101 See D.45.1.101. Modestinus libro quarto de praescriptionibus. Puberes sine curatoribus possunt ex stipulatu obligari. (Those over the age of puberty can be bound in terms of a stipulation without the intervention of their tutors.) This emendation appeared in Crusius’ posthumous Dissertatio ad constitutionem Divi Marci de curatoribus minorum quinque et viginti annis Leiden, 1712. On this see further Noodt, Probabilia, 1.4.2. (1674) and Commentary Chapter V.2.2.

102 D.1.1.1. Jus est ars boni et aequi. (Law is the art of the good and the fair.)

103 This issue had long teased the minds of jurists and doubts were not based solely on the “sacred craft of emending”. See e.g. Matthaeus De Criminibus, (1644) 1. passim. On p 377, Matthaeus cites an emendation by Alciatus (Dispunct. 1.17) but rejects it. For a more detailed exposé of Noodt’s views on D.48.8.1.3, see Probabilia 4.8 (1691). Here he crosses swords with Huber. In the passage cited here on pp 44–45 Huber is clearly speaking ironically, and certainly does not support the arguments he raises.

104 This mention of Lapiths and Centaurs refers to an earlier dispute on this very question between Huber and Noodt, see Probabilia 4.8.
45 Iuris, Dialogus.

& promiscua cede cruentata sine metu mortis celebrare: qui rapido furore sodalium sanguinem duellis hauriunt, nihil amplius ulterius gladium metuent. Quin tu, si ituc alius praetextu critice auctoritatis obtinebit, aiunde probes, ordinaria furti poena eximendos, qui subita cupiditate acceperit res alienas absulterunt: qui matremfamilias alienam improvis libidine motus corrupt, eum expers legis Juliae sanctione non teneri: neque Textus deerunt, et quibus mutatis lectionibus hæc calaque possis evincere, si Lex Cornelia violentis hominum affectibus coque violentioribus, quia subitis, in atrocissimi criminis temperante ignoscit, aut, si haec sententia sagacitate criticâ legibus inferri potest.

Necio, ad illa CRUSIUS; quorum haec ultima specierit, nec imaginari possum, quius ad stabiliendam opinionem, ut mihi videtur, inauditar, articulum illum veterem Jurisprudentiae vellet immutatum. Possè equidem singularibus & exquisitis perfonarum rixarumque circumstantis judici mitiganda poena causam daret, fateor, urapud Alciaturn me legere memini, de puero, qui fortuita ira colluto rem fum cultro percurrerat. Verum si quis inde colligendi dum puter, homicidio quelibet subito rixandis studio fiscis & gladiis admissa, mihiore quam capitis supplicio adsciendo, ne ille parum incolumitati generis humani confugeret, quod salvum esse non posset, si violenti affectus rigidi poenarum frenis ad facinoribus non cohiberentur. Caetera tua, Mi Hubere, nunc quidem praeter ero, quis enim finis contentionum! Dicarem alias, quam infictos faepe ferebeant, qui Auctoriibus noffris sententias, de quibus illi ne nominantur quidem, adstringere malunt, quam levim manu vocule aut literate aliquando unus subsidatia, vel additione, vel mutatione sanum veteribus senium Artique honorem Q. I. I. 3 conci-
and indiscriminate killing. Those who, in a sudden fury, draw the blood of their companions in a duel will no longer fear the avenging sword. Certainly, if someone maintains this on the pretext of some critic’s authority, you may prove from somewhere else that those who steal another’s property, when inflamed by a sudden desire, must be exonerated from the statutory penalty for theft. You may say that he who rapes another man’s wife, moved by an unforeseen lust, is not liable to the express sanction of the Lex Julia. For, if in the rash fury of a most atrocious crime, the Lex Cornelia pardons men’s violent emotions, and they are the more violent for being unforeseen, and if this opinion can be imposed on the law by sagacious criticism, there are no lack of texts from which by changing the reading you can prove this and other things.”

To this CRUSIUS replied: “I do not know at what this last statement is directed nor can I imagine who, in order to establish an opinion which seems to me to be unheard of, would wish one article of the old jurisprudence to be changed. I indeed admit that there can be reason for mitigating a penalty in singular and specially selected cases of persons and of brawls, as I remember reading in Alciatus105 of a boy who, in a flash of anger, had struck his playmate with a knife. But if anyone thinks one must deduce therefrom that ‘any homicide committed in a sudden urge to brawl, and with daggers and swords, must be punished with a penalty less than capital’, truly such a one would not be considering the safety of the human race adequately, for it could not be safe if the low passions of a violent man were not restrained from crime by the immutable reins of punishment. Now indeed, my dear Huber, I am passing over your other points, * for what end would there be to our controversy! I would otherwise say how stupid those men often appear who prefer to attach to our authors opinions about which those authors have not even dreamed, rather than trying, with a light hand, sometimes by the subtraction or by the addition or by a change in one little word or one little letter, to achieve good sense for the ancients and honour

*† quis enim...rtandabor (p 46).

105 Alciatus Disputationes, 1.17.
De Ratione docendi & discendi

conciliare malunt: Sed his ego minime retardabor, nihiloque fecus Crisius juridicam, faventibus Mufis, dum spiritus hos reget artus, alacriter exercibo, neque morabor;
Si livor obtrectare curam voluerit,
Donec seculum criminis sui pudeat.

Colliganus igitur vela, regerebat HUBERUS, pro-pinquum portu; neque libet mihi reciprocare ferram, á qua Tu manum generosce contemptu amovistis. Unum addam, aequum me censere, ne vos folos effe, quos aequus amavit Jupiter, reputare in animum inducatis; omnes autem qui in exercendis emendationibus fæ conficiendos non praebent, quid de fensibus legum sit, peripicere non posse. Sed manum de tabulâ, ubi addidero, me fæquitum effe in adolescentitia sectam hominum, qui varie eruditionis liquore non in-néti leviter sed imbuti, tamen in correctionibus legum venditandis auditoribus suis non praeverunt: Vinnius, Matthaeus, Wisnomachius, moti, fæ ticia, rationibus à me prædem expositis, tum vero hác inprimis; quod fatis comper-tum habeant, eos, quibus hæc precipua Cristios professio arridet, ab omnibus systematicâ doctrinâ, denique ab omnibus, quæ civilem prudentiam tradunt, disciplinas alios adversumque effe; cujus specimen habuimus à Salmasius, quem fatis confutat, cum alia hujus generis, tum divinum Grotii de jure pacis & belli opus insolenter adspernari, atque ad omnem politicam civilemque doctrinam tantum non nau-sare confuevisse, quod & aliis, si non omnibus eujdem institutis rigidis cultoribus evenire notabiliter animadvertimus, ejusque contemptus Salmasii fructus in succfu de-fensionis Regis consuevit hau domino gloriosus. Preceptoribus illi mea sic arbitrabanunt, officiis effe fui, facere Juris-conceelos, id eff, homines qui de qualibet facto consulti respondere, cavere, scribere potent; quas boni Juriscon-
fultis
for the subject. But I shall in no way be impeded by these considerations,† and notwithstanding, while life shall rule these limbs, I shall, with the help of the Muses, keenly practice judicial criticism and I shall not be deterred,

If envy wishes to carp at my careful work

Until our age is ashamed of its accusations.**

“Then”, resumed HUBER, “let us therefore furl our sails in the nearby port for it does not please me to continue the thrust and parry of this argument from which you have withdrawn with such superior scorn. Let me add one point. * I am convinced that you should not get into your heads the idea that it is you alone whom benevolent Jupiter has loved, and moreover that all those who do not appear competent in the practice of emendations, are incapable of perceiving what is the sense of the laws. But it will be enough, when I have added † that in my youth I followed a school of men who were deeply imbued, not slightly tinged, with the dye of wide scholarship; nevertheless in promoting their corrections of the law, they did not dictate to their students. Vinnius, Matthaeus and Wissenbach were, I know well, moved by the reasons initially expounded by me, but then also by this especially that they were convinced that these men to whom this particular practice of criticism appeals, are completely unfamiliar with and hostile to systematic study, in short to all studies which concern the civil law. Of this we have an example τον πανο (in particular) in Salmasius whom it is generally agreed haughtily spurned both Grotius’ divine work De Iure Belli et Pacis and other works of this kind107 and was all but accustomed to spew forth nonsense against all teaching of political and civil subjects. And we clearly notice that this happens also to others, if not to all who rigorously cultivate the same subject, and for Salmasius the not entirely glorious fruits of that contempt consisted in the success of his Defensio Regiae. These teachers of mine thought, as I just mentioned, that it was their duty to produce jurists, that is men who, when consulted on a certain point, could give a responsum (legal opinion), advise on legal transactions and draft documents, which are the attributes of a good

*† aequum me...ubi addidero.

106 These two lines are from Phaedrus’ Epilogue to Book II, lines 10 and 19. Phaedrus says that the Athenians put up a statue to Aesop as recognition of his fame. Phaedrus is trying to do for Latin what Aesop did for Greek. But although jealousy attempts to detract from his work, it will not deprive him of the knowledge of his merit. If his work pleases, that is his reward; if it does not, he will endure with strength of mind until Fortuna repents of her accusations. It will be seen that Crusius has, not entirely arbitrarily, joined two separate lines and moreover that he has adapted the last line to suit his situation. He writes Donec seculum crimini sui pudeat, (Until our age is ashamed of its accusation) for Phaedrus’ Donec fortunam crimini pudeat sui (Until Fortune is ashamed of her accusation).

107 See Oratio I p 7, Huber does not think much of Salmasius, who was invited to Leiden, merely, he says, to add the lustre of his name to the University. See also the Album Scholasticum Leiden, under Salmasius, p 131.
Iuris, Dialogus.

sunt eis partes, ut olim Cicero tradidit, ita hodieque facultates eadem illud nomen atque munus implent, a cujus gravitate cos, qui folis verbis & syllabis inherent, mirifice videbant eis alienos. Enimvero non debeo preterire, Wissenbachium nostrum fuisse maximum sui temporis Criticus, idque ei haecfisse a praeposte suo Mattheo Seniore, Groningenfi; sed prordius alio genere Crifeos, ac illud eft, quod in figlis & notarum enigmatisbues officiur. Tenebat homines clarissimos immodica confuetudo demonstrandi navos juris, vel potius, ut loquentur, detegendi flagitia Triboniani, errores veterum Juris magistrorum, omniaque inhonesta, absurda, falsi notati, ut ipsis videbatur, deformia paffim indagandi, in locis communes redigendi atque exagitandi in auditoris & in libris suis. Habet hae Facultas speciem libertatis neque vulgare famae lenocinium; satis videlicet animi esse Juris Interpretibus, ipsos Artis suae Cuditores vocare sub censuram; ideoque res hae admodum latē patet, ut ingentes libri censurae Juris Romani extrent in lucem dati. Ego nunquam aliter de hac parte Crifeos fenli quam de Antinomis & emendationibus; non utendum illis, nisi extrema cogente necessitate. Non puto facire legum, reprehendere Justinianum, vel antiquos Justinianae, facerdores, quales specto appellari posse credebant, sed hoc affectare gloriamque exinde captare, ficut facere videntur, quia numerum Juris novorum tam immaniter augment, alienificium ab officio boni Interpretis eft videatur. Necio, quæ mea simplicitate fiat, ut judicium meum à judicio communi, quod jus Romanum nititur, admodum raro defleclatur. Ideoque dedi toro biennio in publicis lectionibus operam, ut demonstrarem, plerique loca Juris nostrī, quæ ut mihi, inhonesta, falsa, absurda traducuntur, fano fenju intellecltu, nihil ejusmodi continuer, cujus
lawyer as Cicero once said\footnote{See Cicero De Oratore, 1.48.212. His words are: *Sin autem quaeretur, quisnam jurisconsultus vere nominaretur, eum dicerem, qui legum et consuetudinis eius qua privati in civitate uterentur, et ad respondendum et ad scribendum et ad cavendum pertius esset.* (But if the question were to arise as to who should truly be called a jurist, I would say, he who is knowledgeable as to the laws and customs which private citizens use in the state, in order to give legal opinions, to draft documents and to advise on legal transactions.) See too *Oratio II* p 64.}, so today too these same abilities are required for the name and office of a jurist. From the importance of this those who cling only to words and syllables seem wondrously far. For I ought not to omit to say that our Wissenbach was the greatest critic of his day and that he learned that from his teacher Matthaeus senior of Groningen, but this is a completely different kind of criticism from that which is concerned with sigla and the problems of notae. Very well-known scholars were bound to the unrestrained practice of exposing the blemishes of the law or rather, as they said, of detecting the sins of Tribonian, the errors of the old legal masters, and of generally sniffing out everything which is inelegant (as it seemed to them) and marking it as dishonourable, absurd or false; of restoring them in general arguments and discussing this in their lectures and books. This practice has the appearance of liberty and not the vulgar and meretricious appeal of fame, namely it was enough for the interpreters of the law to subject the actual founders of their discipline to their criticism and this topic is so extensive that huge volumes of *censura Iuris Romani* (critical judgments on the Roman Law) have already been published.

I have always felt the same about the rôle of criticism namely that antinomies and emendations are not to be employed except in a case of dire necessity. I do not think it sacrilege to find fault with Justinian or the ancient *priests of the law* as they believed they could rightly be called, but to work at this and to try to derive glory from it, as it seems do those who so excessively increase the number of blemishes in the law, appears to be very far from the duty of a good interpreter. I do not know because of what simplicity of mine it comes about that my opinion quite rarely differs from the common opinion on which Roman law relies. And so for two whole years I have taken pains that in my public lectures I should show that most texts of our law which are maligned as inequitable, dishonourable, false or absurd contain, when understood with a balanced mind, none of the flaws
De Ratione docendi & discendi

cujus à claris hominibus insimulantur. E quarum lectio-
um memoriā necio, an non aliquando censorum Censoriae
Juris Romani & Anticriticam hujus generis incorrupto
eruditorum judicio sim positus. Quae mea de criticā
studii Juridici professione tretententia, fatis abundeque
differuiffe videor, In historicis similibusque veterum scrip-
tis, ubi nulla dogmata in humana societate stabilita tra-
duntur, res non habet tantam: nunciquam, quanquam ego, si
in hoc ipso genere me continuissim, experimenta professionis
& fame ab emendationibus prima non cepisse, neque
tamen, si quae mihi oblatæ fuissent, abrupte avertatus eff
sēm; quo pertinent exempla, quæ modo mihi est differra-
tionibus illis historicis objeciebas. Quod ad systematacom-
pendiofā univerfī juris attinet, non discrepat instituti mei
ratio à communi omnium temporum confuetudine, nec
ab ipsis quæ modo in hanc rem luculentem Bokelmanno nofr
prolata sunt in medium, modo à duobus scopulis diligenter
caveamus. Primo, ne studiosis compendia, ficca, jejunum
&a arida proponamus, verum talia, quæ gustum melioris
doctrine, simulque initium exhibere possint; tum vero, ut
adhibis hortamentis exemploque precanum, ne in his e-
lementis subfisterē sē debeā, nec possē praśimant. Denique
nollem, mi Cruici, tantopere placuiuis tibi, ut rem ab o-
mnis studiorum ordine judicioque remotifiiam, cum atro-
ci invidiā secus agentium, tam fātidenti oratone professu-
tus effēs. Nec eft, quod dicam, ut postremo definebas,
ter paucos notare voluiisse nundinares fānēfisimae Artis,
qui Juris Doctores intra paucos mensēs perficindos impu-
dentem fulcipiunt. Nam hi profeōto sunt pauci, nec, si
aliās bene ἵδε habet Ars Juris, horum causā, de corrupta
Jurisprudentia queri in mentem tibi veniisset. Tu latē pa-
tentem errorem universalemque vituperasti, qualem vis
iliam
that are alleged by well-known scholars. I don’t know whether on the basis of these lectures I shall not some day propound a judgement on the ‘Judgement of Roman Laws’ and an *anticritica* of this kind with the correct opinion of learned men\(^\text{109}\). Let this opinion of mine about criticism in legal studies stand. I seem to have argued enough and more than enough. In historical and similar classical writings, where no body of tenets rooted in human society are being studied, the material does not need such \(\text{ενοθεωρησις}\) (close observation to detail), although if I had continued with that kind of work, I would not have drawn the chief evidence of my skill as a professor and my reputation from emendations, but however, if any had come in my way, I would not have turned aside abruptly. And to this pertain those examples from those historical dissertations that you were just now alleging against me.

But as regards systematic compendia of law as a whole, the reasoning behind my practice does not differ from the common practice of all times nor from those which have just now been excellently brought into the discussion by our colleague, Böckelmann, * provided we take great care to avoid two stumbling blocks. Firstly, that we should not provide our students with dry, barren\(^{110}\) and soulless compendia but with such as may be able to arouse a taste for more in-depth knowledge at the same time as providing an introduction; then indeed that we should show the way with constant encouragement and example so that our students should not presume that they should, but cannot, cope with these rudiments. † Finally, friend Crusius, I would not like you to have pleased yourself so much that you pursued a subject completely removed from all orderly study and from legal practice with unyielding ill-will and scornful words, towards those doing otherwise. You cannot say, as you were stating at the end, that you had wished to point a finger at a few traffickers in our most sacred subject, who, shamelessly undertake to produce Doctors of Law within a few months. For these indeed are few and if the science of law was otherwise in good condition, it would not have occurred to you to complain about the corruption of jurisprudence just because of these men. You have censured a widespread and universal error, which you allege

\(^{*\dagger}\) * modo a duobus . . . praeurnant.*

\(^{109}\) In fact Huber did this in his unfinished *Eunomia Romana sive censura censurae juris Justinianae . . .*, written 1692-1694 and posthumously published as a book, Franeker 1700. However most of the disputations collected therein were published during his life. See Feenstra *BGNR Franeker*, pp 94-95, nos. 279, 283, 284. The title page declares that those texts which are variously traduced as false, unjust, dishonourable, absurd, corrupt and underhand are vindicated by the true reasons of jurisprudence, civil philosophy, history and Holy Writ.

\(^{110}\) Cf The title to Albertus Rusius *Oratio de jejuna quorumdam et barbarae iuris compendiaria*, 1659.
Iuris, Dialogus.

illam esse preparatoriam Compendii Institutionem. At vero
nollem illum disserere, generofum illum spiritum, qui ad
infraurandum Juris disciplinam tanto cum impetu adiuravit,
inde reformationem aulpicari, quo maxime obtento, refor-
minationem in se ipsam ruere oportet.

Ego vero, CRUSIUS, aetum agere nolo, & iremova-
vende sunt amplius ratiuncula veltra, quod in procli fo-
ret, hujus quidem colloqui odium, sicut vos intituitis,
jampridem me habet; alias dabitur occasio; nunc ad alia
transcamus: Cavendum enim, ne materia novi diaogii sui-
crescat, neve reliquis convivis parum officiosi longiore fe-
cessi videamur.

Illi quidem, excipiebat Wijngardenius, suis quoque fa-
bellis detinuatur. Sed antequam digrediamur, ne plane
nec quis quereris in hac scena esse videar, date mihi quoque lo-
cum, non dicendi sententiam, neque refellendi quicquam
a vobis dictum & discepatum; fed rogandi te potissimum
Hubere, non qua caula corrupta sit jurisprudentiae, nec,
an compendia sint dispensia juvenitis; fed quoniam me
favor studioforum, potius quam meriment eruditionis meae
in partem aliquam docendi, seve indultu seu commveniata
Amphissime Facultatis Juridice recepta, faci servem,
quod potissimum ordine, quibus studendi gradibus adolescet
mihi commissos ad Themidos sacrarium deducere possum.
Quando autem Cll. Bokelmanni Crusique humanitas semper
ad illos aditum mihi praebet, Tui maxime conftlii prefcri-
ptum ad exempli copiam mihi relinqui defiderarem. Intelle-
lexi equidem genus universum institutti, quod in studio Ju-
ris excolendo probes atque commendes, sed opus est mihi
exaetia magis & speciali descriptione, ac quas manuaditio-
ne a carceribus ad metam, quod ajuent: Etf enim tuus ali-
quandiu fuerim Auditor, ideoque ordinis quem ferves, ra-

RRR
is teaching by means of preparatory compendia. But I would not wish that ἀγήνορα θυμόν (noble enthusiasm) which rises so strongly at the commencement of law studies, to thereafter undergo a change for unless that enthusiasm is maintained the change necessarily collapses in on itself.’’

CRUSIUS replied: “I, indeed, do not wish to discuss what has been discussed and, although all your little arguments should be further dispelled, which would be easy, I have by now developed a dislike of this conversation as you have conducted it. An opportunity will be given at another time. Now, let us move on to other things. We must be careful that material for a new discussion does not creep in and that we do not seem, here by our rather lengthy withdrawal, to be neglecting our duty to the other guests.”

“Oh, indeed, they are also busy with their chit-chat” remarked WIJNGAERDEN. “But before we depart, lest I clearly do not seem to have κωφόν πρόσωπον (a speaking part) in this play, give me too an opportunity, not to voice my opinion nor to refute anything said and disputed by you, but to ask you, particularly, Huber, not what are the causes of the corruption of jurisprudence nor whether compendia are a waste of young men’s time, but since the favour of the students rather than the excellence of my learning has brought me into some part in teaching, either because of the indulgence or the connivance of the most honourable Faculty of Law, I would like to know in what order preferably, and by what stages in their studies I may be able to lead the young, entrusted to me, to the inner shrine of Themis. Moreover, since the kindness of Professor Böckelmann and Professor Crusius always allows me to approach them, I would like an outline of your programme in particular, to be left for me as a model. I have indeed understood the overall nature of your teaching practice, which you approve and recommend in working on the study of the law, but I need a more exact and specific description and as it were a guide from the starting gates to the winning post, as they say. For even although at one stage I was a student of yours and so the logical method

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111 Wijngaerden was enrolled at Franeker on 1 January 1666 and defended his thesis under Huber in October 1669. See Postma and van Sluis *Auditorium Academiae Franckensis* p 195. He took his doctoral degree in Leiden on 13th March 1674. See Molhuisen *Bonnena Leidse Universiteit* III, p 320*.
De Ratione docendi & discendi

tio mihi non plane ignotus esse quærat, haud tamen dubiter, quin longa discendi docendique experientia collexerit & libereris monita non tralatia, quæ in promícuo studiòrum concursu proferre non solebas, quæque mihi hanc docendi viam primum ingredienti, multum conducere posse crediderim.

Ergo Tu quoque, HUBERUS, in eodem verfís errore Wyngardeni, quo vulgus studiorum tenetur? Emin-vero sèpe mihi usus venit, ut adolescents discendi cupidi privatim me adirent atque ad uerum amicitiam aditum afferrent, haud aliá gratia, quam ut peculiarem methodum secretamque viam sibi panderem atque monstrarem, per quam celerius & felicius eruditionis iter concifer poßen.

Respondere sum solitus, maximum quod illis suggere pos- sem arcanum, esse laborem indefessum in eà vià, quam pu- blicè illis praèirem; pararent se diligenter, antequam ad audirem venirent, auctórent attente, notarent quod non lectionem primum audirent, cuncta repetérent domi, confer- rent cum fontibus legumb, mandarentque memoria, ruribus offerrent se examinii, quoties occasìo foret; hoc agerent, ut tyrconnium suum pacis onerarent præceptis, attamen univerśe artis, eaque validissime sua facerent, & in causas fontisque rerum ubique penetrarent. Quando tamen eujusmo- di summi cohoratione non videris esse contentus, utcumque nihil inultitati arcavse polliceri habèam, nolo tamen defìesse facilitatem meam desiderio tuo, quod ex animo, veteris amicitiae disciplinaque memore, proficisci, facile mihi periuadeo. Caxerum, non est quod expectes ita Jurifconßultum à me formatum iri, quæ Stoiici suum sapientem, describunt, neque ut Cicero suum oratórem esse voluit, cui nihil defit, quia quod sumum est, quod nemo forstium unquam alti- gât, sit confecutus, nec a studiòfo tantum laboris durique
of the order which you observe cannot be entirely unknown to me, nevertheless, I do not doubt that from long experience of learning and teaching, you have collected and distinguished your own private rulings which you were not accustomed to make known to the general body of students and which, I believe, could contribute much to me as I am first starting out on the path of teaching.”

Therefore HUBER answered: “Are you too, Wijngaerden, making the same mistake as the run of the mill students? For I have often found by experience that young students, desirous of learning, approached me privately and aspired to access to an inner circle of friendship. And this was for no other reason than that I should open up and show them my particular method and a secret path, by which they could more quickly and more successfully cover the road to learning. I usually answered that the greatest secret which I could suggest to them was unremitting toil on that road which I show them in my public lectures, namely that they should prepare themselves diligently, before coming to lectures, listen attentively, note what new material they hear for the first time, revise everything at home, check against the sources of law and commit everything to memory.\textsuperscript{112} Again, that they should present themselves for responding as often as the occasion arises, that they should do this so that they burden their first year studies with few rules, except those of the whole discipline, and that they should master them most thoroughly and everywhere probe the reasons for and the sources of the material. However, since you do not seem to be content with a summary exhortation of this kind, although I have nothing unusual or secret to promise, I would nevertheless not like my good nature to disappoint your wishes, which I can easily convince myself arise from your heart and from the memory of our long friendship and professor-student relationship. But you should not expect a jurist to be formed thus by me, just as the Stoics describe the forming of their ‘wise man’, nor as Cicero wished his orator to be, a man who lacks nothing, who has followed what is best (perhaps something which no one has ever attained), and I would not demand from students so much labour and so much strict

\textsuperscript{112} See \textit{Oratio IV}, p 88f. The passage ‘For I have often found . . . the material’ (\textit{Enim vero . . . penetrarent}) is taken almost verbatim from pp 88–89.
71

*Juris, Dialogus.*

in sement imperii exigam, sicut alii plurquam heroico instituto faciunt, ut merito viris esse tanti, eruditum esse, inexperti arbitrentur. Agam civiliter, atque ita, ut adolecentes ne desperent effici possent, quod ipsis praeficiatur. Sic igitur ego fauserim. Quin animum ad studium Juris applicat, eum primo adniti deceat, ut litteras ac artes, sive quibus Jurisprudentia non potest valde percipi, mediocrer addicat. Litteras intelligo Latinas et Graecas, priores exactius et cultius; alteras ita, ut scripta veterum, faltarum interpretis ope distinetae et eum ratione tractari posseint; sub litterarum studio *Historicum* me compleksi facile praeficiatur: Artes quae ad Juris studium preparant requiro *Logicam*, et si hac penem jam obsoleceat, atque Ethicam, Mathematicas artes et Physicam, si quis addat, laudo, exigere non audeo; neque politicam praemittere potius comitari volo studium Juris; de oratoria quoque nihil dixi; nam praecepta Rhetorica litterarum studio implicita sunt, *Facultas scribendi habendi que orationes mibi videtur omnium difficillima*, ideoque inter praeparatoria non collocanda; sed alia ityli exercitia in hunc usum soleo commendare; vera eloquentia ex omnium rerum notitiat exundat & exuberat, ideoque majorem postulat eruditionem, quam ab adolecentibus, qui sequuntur Jurisprudentia maturi sunt, praecari posse. Plura de *propaedeticis* non dicam; nec enim dubium credo cuquam esse, quin liberalia *Literarum et Artium studio Juris praemittenda sint*; quomodo autem in illis sit verandum, a me hoc quidem tempore non expectas ut edifferam; nisi unum, quod alii forfiant omnium minime expectatas ut edisseram: nisi unum, quod alii forfiant omnium minime expectabunt, monendum videatur; adhibendas esse litteras & Artes sane, priuquam leges agregiare, sed tamen hec quoque locum habere Terentianum illud, *Ne quidnimus*. Intelligo, non
control over themselves as do some people with a more than heroic programme, so that they are rightly considered to be scarcely worth so much, to have been taught but to be lacking in experience.

Let me behave in a less ambitious way so that the young students do not despair that what has been prescribed for them can be achieved. And therefore I shall advise as follows: he who applies his mind to the study of law should first work to learn literature and the arts tolerably well, for without them jurisprudence cannot be effectively understood. By literature I understand Latin and Greek literature, the former should be learned more precisely and thoroughly, the latter in such a way that the writings of the ancients can be handled clearly and rationally at least with the help of a translation (into Latin). Under the study of literature it is readily assumed that I include history. I require the subjects, which are preparatory for the study of law – logic, even although this has already almost died out, and ethics. If anyone should add mathematics and physics, I am in favour but I do not dare to demand them. I do not wish Politics to be studied in advance but I wish it rather to accompany the study of law. Also, I have said nothing about the art of oratory, for the precepts of Rhetoric are implicit in the study of literature. The ability to write and to deliver speeches seems to me the most difficult of all and so these subjects must not be included in the preparatory courses, but I usually recommend other written exercises for this purpose. True eloquence flows exuberantly from knowledge of the entire field and so requires more learning than can be shown by young men who have not yet come to maturity in jurisprudence. I shall not say more on propaedeutics, for I am sure that no one doubts but that the liberal studies of literature and the arts ought to precede the study of law. You do not indeed expect of me at this time that I should explain how this is to be treated in these subjects; unless it would seem good that 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 nevertheless here too there is place for that remark of Terence’s *ne quid nimis* (nothing in excess).

I perceive that I have said this, not

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113 See Veen *Recht en Nut*, p 78, ft. 85. Veen cites the above passage to illustrate Huber’s attitude to Politics. Ibid. p 123 ft. 84 contains an extract from Ep. 1.33 of 2nd June 1657 which expresses his early ideas on the topic. In Oratio III (1978) p 9 ft. 49, Veen emends certain assumptions concerning the letter, which he made in *Recht en Nut*.

114 Cf. Tacitus *De Oratoribus*, 30. *Ita est enim . . ., ex multa eruditione et plurimis artibus et omnium rerum scientia exundat et exuberat illa admirabilis eloquentia.* (Thus it is that such admirable eloquence pours forth and overflows from great learning, very much skill and knowledge of all things.)

115 See Terence *Andria*, 1.1.34.
De Ratione docendi & discendi

fine offensâ Cruși, forte nec fine admiratione Bökelmanni tuque id à meadfirmari. Quis enim non potius stimulum ab hac parte quam suflamen opus esse arbitretur? Certe stimulum multò magis esse necessarium juventuti, res ipfaloquitur, nofque jam publice privatimque fape confelli fumus. Attamen generosis animis, qui philosophiae literarumque amore capti se toto illis dedunt, ego modum imperare non dubito; salem haætensus, ne legale studium inciboare cumichtenitur, ubi primum ingenio judicioque ad accipiendum Juris disciplinam maturi facti videantur; et si in Artibus alis humanisque literis nondum eo proveâti sint, quo pervenire possunt & debent, qui harum laude confici atque cenféri cupiunt. Ratio confit ab experientia, quæ sic fere me docuit evenire, ut qui diu multumque philosophiae, literisque ac historis immorantur, earum amènitate vel fæcilitate eo modo in finum suæ adficiantur, ut cum ad Leges se conferunt, earum studium patent esse tetricum & asperum, agereque ab animis suis impertare solent, ut eam disciplinam libenter & alacriter accipiant: Nemo autem dicit aut proficit invitus & relucfante naturæ suæ ingenio. Velim igitur, qui studiosus Juris esse cupit, idem agat, quod mihi Wisenbachius nofer auctor fuit; ut cum annum integrum in preparatoris studiis commoratus essent, Institutiones Justinianorum auditem atque deinceps in perciendis integra Artis elementis perseverarem. In illo anno vellem studiolum meum audire Logicam & Ethicam, ediscere compendium historiarum universalium & dare operam, ut plane pleneque Suetonium intelligeret. In quo plerisque ad antiquitates Romanas & Juridicas speciantia facile ordine atque historicâ offerunt se explicanda: Nam in omnibus vivam præceptoris voce, si copia detur, adhibendum esse non est ambigendum. Interim in legendis alis Històriæ antiquescriptoribus vacuo tempore
without offending Crusius, but perhaps with some admiration from you and Böckelmann. For would one not think that in this respect there was rather need for the goad than for the brake. Certainly, it is self evident that the goad is much more necessary for young people and I have often admitted such both in public and in private. However, I do not hesitate to recommend a limit for those high-minded souls who, fascinated by love of philosophy and literature give themselves over entirely to them, at least to this extent that they should not hesitate to begin their legal studies; that is as soon as they seem to have become sufficiently mature in ability and judgement as to understand jurisprudence, even if those who wish to be acknowledged and recognised as praiseworthy in the other subjects and in humanistic literature have not yet advanced to the point which they can and ought to reach. My reason is based on experience which has taught me that the almost inevitable result is that those who linger long and much with philosophy, literature and history are so entrapped in their toils by their pleasantness and grace, that when they betake themselves to the law, they think the study thereof boring and harsh, and can scarcely force their minds to undertake the learning of it gladly and with alacrity. No one, moreover, learns or makes progress unwillingly and contrary to his natural talent. So, I would like those who want to study law to do the same as my teacher Wissenbach advised me, recommending that when I had spent a whole year in preparatory studies, I should attend lectures on the Institutes of Justinian and then continue with reading the elements of the whole subject.\footnote{See Huber’s \textit{Historia Vitae} (170v) where he describes his own studies. Veen \textit{Recht en Nut. Bijlage} 1, p 250.}

I would like my first year student to attend lectures on logic and ethics, commit to memory a \textit{compendium} of universal history\footnote{e.g. Vossius’ \textit{De historici Latinis libri tres}, 1627; \textit{Dissertatio particularis de ratione universam legendi historiam} in Vossius’ \textit{De Studiorum ratione opuscula}, 1651.} and see to it that he understands Suetonius clearly and fully. For in Suetonius most things relating to Roman and juridical antiquities present themselves to be understood in an easy and historic order. Moreover there must be no doubt that in all matters, the oral discourse from a master\footnote{Cf. Quintilian \textit{Institutio Oratoria}, 2.2.8.} should be heard, if the chance should offer. Meanwhile, in his spare time,

\begin{quote}
\textit{Licet enim satis exemplorum ad imitandum ex lectione suppeditet, tamen vivo illa, ut dicitur, vox alit plenius praeceptorque praeceptos quem discipuli, si modo recte sunt instituti, et amant et verentur. Vix autem dixi potest quanto libertius imitteru eos quibus famemus.} (For although [the teacher] may provide sufficient models for emulation from their reading, nevertheless the living voice, as it is called, nourishes [the mind] more fully and especially the voice of a teacher whom the pupils both love and respect, provided they have been properly brought up. It can scarcely be said how much more readily we emulate those whom we like.)
\end{quote}
53 Iuris, Dialogus.

re pergendum; neque minus, in continuo styli exercitio, non modo lectione sed & imitatione veterum eloquentiae Auëtorum. Si qui sunt, quorum aetas & ingenuity non habeat eam facultatem, ut unius anni decursu his rebus mediocritet defungi posint, his, siliêcet, tantum temporis adjiciendum puta, quantum opus est ad capiendum talem profection, qualis validioribus intranient spatiatum contingere poteft. Neque deurunt, qui & de physica deque mathematicis codem anno primitias capere posint. Ubi vero studium Jurisanno secundo inchoatum fuerit, nolo novum Justinianæm ita fete
torum folis legibus dedere, ut incoata bonarum artium literarumque studia deferat, nec amplius ad fe pertinere putet. Nihil æquæ delectat quam variance, nec est alia dignior studiose recreandi animi ratio quam in amanitate doctri-
na faciisque. Atque hanc viam, quæ consitt in continu-
tione studiorum primi anni, per omne tempus descendi jus-
ris, eò fidentius commendare fœleo, quod per eam non mo-
do ad Artis Juristicæ peritia feliçius perveni, sed & elo-
quentiae ac Historiarum professioni deinceps admissus, ci
qualitercumque satisfacere visus sum. In hoc autem praen-
illa, diversam ratione, quæ pluris annos preparatoris studii
praebibit: quod & notabile temporis compendium facit, cujus summa ratio confit studiosis, & quod illam averseston, quæ fere laborant, qui valde sunt philosophi & critici, an-
tequam jus didicerunt, antevortit atque conversit. Porro
ipsum Juris studium hoc modo inprinis decreundum exi-
limo, ut id quodammodo duplex effe meminerint studiosis.
Primum certis gradibus confectum sufficit ad forenses exer-
citationes cum fructu suíciendas; alterum ad interiorem
Juris antiqui notitiam & ejusmodi facultatem acquirendam
pertinet, quæ ad Jus explicandum docendumque sufficiar.
Primum duobus intervallis absolvitur, Institutionibus atque
R r r 3 Pau-
progress must be made with reading other writers of ancient history, and also in continual practice in composing, not only by reading but also by imitating the eloquence of the ancient authors. If there are some students whose age and talents do not give them this ability, so that after the passage of one year they can only perform moderately well in these subjects, consider that they should be given as much extra time as is necessary to achieve such progress as the better students can achieve within the space of a year. And there will be no lack of those who, in the same year, can master the basics of physics and mathematics. Then, when the study of law is begun in the second year, I do not think that the new law student (novus Justinianaeus)\textsuperscript{119} should so devote himself to the law alone, that he abandons his initial studies in the humanities and literature and considers that they do not concern him any longer. For nothing delights like variety, nor is there any worther means to recoup the mind of the student than the pleasures of an easier subject. And I usually recommend this route, which consists in continuing subjects studied in the first year throughout the whole period of learning law all the more confidently, because, by that method, I not only came more happily to master jurisprudence but also when I moved subsequently to a professorship of rhetoric and history\textsuperscript{120}, I was able to give adequate satisfaction in that too. Moreover, for a different reason this route is superior to that which prescribes several years for preparatory studies, because it makes a notable saving of time, which is a major consideration for students and also because it forestalls and dissipates that dislike from which suffer those who are very much philosophers and critics before they have learned any law.

Furthermore, I think that the actual course of law must in particular be run in this way, so that the students remember that it is in a certain way a ‘double’ course. The first, completed by definite steps, suffices for undertaking legal practice with success; the second pertains to the inner knowledge of the ancient law and to acquiring a competence of the kind which is necessary for explaining and teaching the law. The first part is concluded in two stages, the \textit{Institutes} and

\textsuperscript{119} See \textit{Constitutio Omnem} § 2.
\textsuperscript{120} See the Commentary, Chapter V.1.
De Ratione docendi & discendi

Pandeitis. Instituciones velim bis tractari audiendo atque respondendo. Nam sola audito nequaquam sufficit ad ex-promptam validamque Juris scientiam confecundam; pri-moque statim ingreſſu qui ferio vult proficere, non debet inutili verecundia superbiaque animi deterreri, quominus examini fe quotidie committat. Juxta secundam actionem, disputandi exercitium sedulo inchoandum & omni tempore, quod juri impedatur, continuandum cenſeo, cum nihil co-fit efficacius preparando animo, sermoni, ori ad publicas actiones, in quibus aliquando se Jurisconsulti exhibere at-que præfere debeant. Expositio & diſceptatio fundamentorum Juris in hoc primo fladio non potefl aliter regi, quam secundum positiones compendiæ alicujus systæmatici, quæ in ære nihil addendum habeo, ad ea quæ Bökelmannus nobilis in hanc rem exacte différunt. Nam quia primus fludio Jüridici cursus adoleſcentes aptos reddere debet ad respondendum, cavendum, scribendum; quibus partibus officium Jurisconsulti novimus abfolvi; palam est, eodem modo nobis in hac viâ esse procedendum, quæ Graecos tribus post Juſtinianum seculis tenuifte modo probavimus, & quæ in superio-ri diſputatione luculententer ſciaeque demonstrata eſt. Primâ deambulatione hujus itinera, quod ad Institutiones dirigi-tur, nihil aliud ab adoleſcentibus exigo, quam ut diſclata Preceptoris suis memoriā judicioque ſubīgant, eaque cum textu Juſtinianae Regulisque Juris & præceptis de verbo-rum significacione præfere accuratēque conferant. Secunda au-diṭione textus ceteros, qui e Pandeitis & e Codicem magna numero in explicandis Institutionibus adducuntur, inspice-re, examinare, perpendere debent, quod nemo aliter, quam fudante cerebro, fat scio, praefabili. Atque hic est annis i-integri juſitus labor, accedente, quam dixi, continuatione studiorum liberaliorum & humaniorum. Sequentem annum Pan-
the Pandects. I would like the Institutes to be treated twice, once when heard in lectures and once when responding. For merely listening to lectures in no way suffices in order to achieve a ready and sound knowledge of the law. For he who seriously wishes to make progress from the very first step, ought not to be deterred by useless bashfulness and mental pride from committing himself daily to examination. After the second course I think that practice 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 suited to public actions where, at some stage, jurists have to stand up and discharge their duty successfully.

The exposition and discussion of the basic principles of law cannot, in this first stage, be regulated other than in accordance with the positions of some systematic compendium, on which matter I have nothing to add to that which our Böckelmann has precisely stated on this topic. For because the first course in legal studies ought to render young persons capable of giving legal opinions, advising on legal transactions and drafting documents, which we know are the aspects of the duty of a jurist\textsuperscript{121}, it is clear that we must proceed along this route in the same way as we have just proved that the Greeks did three centuries after Justinian, and which has been clearly and knowledgeably expounded in our previous discussion. In the first stage of this route which is directed to the Institutes, I require nothing other from young students than that they should commit the lectures of their teacher to their memory and judgement and that they should simply and accurately compare them to the text of Justinian, and to the Regulae Iuris (rules of law)\textsuperscript{122} and to the rules of De verborum significatione (on the meaning of terms)\textsuperscript{123}. In the second course of lectures they ought to look at, examine and assess the other texts, which are cited in great numbers from the Pandects and the Codex in explaining the Institutes and no one, I know well, will achieve this without intellectual sweat. And this is the proper work for a whole year, accompanied, as I have said, by a continuation of the liberal and humane studies.

The next year

\textsuperscript{121} See Cicero De Oratore, 1.48.212. ft 109 supra.
\textsuperscript{122} i.e. D.50.17. See Böckelmann’s Compendium, at the back, pp 68–102.
\textsuperscript{123} i.e. D.50.16. See Böckelmann’s Compendium, at the back, pp 1–67.
Iuris, Dialogus.

Pandectae impendere oportet, eadem præeunte methodo summariae institutionis, quæ materiam omnem Artis definitionibus et partitionibus exhaust, eiusmod decisiones quæestionum, tam quæ ad integritatem Artis antiquæ, quam in primis, quæ in ufu rerum humanarum hoc seculo verificant, ex iphis juris fontibus addit et innecit. Quia autem mea licet ratio, Quam Artem aliquis omni vitæ sua tempore vult proferer, quæ fortunam rerum suarum fulcire cupit, hanc eum prompte valideque sciens atque in habitum, quod philosophi crebris aëribus fieri docent, convertere deberet; censeo, repetita praelectione audientiisque & examinatione opus esse. Prudè biennio non minus in Digestis, eo modo transfigendum: Etenim Pandectas ego ita tradere soleo, ut quæ in Institutionibus exposta sunt, illuc denuo per varias positiones non tractentur aut explicentur, tamen annus utilis Academicus opus est ad summarium quinquaginta librorum interpretationem. Interea tamen temporis, operanda est Studio so, ut non modo leges, è quibus positiones Juris probantur, additum intentateque perlegat fiduloque inde, quæ ad intelligendam Artis doctrinam faciunt, colgat; sed & observationes ad illustrandam augandamque eam pertinentes, quarum materia gnauo scrutato literarumque & philosophia perito desce posse potest, à notitiâ receptarum sententiarum segregat etque recondat. Quod autem omnium ego praefullum in hoc instituto confilioque meo esse commeret, id est; quod qui in illo triennio, Institutionibus & Pandectis occupato, vacuum tempus evolvendis scriptoribus antiquis impedunt, inde jam Artis inua gnari, solvere & ad idem locos referre possum omnia, quæ ad illustrandum jus Romanum in Philosophis, Oratoribus, Historicis atque Poësis referunt, quod facere non possunt, qui ad legendos antiquos fœcit totos conferunt, antequam Ar-
A Dialogue on the Method of Teaching and Learning Law

ought to be spent on the Pandects, beginning with the same method of summary instruction, which reduces all the material of the subject to definitions and partitions, and to these, from the actual sources of the law, this method now adds and interweaves decisions on questions, both those which pertain to the ancient law as a whole as well as in particular to those which, in this century, are dealt with in everyday life.

Moreover, my reasoning is as follows, namely ‘if someone wishes to practice a profession all his life and intends to make his living by it, he ought to know it thoroughly, have it at his fingertips and make it second nature and this the philosophers teach is done by frequent practice.’ Consequently, I think that there is need for consistently attending lectures and responding. Hence no less than two years must be spent in that way on the Digest. For although I usually teach the Pandects in such a way that what has been explained in the Institutes is not handled or explained anew through new positions, nevertheless a full academic year\(^{124}\) is necessary for a summary explanation of 50 books. Meanwhile, however, the student must take care that he not only reads assiduously and carefully the texts on which the legal positions are based and diligently deduces from them what they contribute to understanding the principles of the discipline, but from his knowledge of received opinions he should also separate observations which pertain to illustrating and augmenting this discipline and set them aside. There can be no scarcity of such material for the conscientious searcher, who is thoroughly acquainted with literature and philosophy. I have found that the most important factor of all in my practice and programme is the following: namely that those students who, in the three years, which are occupied with the Institutes and the Pandects, spend their spare time in reading ancient writers, and hence are already acquainted with their subject, are students who can select and refer to the appropriate texts all the material for illustrating the Roman law which they find in philosophy, rhetoric, history and the poets.

This they cannot do, if they devote themselves to reading the ancients in toto before

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\(^{124}\) *Annus utilis Academicus*. The term *annus utilis* (a year that can be used) refers to a period of 365 days when a party was able to act in court, and exercise his rights. The term *annus utilis academicus* refers to a full academic year.
56 De Ratione docendi & descendi

Artis, cui fere potissimum dedere cupiunt, universam compositionem teneant. Quando enim in omnibus excellere multitudo rerum infinita & ingenii humani imbecillitas non patitur, optimaratio est, in una duntaxat scientia, quod sumnum est affermare, de ceteris excrepere, quod ad illum unam pertinent orandam & illustrandam; hoc facere non potest, quia comperiam Artis illius notitiam animo non praecipit; ideoque nec Jurisprudentiam ex antiquis augere & expolire poterit, nisi quot prius Arte cognita, fixi rit terminos, quibus obvia quaelibet includere debat. Triennio in Jure, quadriennio in Academia, sic abfoluto, studiose, cui ratio temporis fui bene confitet, ad alterum finem fe comparare debet, ut vel ad forum fere conferar, cujus exercitationibus parem doctrinarum adipeci jam potuit acdebut; vel ut alterum Juris descendi stadium renovato studio ingrediatur. Pars quidem multa maxima finem Laborum in illo primo stadio ponit, nec aut ipse cupiditate proificendi, aut parentes sumptuum prorogatio, ad alterum d curandum sufficere vel durare solent; nec ideo tamen posterius priori antevertendum esse quidquam recte atque ordine fluiderit. Nam qui Jurisprudentiam forem animo suo proponunt, his solum & totum jus antiquum in omni fata subtilitate critica tenere non expedit neque sufficit, opus est illis institutione moribus felicis ad tempertam. Talis cum eloquentia Latinita, Graecinita notitiae, Philosophiae & Hultoria literisque reliquae humanitatis conjuncta, quam haec nostra methodus requirit & praestat, in exitu quadriennii laudabilem Jurisconsul tum, etiam fatis criticum exhibere potest: modo Politicam & juris publici doctrinam in illo triennio non omiserit addere privati Juris institucionis; denique, tunc etiam fecta mens cognitione rerum gravissimorum justis orationibus eloquentiam exercere potest. Enimvero, si quis hae
they have a comprehensive view of the subject in which they chiefly desire to
specialise. For since the amount of information available is infinite and since
the weakness of the human mind does not allow one to excel in all things, the best
plan is to aspire to the heights in only one field of knowledge and to select from
the others what pertains to enhancing and illustrating the chosen field. He who
does not have a compendiary knowledge of his subject in his head, cannot do
this. And so, only he who has learned his subject and has established the bounds
within which he ought to include material that comes to hand, will be able to
enrich and refine his legal studies from the old writers. When four years have
been spent thus on academic studies, of which three are on law, the student, for
whom time is important, ought to ready himself for one of two careers, either he
should proceed to the courts, for practice, for which he already has, or ought to
have, acquired adequate learning, or he should, with further study, enter on the
next stage in learning the law. Indeed, by far the great majority of students finish
their studies at the end of that first stage and it is not usual that the students’
desire to continue, or the parents’ further financial support, suffices and extends
to completing the second stage.

However, no one would rightly and properly argue that the second stage
should precede the first. For, to have only a complete knowledge of ancient law
in all its critical subtleties neither helps nor is sufficient for those who propose for
themselves a legal career in the courts. They need instruction adapted to the
customs of our day. Such a course, together with Latin rhetoric, a knowledge of
things Greek and combined with philosophy, history and further humane
literatures which this method of mine requires and provides, 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. Finally, even then a
mind rich with knowledge of the most important requirements for a proper
speech will be able to speak eloquently. Certainly, if anyone

\[125\] Cf. Veen *Recht en Nut*, pp 38-39, especially ft. 15, for Huber’s comment on his expenses on clothes.
On p 39 Veen expounds Huber’s desires for an academic career. See also p 251, where in his *Historia Vitae* Huber writes: ‘Schrijvens ontvangen hebbende van mijn Vader (in 1655), dat hij begeerde mij te hebben gepromoveert, heb door missive van hem verkreegen, continuatie van mijn studien. (Having received a letter from my father, saying that he wanted me to graduate, I received a letter from him
[enabling me] to continue my studies.) Huber senior had financial reasons why he wanted his son to
finish his studies and start a career. See also two letters written to his father by Huber translated into
Dutch and thus reproduced by Veen in ‘Observationes tumultuariae novissimae’ in *De Memorie*, 3.1
Iuris, Dialogus.

haec ita generose persequatur & impleat, ut nostra methodus dicitur, eum ego non dubitem, pari aceritate fladium alterum, quod diximus, interioremque studii paritem aggregaturum: quod, videlicet, consuetudine totius Juris antiqui, sicut à Juseiano nobis est reliquitum, ejsusque collatione cum reliquis eorum scriptorum, e quibus Caesar corpus ejusum colliquit; quae quidem hodie perquam exigui superlun, fragmenta Caji, Pauli, Ulpiani, collatio Ruffini, Codex Theodosianus, & Basilica Leonis. Quae si totum jus complectorentur, abundantes hic instituto feriunt, et si nunc cadem fatis luculentam conferendi copiam praebant. Debet etiam hic esse novae lectionis arque collationis universi juris: opus, ut quae dicit bonis & acquis in positionibus systematicis questionumque decilationibus apud eas tractati solutis nondum percepta sunt, haec est recellibus integris corporis legum, etiam ubi de rebus ubi usu hodierno remotis agitur, sedulo conquiritur & ad loco summa, quae pridem formata fuerit, singula redigantur. Dum hoc autem studiosus naviter agit, novimus alteri fieri non posse, quin ubique incidat in cruciulos & difficiles intricati, quibus tamen resolvendis & amovendis indefessam operam navare debet. Interpretans in hac obfusa via lucem affatim praebent; sed ego tam non ita comprehensum atque ita meis amis; suadere soleo, ut e modo textibus intricatis, etiam pro die-speratis aut dammatis, ut loquantur, habitis, incipientis, quasi nullus interpretatio effet in mundo. Nam si prius interpretationes varias confecer e & expendere voluerint; in singulis pauco minus difficilis inventum ac in ipsa Lege reperiant, parumque abierit, quin idem illis eventum sit, quod Patri Comico, qui consulti tribus Jurisconsultis, discrepantibus, ita abibat ab illis, Facile, inquit, probe; incertior fum nunc multo quam dudum. Ubi vero Tu vires...
follows and completes this course as my method dictates, I do not doubt that he will attack with equal alacrity the second phase, which I have mentioned, namely the inner aspects of the subject, which, naturally, consists of a careful reading of the whole of ancient law, just as it was left to us by Justinian, and a comparison of that with what remains of the writers from whom the emperor gathered his Corpus. Indeed, today very scanty remains survive, fragments of Gaius, Paul, Ulpian, and the Collatio of Rufinus, the Theodosian Code and the Basilica of Leo. If these works were embracing the whole corpus of the law, they would serve this purpose better, but even now they provide a sufficiently rich source for comparison. [A12]

But even here there ought to be room for a fresh reading and collation of the entire law. Thus those precepts of the good and the fair in the systematic compendia and in the decisions of questions which are usually dealt with in that connection but have not yet been fully understood, should be diligently gathered from the obscure places of the entire body of the law, even where the issues concern matters remote from present day usage. They may then be assigned individually to the chief heads (titles) of which they were formerly part. We know that, while the student is conscientiously working on this, he cannot avoid encountering problems and most intricate difficulties everywhere, however, he must press on with unremitting effort to resolve and remove these. On this dark road the interpreters offer sufficient light, but I have found out (and thus I am accustomed to advise my friends) that they should apply themselves to these complicated texts, even those considered as hopeless and damned as they say, as if there was not a single interpreter in the whole world. For if they wish to begin by consulting and evaluating the various interpretations, they will find in every one of them little less difficulty than they encounter in the actual fragment, and there is every chance that the same result will befall them as befell the Comic Father, who having consulted three lawyers, each of whom held a different opinion, left them saying 'Jolly well done! I am now in a bigger muddle than before.'126 Truly then, when you have tested the strength

De Ratione docendi & discendi

ingenii judiciumque tui expertus fueris, tunc inveneris, quod
fatus tibi videatur, sit nihil expedieris, tempus erit, ut
Interpretationes adeae, quae vel in tuis cogitationibus firmarum, vel
harum defectum ex corum commentariis superles. Heie vero
sueve jucundumque spectaculum praebent, qui negleget
priore viam, quam per meliorem appetites systematicam,
continrenti hoc examen universi juris occupant: quando loco,
que non intelligunt, inopiae doctrinae juridicae, continuo
fuis conjecturis, interpunctionibus, additionibus, subtra-
cutionibus, transpositionibus ac omnino genere emendationum se
pe tam subtilium, ut uno spiritu diffili possint, in suis in-
tellectus licentiant, cogunt, rapiunt. Plura Doctissime
Wingardeni, non habeo, quae habi horae inter nos super hoc
quefito communicari possint. Dantur equidem & alia, quae
momentum in utraque studii vias non spernendum factant;
Sed cum in aeterno magis & demonstratione praeventi quam in
oratione consistere videatur, dabis veniam, heic ut subfi-
tere nobis licet. Wingardeni novam parat infantiam,
Quando Bökelmannus, ut abrumpet hos nimirum studiosos
ferones, libellum proferebat, cui praefixus erat titulus
talis, Ephemerides Eruditorum, gallice conscriptus. Ratio
institutum notior est, quam ut cunctus pluribus exponi necesse
sit. Verum Bökelmannus aperto libro incidunt in hujusmodi
titulam, Ventriculi Querela & opprobria, operà A. S.
Med. Doctoris Amstelodami. rumus alibi, Carissimi Mosai-
zans, Autore N. Amerpoel & idgenus alia; quam autem eph-
emeridum illarum prolino eloquio profequabatur. Ad hanc
Bökelmannus, Nonne vobis indigna res videtur, hos ho-
mines, qui scribendis lusce diariis Reipublice literarie dant
operam, alia quidem illis inferere atque laudare nullius
momenti scripta, rumus alia magnae frugis & solidae erudi-
tionis omittere vel frigide commendare, coque modo e ar-
bitros
of your own intelligence and judgement, you will either have found what seems good enough to you, or you will have found nothing and then it will be time to go to the interpreters so that you may be confirmed in your surmises or you may supply the necessary from their commentaries. Here indeed these provide us with an agreeable and pleasant sight as, having neglected the former route, which I allow you to call the systematic route, they immoderately busy themselves with an examination of the whole law, for they are constantly worrying at the texts, which they do not understand because of their lack of legal training, tearing at them and pulling them this way and that, with their conjectures, punctuation, additions, subtractions, transpositions and all kinds of emendations, ones which are often so fragile that they can be blown away with one breath. [A13] Most learned Wijngaerden, on this topic I do not have anything more to say which can be shared between us at this time. There are, of course, other things which make for significant moment in both ways of studying. But since they seem to consist more in action and visible demonstration than in speechifying, you will grant me permission to stop here.”

Wijngaerden was preparing to press on, when Böckelmann, in order to break up these excessively academic discussions, produced a little book127 to which had been affixed the title Ephemerides eruditorum (Journal des Sçavans), (originally) written in French.128 The prevalence of this type of book is too well known to need further explanation. But Böckelmann, opening the book, began with a title of this kind Ventriculi querelae et opprobria, opera A.S. Med. Doctoris Amstelodami.129 Then again somewhere else Cartesius Mosaizans, Auctore N. Amerpoel130 and other things of that type. These works the author of that journal presented with a wordy eulogy. Referring to these, BÖCKELMANN said “Surely it seems to you unworthy that these fellows who devote their energies to writing these daily pamphlets for the Republic of Letters introduce and recommend some writings of no significance, and again omit or only mildly commend others of great value and solid learning and that thus.

127 The use of the title Ephemerides Eruditorum, argues for the German version. See Chapter IX.
128 Gallice conscriptus. This is part of the title of the Ephemerides Eruditorum which in the 1665–1666 and the 1671 editions reads . . . Ephemendes Eruditorum . . . Gallice primum editae, Jam vero in Linguam Latinam versae . . .
bitros ferre meritorum atque famae eorum, qui nomen aliquid inter literatos affectant? Mihi certe res non toleranda videtur, hujusmodi quoque nostrarum libros, quorum inscriptiones vobis praelegi, & quos in his locis rarus lector inspexitione dignatur, illae ut opera consideratione literati orbis digna commemorari, nec quicquam ineptiarum Gallicarum omitt, quod fallendo aulicorum aulicarumque otio servat; interea commentationes hominum doctissimorum in uraque Germania & alibi silentio damnari, vel frigidâ negligentique mentione, quasi quae legantur indignas, tantum non ludibrio exponi: Neque sunt, quibus iustior hab parte caufa sit indignationis, quique iniquius sint habiti, quam Jurisconsulti. Ad hac Cruius; nolim, Bökelmannne Clarissime, tam parvi animi querelam à te serio intelligere emissam. Quid enim queso refer, tuum de Actionibus vel ad Pandectas, meumque ad Legem, Si Paterfamilias, commentarium igitur Ephemeridi infertum vel non fuisset infertum, magis quam si Novellis hebdomadibus, ut sit, eorum nomina subiecta fuissent, aut non fuissent. Nifi tu putes, multum interesse, mens trui an hebdomadales sint falsi, de actis literatorum, an de Regum & Principum, de pacis & bellis negotios sint compositi: aut nisi putes, invidendum esse Medicis & Artium Magistris, quorum laudes in novel lis decantantur, prae alius, qui modesti contenti famam ipsi non faciunt, aut fieri curant, sed expectant. Enimvero non est difficile a lectione Ephemeridum illarum animadvertere, conditores illarum fere ex eorum effe genere, de quibus Fabius scribit, parva facile. Sane jurisprudentios adhuc quidem inter eos fuisset nullos, ipsa ephemeraides manifesto pra sec ferunt. Proinde faciunt id quod fieri confitantaneum est, ut de rebus, quas non didicerunt, aut nihil, aut valde parce tenuiterque loquantur. Et mea quidem auctoritas si S 1 f 7 2 quid
they present themselves as arbiters of the merits and reputation of those who endeavour to make a name among the learned? To me, certainly, it seems intolerable that books of this kind, written by our countrymen, whose titles I have mentioned, and whom in these parts only the occasional reader deems worthy of a glance, be mentioned as works worthy of consideration by the world of letters, and that also included are some French trifles, which serve to entertain the leisure of the gentlemen and ladies of the court; that meanwhile the treatises of most learned men in both Germanys and elsewhere are condemned by silence or mentioned coldly and casually as if they are unworthy to be read except as a joke. Nor are there any to whom there is a more just cause for indignation in this regard, none who are treated more unfairly, than the jurists.”

To this CRUSIUS replied “Dear Professor Böckelmann, I would not like such a small-minded complaint to be seriously uttered by you. For what, I ask, does it matter whether your commentary on Actions131 or on the Pandects132 or mine on the fragment si pater-familias, [D.28.5.41(40)]133 has or has not been included in that Journal, any more than if the titles of those works you cited had or had not been added to those weekly news-sheets, as has happened. Unless you think that it is very important whether these monthly or weekly reviews pass judgement on the actions of men of letters, or whether they are written about the doings of kings and princes, or about peace and war. Or unless you think that medical doctors and Masters of Arts, whose praises are sung in these news-sheets, are to be envied above the others who, content with modesty, do not themselves create their reputation or see to its being created but await it. For it is not difficult from reading those papers to realise that their contributors are almost all the sort of people of whom Marcus Fabius Quintilian wrote parva facile (it’s easy to do little things).134 Certainly those papers show clearly that as yet there are no jurists among them. Forsooth, they do what is to be expected, that is they speak superficially about matters of which they have learned nothing or at most a little and that of little worth. And if my authority

131 Böckelmann produced a series of 11 Exercitationes on Actions, probably published together in 1661. See Ahsmann-Feenstra, BGNR Leiden p 56, no. 12. Under p 64, nos. 46-48 are listed posthumous Exercitationes de Actionibus, which according to Jugler 298 are completely different from the above. These do not appear to be the text referred to as the dates, 1687, 1694 and 1695 are later than the first edition of the Dialogus. For the summer semester of 1671, Böckelmann appears in the series as offering lectures on jus actionum. See Molhuysen Bronnen Leidse Universiteit III p 235*; Feenstra, Böckelmann, pp 141, 142.
132 In 1664, while still at the University of Heidelberg, 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 presumable he was the author. The Exercitationes was published in Heidelberg by one Adrian Wijngaerden. Four years later, in 1668, Wijngaerden published Böckelmann’s Collegium Pandectarum compendioso exhibens fundamenta et praecepta controversiarum quae in singulis titulis occurrant, praeside 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 Justiniani libri XIX published by Felix Lopez of Leiden. The first 6 books were a reworking of the Exercitationes ad Pandectas. In 1694 this work was expanded and re-issued. See Ahsmann-Feenstra, BGNR Leiden, p 57, no. 14; p 59, no. 23; p 61, nos. 30 and 31; Feenstra, Böckelmann, p 141.
133 See Ahsmann-Feenstra, BGNR Leiden, p 83, nos. 115 and 116 and Commentary, Chapter V.2.2.
134 See Marcus Fabius Quintilian Institutio Oratoria 1.3.iv. Hi sunt qui parva facile faciunt et audaciae prorecti quidquid illud posunt ostendunt. (These are such as do little things easily and, carried along by their audacity, they immediately display their limits.)
De Ratione docendi & discendi

quid apud eos valeret, rogarem Viro cordissimos, ut Jurifconsulorum ordinem ephemeredum fiorum memorialibus saepe eximere, singulorumque facto committerent, utrum faram hab. rent, an merentur. Quod si tu in aliquá parte gloriae pont, nomen tuum in illis diariis, cum amplo elogio cumque speciosa scripturae historia confici, ita cenisco; scribas cum in procinetu es edendi aliquem librum, tuo vel typographi nomine, ad compilatores sequi, quid pares emittere, quae si libri tui summa, quid in eo praecipue excerpti laudarique cupias, inprimis ipsas Ephemerides carumque Scriptores fac aliquo sublimi charactere laudis adpergas. Sic tib i nulam caufam fore pollicor hac parte Salvio & Amerpoelio similibufque Heroibus invidendi. Necio, regebat Bokelmannus, quid ex meis verbis argumenti sumfteris, ut mea potius unius quam Jurifconsulorum communi causa queflum me esse putares. Quod si torum hoegenustibit contemnendum videtur, non habebis me tam contabantem adversum, quam modo in causæ systematim & Compem dorium expertus es. Proinde facile patior, nihil esse commune Jurifconsulis, cum diarii & Novellis Hiftis eruditorem, nisi quid Hubris dissentit. Ego vero dissentio, Ille, venerabiles Symmysti, nec ullo modo confultum duco, ut homines elegantibus ingenius & pari fama notos ordinis nostris inimicos reddamus. Nec enim ipsis uscifendi ratio deflet, si intelligerent, nos de instituto suo tam inquearente, quam vos in animos vetros inducere vultis. Credo, non amplius silentio nos omitterent, sed cum aliquà notà vel contemptus argumento scripta nostra fuisse saepe immiferent, vel omittentes, que magno labore constructis, si quid tibi fersit abortivi foetus tuoque nomine minus decori excedisset, nomine licet presfo, tamen, illi hoc suis compilationibus, nomine tuo palam facto inferere non dubitarent. Necio, an non de meis Di-
would have any influence with them, I would ask these most sagacious gentlemen that they should leave the jurists out of the judgments expressed in their papers and leave it to the fate of the individual authors as to whether they have or deserve a good reputation. But if you reckon there is glory in any degree in having your name appear in these papers, with a handsome statement and a well-sounding account of your writing, I propose the following: when you are on the verge of publishing some book, you should write either in your own name or in the name of your publisher to the editors τϖ νυ νεαρϖ (of the news-sheet) and state what you are preparing to publish, what is the main theme of your book and what you desire should especially be quoted and commended; in particular be sure that you shower the actual news-sheets and their contributors with some sublime marks of praise. Thus, I promise you, you will have no cause in this regard for looking askance at Salvius, Amerpoel and like heroes.

“I do not know”, resumed BÖCKELMANN, “what evidence you have taken from my words that leads you to think that I am complaining about my personal position rather than that common to all jurists. But if this whole scene seems contemptible to you, you will not find me as consistent an adversary as you have found a little while ago in the case of systems and compendia. Accordingly, I can easily allow that there is nothing in common between jurists and those journals and news-sheets of savants, but perhaps Huber disagrees”.

“I indeed do disagree” said HUBER, “venerable colleagues, and I do not think that it is in any way advisable that we should make men of elegant talents and equal reputation into enemies of our profession. For they will have every reason to avenge themselves, if they realise that we feel as indignantly about their practice as you want to suggest. I am sure that they would no longer pass us over in silence, but would include our works in their résumès with some black mark or contemptuous comment, * or make no mention of works which have come into being with much labour but, if perhaps some abortive work which brings no honour to your name, has come out, even although the author’s name has been suppressed, they will, however, not hesitate to insert this in their pages, clearly under your name.† I do not know whether they would not perhaps write intemperately about my

*† vel omittentes... duitarent.

135 The nota (censoria) was the mark which the censors used to indicate a citizen who was censured for contravening the mos maiorum. Hence it came to mean a mark of disgrace.
Juris, Dialogus.

Digressionibus, quae continent observationes Juris Humaniores, incontinenti forte scriberent, eas idem fere esse cum Menagii Amoentatibus Juris Civilis, eti liber ille mihi nunquam vidit foret, atque materia utriusque scripti nihil omnium inter se commune haberet; sola tamen inscriptionis similitudo ad speciem veri lufficeret, ipsos libros excutire nihil ad rem pertinentem: Eti autem illa Digressionum meorum cum Menagii libris comparatio mihi forte pudenda vel pænitenda non foret, tamen ex ejusmodi relatione simpliciter facta imperiti facile opinarentur, me praecipue observationes meas debere Menagio, uteuncque follicite in praefatione monuissem, fve laudandi conatus mei fve excutirenda fletinatio effe, propriis stylo & cogitationibus elaborata effe, quæ publici juris facerem. Caveamus igitur Viri Clarissimi, offendere vel irritare genus hominum, cui tam potentis fame ininterruptum in promptu est. Videamus illas ephemerides in manibus omnium doctorum & indocitorum verlari, care vendi, cupide legi, ut sit in rebus novitare futuri lectori bland entibus. Et quamquam vera solidaque exiftimatio virtutis & docttunæ ab ejusmodi sufragis non pendet, ideoque tali fecus quam mercare, publicata magnanimo sperne possint; tamen si verum est, contemptu fame plerunque etiam contempti virtutem, viri prudentis effe videtur, nulla publice approbationis adjuncta, præfertim adeo late patentia adispersari. Est fane Jurisprudentia maxime ad graviorum levitatemque doctrinæ comparata, ideoque Gallis & regis auctóribus, qui philosophia, mathematicis & amoeniore doctrinâ potissimum, ut appareat, dextanter, minus placuit, nec apta visa fuit ad augendum scriptum, quod totum recreando non minus quam erudiendo lectori comparatum est. Credo, genus hoc scribendi etiam ad Germanos vicinoique, uti sunt omnes populi novitatis avidi, tran-
Digressiones which contains humanistic observations on the law, saying that it is almost the same as Menagius’ *Amenitates Iuris Civilis*\textsuperscript{136}, even although I had never seen that book and the material of both books has nothing in common. Only a similarity of the titles would suffice as a justification for the statement, to examine the actual texts would be irrelevant. Moreover, even although a comparison of my Digressiones with Menagius’ work would perhaps not be to my shame, and discredit, nevertheless from a simply made comparison of that kind, the uninformed might easily conclude that I owe my major observations to Menagius, even although in my preface\textsuperscript{137} I had specifically stated that whether my attempts were to be praised or my haste excused, it was a working out, in my own style, of my own thoughts, as I had formulated them in my lectures, which I have published. Let us therefore, dear colleagues, be careful not to offend or irritate a group of men who have at hand so powerful a means to make or break a reputation. We see that those journals are passed round in the hands of the learned and the unlearned, are sold at a high price and are eagerly read as happens in the case of information which appeals to the reader by virtue of its novelty. And although a true and sound evaluation of merit and teaching does not depend on votes of this kind and so such possibly undeserved publications can be spurned with pride; nevertheless, if it is true that ‘contempt for reputation is generally contempt for virtue’\textsuperscript{138} it seems to be the part of a wise man not to spurn the aid of public approval, especially when so widespread. And, indeed, legal writing is specially composed for weighty and serious instruction and so it does not appeal to those French writers των νεαρων (of the news-sheets) who, as it appears, are delighted by philosophy, mathematics and especially the more pleasant subjects, nor is it suitable for filling out a journal which is produced entirely to entertain as much as to educate the reader. I am sure that this type of writing will pass on to the Germans and their neighbours, as they are all people keen on new developments.

\textsuperscript{136} Menagius, *Iuris Civilis Amenitates*, Paris, 1664. This was a collection of elegant dissertations on various topics. Huber here (p 61) denies that he ever saw this book (*liber ille mihi numquam foret*). Certainly the contents of the *Digressiones* bear little resemblance to *Menagius Amenitates*. However, on pages 20 and 21 of the *Dialogus* Huber (through the mouth of Crusius), as shown in note 63, clearly was familiar with chapter XV. As an extenuating circumstance it is of interest that the 1684 edition does not contain the long section, running from *Quod tu compendiariae* on p 20 to *velle videbant* on p 22, which contains the reference to Menagius. This was presumably added in 1688.

\textsuperscript{137} See *Digressiones*, *Dedicatio Zachariae Hubero* (his father). “Quod autem hodie profero, sive ejusmodi sit, ut melioris proventus spem facere videatur, sive nulla quam festinatae editionis excusatione sublevetur, neo solius ingenii periculo expontur in lucem . . .” (Whether the work which I am producing today is such that it can hope for a happy reception or whether it is supported by no excuse for a hastily prepared edition, it is published at the risk of my talent alone.)

\textsuperscript{138} Tacitus *Annales*, 4.38.
De Ratione docendi & disendi

siturum. Germanorum, ingeniis propitia magis est Jurisp
prudentia Belgique secundum illos aequae familiaris. Hi de-
fectum, quem Bokelmannus in Gallis arguit, forsitam sup-
pbleunt, ordinemque nostrum pro parte aliquae literati or-
bis, habere non gravabantur, atque, si juvat & refert, in
ipsum fuis diarissimi nihil magis obliviscantur. Ego quidem hac
gratia libenter illis utor, quod ex is per compendium icer
licit, quibus Auctoris studia nitantur, Favendum est in-
geniis feculi nec folis mortuutendum magistris; neque de-
cet esse tam fastidiosos, ut quae maximo labore clari homi-
nes, aut qui indlerevcre cupiunt, opera doctrinae compo-
suerunt, ea non modo legere, sed ne argumenta quidem
summaque librorum cognoscere dignemur. Nolim igitur
contendere, ut ordo nofiter, quaest interdicto ab hac fecn
Reipubl. literarum excludatur, neque fane etiam ambire
muito minus, ut ratio nostrum habeatur. Facile patior, au-
tiores uti arbitrio suo; duntaxat, ne faciant Criticas gene-
rales, sed ut simplicitate narrationis, quae est propria dia-
riis & novellis, contenti, abstante omni judicio omnique
criti: hanc enim integre euiuque scripotoris lectione publica-
exque affimatione relinquere oporbebat. Quod quidem eo
magnis requiritur neceatium est, quod difficileius evitatur; si-
quidem observare licuit, aliquos id fiero in prafationibus
fuis sollicitos, in progressu relationum calore scribendi ab-
reptos nihil minus praebuisse ac etiamnum preftare. Scribunt
igitur, CRUSIUS, argumenta hibrorum florum & ambitant
elogia, qui volent pacantque fede deliciis imaginarius. Ego ma-
luerim, homines rogant, cur Crusius non compararet proce-
ribus permixtus aehivis, quam ut elogia rationesque me-
rum qualitemque scripitorum, juxta tot dignas pariter in-
dignataque reverentia polteritatis chartas, comparentur atque
cenibantur. Non defecerat adhuc materia dialogorum, sed
reli-
Jurisprudence is more suited to the talents of the Germans and, next to them, is equally natural to the Dutch. These people will perhaps provide the lack which Böckelmann finds in the French, and will not be reluctant to regard our profession as some part of the world of letters and they will not forget in their papers what pleases and is relevant. I, personally, am grateful to them for this reason, that thanks to them one can learn as if through a compendium, about the authors who are relevant to one’s own studies.\footnote{From 1675, the edition of the Journal provided a list of books published that year and it may well be this to which Huber is referring. In 1686 Huber’s Positiones was mentioned. See Commentary Chapter IX.1.} The talents of our age must be cherished, and we must not only use the great masters who have passed on, nor is it fitting that we should be so disdainful as to refuse to read the works of learning which well-known writers, or those who desire to be well-known, have written with great labour, but should also disdain merely to learn their arguments and the main points of their books. Therefore, I would not like to argue that our profession should be excluded, as it were by an interdict, from the public stage of the Republic of Letters,\footnote{The term Respublica literaria, according to Bots Republiek der Letteren, p 4, was invented and used by Erasmus. See Commentary Chapter IX.} but much less would I like us to court favour so that account be taken of us. I can easily accept that the contributors should use their own discretion, provided that they do not make all sorts of criticisms but that, being content with a simple statement such as is proper to papers and news-sheets they should refrain from all judgement and criticism. For this ought to be left to a reading of the entire book\footnote{It is ironic that Huber should scorn those who comment adversely on books they have not read in their entirety, as he himself is accused by Noodt of citing and refuting authors without having read their works (Noodt to van Eck, Leiden, 3 October 1693. U.L. Utrecht Ms 1000): gelijk ick dan oock bevinde dat hij allegereert auteuren, ende die afrageert sonder dat hij se gelesen heeft. See van den Bergh Noodt, p. 56. ft. 90 and Veen’s article on Stolte’s Brenkman p 383 ft. 9.} and to the evaluation of the public. But the more necessary it is to demand this, the more difficult it is to be avoided, if one may be allowed to observe that some writers, having made earnest promises in their prefaces, carried away in the course of writing by the fervour of composition, have provided nothing less * and even now provide it."

CRUSIUS said “Let those, therefore, who wish for and are gratified by imaginary pleasures write the main themes of their books and cadge for favourable judgments. I would prefer that men should ask why Crusius does not appear in company with the ordinary writers rather than that reviews and assessments of my writings such as they are, should be compared and judged together with so many equally worthy and unworthy writings by the regard of posterity.”†

There was still no lack of topics to discuss but

\textit{et etiamnum . . . censeantur.}
63

Iuris, Dialogus.

reliqui convivæ Bökelmanni, qui magis verecundia nos interpellandi, quam sua sponte in alio recessit amici fimi hor-
ti subliterant, tandem affluebant, ut nobis valedicerent, hospitique gratias actis, in urbem se recuperent, quod & à
nobis, post aliquot ultimæ civilitatis complementa mutuo-
que amicitiae conterationes, factum.
Böckelmann’s other guests who had stood around in another part of his most pleasant garden, more from embarrassment at interrupting us than voluntarily, now at length came up to us so that they might say farewell to us and, having thanked their host, should return to the city. [A14] This was also done by us after some final courtesies and mutual protestations of friendship.
PART III
CHAPTER III
LEGAL EDUCATION — A BRIEF GLANCE AT SOME RECURRING ISSUES

The quality of legal education, its teaching and its learning has long been a vital concern of the authorities, academics, members of the profession and the general public. And rightly so. However, it is not appropriate here to provide a history of the perceived strengths and weaknesses of legal education over the ages but merely to indicate a few features which will help put Huber’s *Dialogus de ratione docendi et discendi juris* into a historical perspective.¹

¹ Huber’s concern with legal education was not unique. See Lipenius *Bibliotheca* vol. 2, pp 35-40 for a listing of various works on the topic.

1. LEGAL EDUCATION IN THE NORTHERN NETHERLANDS IN THE 17TH CENTURY

To appreciate the stresses which were underlying Dutch legal education in the late 17th century, although they are only lightly touched on in the *Dialogus*, it is desirable to mention briefly certain social and political issues which arose during the previous century. The links which bind society and law, and hence society and the teaching and learning of law are among the most significant aspects of the individual and the state. As a rough generalisation, it is possible to say that the Northern Renaissance was more earnest and intellectually pragmatic than that of the aesthetic Italians, in fact it was the beginning of the Reformation. Scholars such as Agricola² and Erasmus³ are significant names. For our purposes Erasmus is to be noted as one who regarded humanism as an effectual weapon against the prevailing ignorance — especially that of the clergy. He was himself a keen student of the classical world and strove to apply its morals to his day. Likewise, he wanted all men to know the Bible and what it meant. The focus on biblical studies rather than the classics was one of the hallmarks of Dutch humanism. The impact of the Protestant Reformation (1519) and the Revolt of the Northern Provinces (1572) had “produced an uneasy blend of Protestant-Catholic confrontation, humanist-confessional antagonism and Protestant-anti-Calvinist dissent which fragmented thought and education, . . . posing questions about the nature of political and ecclesiastical authority, the status of Scripture, the rights and wrongs of revolt, toleration and freedom of conscience and, not least, the problem of how to reverse the perceived collapse of discipline and morality”.⁴

⁴ Israel *The Dutch Republic*, p 565.

In the late 16th and 17th centuries an important factor to consider is the development of universities in the Northern Provinces, (where the Protestant Reformed Church had a privileged position) and their impact on the teaching and practice of law. The University of Leiden (Holland) was established in 1575,⁵ the University of Franeker (Friesland) in 1585, the University of Groningen in 1614 and the University of Utrecht in 1636, followed by the university at Harderwijk.

² Rudolf Agricola (Huysman) (1444-1485) was born in or near Groningen. Later in life he travelled to Germany. His interests were theological.

³ Desiderius Erasmus (1466-1536) was born in Rotterdam, schooled at Deventer and taken to Italy by Agricola, one of his early preceptors. He was a man of high ideals, brilliant scholarship and effectively propagated the humanist scholarship.

⁵ See Feenstra and Waal *Leyden law professors* pp 15-18 for a brief but perceptive analysis of law teaching from the 12th century to the rise of the Dutch universities, passim. For the history of law teaching at Leiden University in the 17th century see Ahmann *Collegia en Colleges*. 
A Dialogue on the Method of Teaching and Learning Law

(Gelderland) in 1648. The Athenaeum Illustre in Amsterdam was founded in 1632 but only became a university in 1877. A university was legally entitled to confer a degree, the Illustrious Schools or Athenaeum could only provide legal education. Of these the Athens or Illustrious School of Amsterdam, founded in 1632, became the most renowned. This was partly because the school attracted outstanding professors such as Gerard Vossius, the first rector, and Caspar Barlaeus, and not least by the generous stipends offered. Thus, in addition to the universities there were various Athenaeum, Latin Schools and individuals providing legal education but not legal qualifications.

1.1 The University of Leiden and the Faculty of Law
In general, Huber’s didactic orations and writings do not attach to any Dutch university other than Franeker, but in the Dialogus, the association with Leiden is marked. Böckelmann, Crusius and Rusius all taught there. Wijngaerden appears to have moved from Franeker to Leiden some time after 1670 and was teaching privately. On 31 March 1674 he defended his disputation pro gradu on De vectigalibus. It is only Huber himself who has no direct links. The setting is clearly Leiden and the discussion relates to its teaching practice. Let us therefore consider that great education centre more closely.

The University of Leiden was established in 1575 shortly after the Revolt of the Province of Holland. Its purpose was to educate the sons of the regents and nobility and train office-bearers and professionals. Theology was also to be taught but the Staten of Holland did not consider this their primary purpose and refused to hand over control of the university to the South Holland Synod. Strict Calvinists considered Leiden too liberal in its policies and preferred Geneva or Heidelberg. Thus its strength was its tolerance of varying confessions. After a slow start Leiden established itself, with its library, the Hortus Academicus and its generally outstanding staff as the leading Dutch Protestant university.

As with most universities, the senior faculties of Theology, Law and Medicine were regarded as the true faculties. The Arts subjects were regarded as preparatory and, in the eyes of the Law faculty, as a means to bring students up to the required competence in Latin and Greek Philology and Literature, Ancient History, Philosophy and Rhetoric. It is doubtful whether students were required to pass exams in these subjects and, certainly students from other universities, and other countries could register for the Doctorate without proof of their earlier studies. At Leiden which attracted first rate philologists and classicists, such as Lipsius.

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6 Vossius, Gerard (1577-1649). Professor at Leiden and the Athenaeum, a pre-eminent humanist and member of the Republic of Letters.
7 Barlaeus (van Baerle), Caspar (1584-1648), Professor of Philosophy and Economics, chiefly lectured on ethics. Vice regent of the Staten College.
8 The Staten College, founded in 1591, was exclusively for theology students.
9 By contrast, the University of Franeker (1585) also got off to a slow start but, even in its heyday, its numbers did not rival Leiden. Many of its foreign students were German. Unfortunately for the Frisian university the attractions of Leiden were such as to draw the best of their staff south. Huber was one of the very few who resisted calls to Leiden.
10 Lipsius, Justus (1547-1606) Professor of History and Law from 1578-1591.
Scaliger, Salmasius, and the Gronovii, the study of the humanities proved successful and it is not surprising that Huber recommended that potential law students should not get too involved with the classical world at the risk of finding law dull and dry.

In the late 17th century it was customary for students to take a doctorate in the law faculty as a step towards a career in the profession, in business or in state administration. Academic research for its own sake, including legal humanism, only came into its own in the early years of the 18th century. It was an ideal goal to enter into the temple of Themis but not the immediate purpose of the degree.

1.2 Didactic policies

In general, the didactic policy was approximately as follows: public lectures (lectiones or praelectiones) were given by professors appointed for a particular subject, eg Justinian’s Digest. These lectures were listed in the series lectionum of the university, giving time and place. They were usually at an academically sophisticated level, were free, directed not only at students but could be, and were, attended by practitioners and interested members of the public. The audience was expected to be familiar with the basics of the subject and there was little or no place for discussion. The professors not infrequently failed to give lectures or shortened their duration. As time went on these public lectures lost favour and in many cases, although listed annually, were not necessarily given.

Privatissima (private lectures) and collegia domestica were closer to our present day tutorials or seminars. The privatissima could take place at the University. The collegia domestica, which could number 10–20 students, met usually in the greater comfort and warmth of a professor’s house and there was considerable freedom of choice of subject. Such collegia were popular both with students and professors — with the students because the collegium more closely addressed their needs than the public lectures, and with the professors because, among other things it was customary for students to pay extra for private lectures and, as most professors claim to be hard-up, the temptations and the rewards were self-evident. It was in the collegia, and privatissima rather than in the lectures, that the real teaching of law occurred. The method of teaching varied somewhat depending on the requirements of the students and the fancies of the professors.

11 Scaliger (de les Calle, de l’Escale) Josephus Justus (1540–1609) — an eminent humanist scholar noted for his knowledge of Latin, Antiquities and History. He was not appointed a professor but was called in 1593 to add lustre to the University and to teach as he saw fit.
12 Salmasius (de Saumaise). Claude (1588–1653) a humanist scholar. He was not appointed as professor but was called to Leiden in 1632 to teach as he saw fit and add lustre to the name of the university.
13 Gronovius (Gronow) Johannes Fredericus (1611–1671) a German humanist, professor and librarian for Greek language and history (1658–71). Gronovius (Gronow) Jacobus (1645–1716). — Professor of Greek language and history (1679–1716).
14 See Dialogus, p 51.
15 See, for example, van Strien and Ahsmann Scottish Law Students, p 289; Molhuysen Bronnen III, pp 242–246, IV pp 48–51.
16 On the position of public lectures and private Collegia at Leiden see Ahsmann Collegia en Colleges (for the period 1575–1630), passim but especially Chap. III and Chap. V; for the late 18th century van der Keessl Dictata ad Institutiones Vol. I, pp xv–xvi and p xviii, ft 42.
1.3 Disputations

Further features of teaching in collegia were disputations. Although these are merely touched on in the *Dialogus*, they were a fundamental aspect of legal training. Their roots were deep in antiquity and the Middle Ages where the question and answer teaching was obligatory in a world largely devoid of written texts. By the 17th century, printing and its concomitant skill reading, were steadily superseding memory and rhetoric although an ability to think on his feet was still essential for the practitioner and disputing was excellent training.

Disputations were of various types — first practice disputations where the theses were usually drawn up by the professor (*praeses*) and then defended by the student (*respondens*). In the course of a year a sizeable portion of the important texts would be covered as each student was required to dispute several times a year. The *disputatio pro gradu* was the final and qualifying disputation. It was sometimes written by the student himself, in which case he appeared on the printed title page as *auctor*. This *disputatio* was usually held in public and after successful completion culminated in an uproarious and expensive party. This method of teaching was introduced to Leiden by Maestertius in the 1630’s. Although it was disliked by certain professors, disputations became a popular, and satisfactory method of revising and of testing the disputing skills of future legal practitioners.

Many collections of disputations were printed — partly for the use of students in future years and also as a framework for a future publication by the professor. Among such from Franeker we note the works of Johannes Wissenbach, Willem Cup and finally Ulric Huber. Most, obviously, concerned the law and its application — but there are a handful in Antonius Matthaeus I’s *Collegia Iuris Sex*, 1637, which concern the actual business of teaching law. These embody many of Matthaeus’ own views on mastering the material and it is of interest to consider a collection of 72 theses which comprise *Disputatio I, De studio juris recte instituendo*. The theses state that some people dare to deviate greatly from the order established by Justinian, others defend it tooth and nail (IV). It is better to abide by Justinian’s order and numbering which is fixed for all (VII). Some writers produce commentaries which was forbidden by Justinian, others do not (V). Legal studies consist of two aspects — learning the law and learning how to apply it (XI). If a student can manage *proprio Marte* (on his own), well and good, if not, interpreters are available to help. The help can come either from men of learning or from books (XVIII). Both are desirable but

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17 For a comprehensive discussion of disputations see Alsmann *Collegia en Colleges*, pp 274-323, Veen *Exeuntia*, pp 127-161. Feenstra *De Franeker juridische faculteit*, p 296. It is worthy of note that the lists of disputations with the candidates’ name and place of origin give an excellent perspective on the patriae of the students.

18 See Feenstra *Maestertius*, passim, with reference to Maestertius’ work *De imminendo labore studii iuridici* § 4.

19 For Huber and Disputations see Chapter IV.2.2., and Veen *Exeuntia*, passim.

20 Wissenbach, Johannes Jacobus (1607-1665) Professor at Franeker (1640-1665).

21 Cup, Willem (1604-1667) Professor at Franeker 1647-1667.

22 Matthaeus I, Antonius (1564-1637) Professor at Groningen (1625-1637). See Hempenius — van Dijk *Matthaeus I*, passim. Matthaeus was of German origin, he taught law at Herborn and Marburg before moving to Groningen where he introduced some German teaching methods.

23 The traditional *Digest* order, based largely on the Praetor’s Edict, was, especially by the Humanists, considered illogical and unsystematic. The *Institutes* alone had a basic structure (persons, things, actions). Thus there was a movement to arrange the *Digest* information more systematically. The leading minds were Duarenus (1509-1559), Donelli (1527-1591) and Hotman (1524-1590).
one or the other will suffice (XIX). There are many advantages in self-study, ie being an οὐτοδιδάκτος (self taught). Those who study independently can progress as fast, if not faster, than those who attend classes and besides there are financial advantages in living at home.24 But if a student cannot cope alone, there are other aids. Next, the theses concern the weaknesses (vices) of professors. The usual criticisms are levelled — Negligentia (indifference), Imperitia (lack of experience), Obscuritas (lack of clarity) and Prolixitas (excessive verbiage) (XXIII). Some professors think more of their own glorification and reputation than of the interests of the students and spend more time on a single lex than the Greeks spent before Troy. Such professors put the students off serious interest in legal studies. At thesis XXVI Matthaeus raises the question of preparing for lectures by reading the texts and the commentaries. If the student and the professor hold different views, the student must not surrender but examine both sides of the question and decide which is the more valid (XXVIII). When in doubt private tutors can be helpful (XXIX) and naturally disputations are too (XXX) but here Matthaeus makes a sound proviso: “Make sure you choose a praeses who knows his law otherwise caecus caecum ducit! (The blind leads the blind.)” (XXXI) Next, starting with the Institutes, Matthaeus lists useful commentators. He then proceeds to do the same with regard to the Pandects and the Codex. There follows an evaluation of mediaeval and more recent writers, the glossators, as usual, being damned for false interpretations and barbaric Latin. The latter theses are concerned with the contemporary writers and with practice. Interestingly, there are no comments on textual criticism. Here in 1637 we have, albeit in a different form, many of the issues raised by Huber and his contemporaries in later decades, in orations, particularly inaugural orations.

1.4 A Scottish student’s-eye view of Leiden 1694-169725

Because the University of Leiden and members of its law faculty provide the setting for the Dialogus, a brief excursus on the Scottish students at Leiden is justified. The University of Utrecht, also attracted foreigners, chiefly Germans, but a fair number of Scots. At Franeker, however, Huber had virtually no contract with Scottish visitors and it is not surprising that no mention of these is made in the Dialogus or in his didactic orations. The following section, however, is relevant in that it shows a student’s impression of the prevailing teaching policy at Leiden during the late 17th century.

This rare perspective on law teaching at Leiden in the last decade of the 17th century is provided by a fascinating set of letters written by a Scottish student, John Clerk (1676-1755) to his father, also John Clerk, of Penicuik (1649-1722) during the period November 1694 — May 1697 when John junior was studying and travelling in the Netherlands.26

24 Pliny the Younger noted this several centuries earlier when recommending that the boys of Como be taught at home and not sent to Milan. See Pliny’s Letters, 4.13.
25 On the topic of Scottish-Dutch legal relations in the 17th and 18th centuries, much has been written by eminent scholars, but for our purposes here adequate background may be gathered from Feenstra Scottish-Dutch legal relations, p 128 ff.; Feenstra-Waal Leyden Law Professors pp 83-88; Van Strien and Ahsmann, Scottish Law Students; and Cairns Cunningham; idem Dalrymple.
26 On the question of Scottish enrollment at Leiden and Utrecht see Feenstra Leyden Law Professors, pp 82-83; Van Strien and Ahsmann, Scottish Law Students, pp 279-282; Cairns Dalrymple, pp 38-40.
Several of the issues raised in these letters are echoes of those raised by Huber, a mere ten years previously. Clerk comments freely on the relative usefulness of public lectures (lectiones or prælectiones), collegia and privatissima. The public lecture professors he heard were Noodt, Matthaeus III and Johannes Voet, but he did not find their public lectures satisfactory nor the collegia and would much prefer the more expensive but smaller and, to him, more satisfactory privatissima. We note that here he is critical of professors who lectured too closely to their compendia — which he felt were for private study, not a basis for public lectures. Clerk himself was very keen to have privatissima with Philippus Reinhardus Vitriarius\(^{27}\) of whom he had the highest opinion — “he is commonly reputed the learnedest man in Europe for the civil law and he is one of the most honest bodies I ever knew and refuses ordinarily to take any man’s money except he knows they (sic) have done some good”.\(^{28}\) This comment about the cost and value of collegia and privatissima is a constant theme in Clerk’s letters. Clerk senior was exceedingly careful of his son’s expenses, wanted value for money and furthermore had a very low opinion of Vitriarius. He argued that Vitriarius was pressing his son to join the privatissimum for his own (Vitriarius’) advantage,\(^{29}\) he is a “poor, wanton, complaisant fellow and loves the Scots because they pay well”.\(^{30}\) It was Clerk senior’s advice, based on reports from others who knew Vitriarius, that his son should attend Noodt’s collegia on the Institutes or alternatively hear Johannes Voet. Furthermore, Clerk suspected that “professors have secret methods which they only impart to those who pay up”,\(^{31}\) also that the question of completing his studies in one year was not possible unless he were allowed to take privatissima.\(^{32}\) Undoubtedly Vitriarius’ colleagues Johannes Voet (1647–1713) and Matthaeus III were more substantial scholars and jurists than Vitriarius but it would seem that, among Clerk’s Scottish compatriots at least, Vitriarius carried the palm for teaching.\(^{33}\)

John Clerk’s correspondence with his father gives a vivid picture of the relationship between parent and son based on the father’s strongly Protestant convictions and his desire that his son should make a success of his studies abroad as a step to a prosperous and God-fearing career in Scotland. The son’s letters reflect his impressions of life and study in a new but not entirely strange setting and show him to have been generally dutiful but, duty notwithstanding, determined to see something more of the world than lay between the covers of his law books.


\(^{28}\) Van Strien and Ahsmann Scottish Law Students, p 324.

\(^{29}\) Van Strien and Ahsmann Scottish Law Students, p 4.

\(^{30}\) Van Strien and Ahsmann Scottish Law Students, p 5.

\(^{31}\) Cf. Diálogo, p 50; Oratio IV, p 88.


\(^{33}\) See Van Strien and Ahsmann Scottish Law Students, p 8 and p 297.
2. HUMANISM AND LEGAL EDUCATION

The interaction between the humanists and the jurists is a controversial field. Humanist thinking with its emphasis on the value of each human being and its rediscovery of the classical world with its rich tradition of literature, history and rhetoric certainly made an impact on legal thinking. However, there is no final definition of legal humanism nor of the parameters of the Dutch Elegant School. The issue seems to be a matter of priorities and which of a number of aspects was most significant to a particular humanist. A summary of the legal Humanist’s goals is provided by van den Bergh. The first step was “back to the sources”, preferably to pre-Justinianic texts. Next, Greek was central to humanistic studies. Away with Graeca non leguntur. The mediaeval urge to harmonise conflicting texts was scorned. The texts must be understood in the context of their times. All this, led to repercussions in legal education.

Ideally, the young student coming to the study of the law had a solid classical education behind him from his Latin school. Ideally he was expected to be familiar with the major Roman writers, poets, historians and rhetoricians, and to be able to express himself clearly and reasonably fluently in Latin — the Latin of Cicero not the Latin of the barbaric Mediaevalists. His proficiency, if any, in Greek was of a much lower standard and was generally not regarded as important for law studies. A product of the better Latin schools could well have been introduced to the new humanist thinking, but undoubtedly there were bad schools as well as good ones and the standard of education in many was a matter for concern.

Once in the law school, the would-be lawyer might well encounter legal humanism, in other words humanism as applied to the Corpus Iuris. The legal humanists were concerned to restore the purity of the classical Roman law and cleanse it of Justinianic alterations and accretions. The tools they used were ancient history, philosophy and rhetoric, constituting a vast range of ancilliary learning. Sometimes it has been claimed, especially by the lawyers, that the law was lost in the wonderful treasure house of ancient civilisation and the intellectual satisfaction of philological emendations. The new emphasis was on understanding the legal text in its contexts, historical, linguistic and social, but some professors, with a love of history and philology, found their greatest intellectual satisfaction in textual emendations. The hunt for interpolations, the palingenesis of the classical legal text, emendations of suspect texts and other abstruse problems were in themselves all in all. Naturally, these pundits were not at one on all emendations and there were intense debates between the protagonists of different views. This not seldom added a polemical element to academic relations. Often the practical application of their enquiries and its relevance for legal practitioners was of incidental, if any, interest. The humanistic contribution was seen as idealistic, elitist and unrelated to the everyday world. Theory and practice stood apart and the average student, at the

34 The term Dutch Elegant School is traditionally given to the Roman-Dutch jurisprudence which flourished in the 17th and 18th Centuries. See i.a. Van den Bergh Geleerd recht, pp 45-61; Van den Bergh Holländische Elegante Schule, passim with Veen’s review in Pro Memorie (2003), pp 201-205; Stolte Berkhout, p 2 f. A significant contribution to this study is Cairns Cunningham which discusses the life and opinions of Alexander Cunningham (1650?-1730?), a Scots scholar who spent much time in the Netherlands and was certainly part of the Dutch Elegant School. This article is much more than a discussion of Cunningham’s work on the Corpus Iuris Civilis and provides, i.a., a perceptive view of Dutch humanistic scholarship.

35 Van den Bergh Geleerd recht, p 50.

36 Cf Dialogus, pp 51-52.
university in preparation for a career in law, could be the sufferer. Among the legal academics were those who felt that emendations could go too far. Huber, as we have seen, believed in rejecting any emendation which overturned the received reading, unless there was good reason for so doing. Further, there were jurists, such as Johannes Voet, who, being neither wholeheartedly for or against the humanists, cited a limited number of humanist writers, but by contrast writers on practice from the Netherlands and neighbouring countries, were more generously cited. At the other end of the scale were the ‘old-fashioned’ professors who taught the essentials of the law, especially to their first-year students, without any concern for these minutaie.

3. SOME CRITICISMS OF LAW TEACHING

In the late 17th century, legal education was under scrutiny, particularly by the law teachers themselves. Roman law was no longer the sole purpose of a university legal curriculum. Training lawyers for their careers in government, administration, business and the law itself, was the focus of many professors and law schools. It was undesirable that students, when thrown into the hurly-burly of everyday life should feel they had been dropped into a foreign land. It was said that 17th century universities did not produce the great jurists and creative juristic writings of the past. Rather, these decades were a period for consolidating, analysing and digesting and an important element in this process was reviewing the law courses. On the one hand the curricula were being examined and expanded to include a little Canon Law and Public Law, Procedure and the *Ius Hodiernum*. On the other the behaviour and attitudes of students and professors came under scrutiny.

3.1 Where does the blame lie?

There were, declared the Leiden Law Faculty (in 1692), various reasons for the decline of legal education — over-indulgent parents, premature promotion from the Latin schools to university courses, the students’ inadequacies in Latin. Further, in their haste to qualify and leap into the world of careers and salaries, the young men skipped the propaedeutic courses in the humanities — still regarded by many as a necessary foundation for a knowledge of law. Finally students favoured professors who promised speed at the cost of true understanding. It was suggested that the Latin schools should be forbidden to pass students who were unable to communicate in Latin and were ignorant of Greek. If it were the students who were to blame, the authorities, supported by the Reformed Church, always saw a solution in greater control over those whose riotous and dissolute behaviour often defeated the purpose of their studies and brought the universities into disrepute. This was nothing new. As early as 370 A.D. the emperors Valentinianus, Valens and Gratian had given instructions to the urban censors that those who came to the cities to study but wasted their time at the games and in intemperate partying should be flogged and sent home in disgrace. A century and a half later Justinian, faced with a similar problem, strongly condemned irresponsible and even criminal behaviour by students,

57 Cf *Dialogus*, p 41.
58 Johannes Voet (1647-1713) *Ad Pandectas*, passim; see *Feenstra-Waal Leiden Law Professors*, especially pp 35-44.
60 For a detailed discussion of earlier educational reform of the Latin schools and of the constructive role played by G.J. Vossius see *Rademaker Vossius*, pp 188-199. Unfortunately, little was achieved.
61 See CTh.14.9.1 concerning “the pursuit of the liberal studies in the cities of Rome and Constantinople”. This constitution was dated 12th March, 370 and by it the emperors Valentinus, Valens and Gratian gave instructions to the censors that those who came to these cities in order to study should “not attend the games too frequently nor have a great appetite for intemperate partying” (*neve spectacula frequentius adeant aut adpetant vulgo intempestiva convivia*).
especially that mockingly directed at professors or other students.42 Those were early attempts to control students but were by no means the last and in the 17th century this was a recurring theme in inaugural orations and other diatribes directed at students. They were, or so said the professors, ill-prepared, ignorant of classical literature, concerned only to get the qualification which would provide them with entrée to the rewarding world of government or business, and meanwhile they amused themselves with wine, women and song.43 Furthermore, the Reformed Church was trying, sometimes successfully, sometimes not, to enforce strict morality not only on students, but also on communities in general.

What, however, if the professors and the curriculum were at fault?44 The father of curriculum reform was Justinian himself45 and his *Institutes* has remained a useful and practical introduction to Roman Law to this day.46 Certainly, Huber and his colleagues reckoned that part of the blame lay with inappropriate teaching policies which ignored the limited pre-academic education in the Latin schools and the practical aims of both students and their parents. The legal humanists with their love of philology and its offspring, textual emendation, were to be admired but not encouraged to foist this discipline on young and ignorant students. The answer to many of the students’ nightmares lay in the intelligent use of compendia and other learning aids as was argued by more than one professor and a multiplicity of students. The next section will consider *Compendia*.

4. THE METHODUS COMPENDIARIA

The teaching of a vast body of largely disorganised legal material to beginners had posed problems from the earliest times. Gaius *noster* in the 2nd Century produced his *Institutions* which appears to have addressed the problem.47 By the 6th century AD Justinian was aware that the scope of material to be covered in the law schools was vast, badly organised and often outdated. The teaching was inevitably eclectic and unsatisfactory. His solution to the problem was the imperial *Institutes*, a practical manual for the *Justiniani Novi* (first year students). It was only after the basic foundation had been laid that the Digest and *Codex* were introduced.48

The problem facing the Dutch in the 17th century had similar elements. The scope of material was even greater, quite as badly organised and often outdated.49 It included not only the *Corpus Iuris Civilis* but also a little of the *Corpus Iuris Canonici*, the old law of the pre-Roman reception, the statutes, *keuren, placaten* of later times and the great mass of learned writing thereon. Where did the raw student go to find some guide through the maze? One answer lay in the *Methodus Compendiaria*, the use of summaries, epitomes, compendia, manuals — call them what you will, but the material was selected, abridged, analysed and presented in a manageable form which it was comparatively easy to remember. Once the student had mastered the basic principles and definitions with nothing which is unnecessary or erroneous50 and had thus gained confidence in himself, he could move on to the details and to the law in action.

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42 See *Constitutio Omnem* §9.
43 It is to be noted that the paragraph attributed to Böckelmann in the 1684 edition where he criticises student attitudes is removed from the 1688 edition, leaving a comparatively emasculated version, but reintroduced in 1696.
44 See Böckelmann *Compendium, Praefatio*.
45 See *Constitutio Tanta, Constitutio Omnem* and C.11.19(18).
46 See Birks *Institutes*, p 7, where he remarks that “the *Institutes* remain essential reading for any lawyer who takes his subject seriously”.
47 On Gaius see *Who is who*, Appendix B.
48 See the *Constitutio Omnem*, where Justinian outlines the course of legal education. His remarks on the state of confusion prevailing in law schools could well *mutandis mutatis*, be applied to later times.
49 According to Böckelmann the existing system was *sine ordine, sine modo et sine ratione. Compendium, Praefatio*, pp [6-11].
50 *Nihil inutile, nihil perperam positum* (*Constitutio Imperatorian 3*).
A Dialogue on the Method of Teaching and Learning Law

Many professors used a standard manual, designed to present the basic principles of the law in a simplified manner, and lectured on the basis of that summary. Apart from Huber’s Positiones and its precursors which will be discussed below, J.B. Böckelmann’s Compendium, J. Voet’s Compendium, C. van Eck’s Principia and J. Voorda’s Differentiae are typical examples. Not only were they used by the compiling author himself but were adopted by others and used for future generations of students. For example, van der Kesssel at Leiden based his lectures on books XLVII and XLVIII of the Digest on van Eck’s Principia and both Bavius and Johannes Henricus Voorda used their father’s Differentiae. The year 1679 saw the first edition of Böckelmann’s Compendium Institutionum, a manual for students which, in several subsequent editions, would continue to be used until the early 19th century. Further, although many students and professors saw great merit in good compendia used intelligently, there was not, even after 1679, complete acceptance of the compendiary method.

4.1 Antonius Matthaeus I (1564-1637) — a significant predecessor
First we shall briefly consider one of Böckelmann’s more significant predecessors. For 19 years Antonius Matthaeus I’s teaching in Marburg consisted solely in teaching and lecturing on the Institutes. It was only in 1625, when he was appointed as Primarius at the new university in Groningen that he became responsible for the Digest and the Codex. It is thus to be expected that, having so much experience in teaching the basics of legal studies in a German university he had developed Notae et animadversiones in libros IV Institutiones iuris imp. Justinianii which appeared in Herborn in 1600 and included a useful Synopsis Institutionum iuris quae illae adhuc hodie sunt in usu and also a letter from a well-known Marburg professor, Aegidius Mommerius, covering his (Mommerius’) views on the method of reading and learning law. Briefly, Mommerius’ letter is of interest in that he recommends that the student, especially one studying on his own, make notes and cross references in the margin — ie make his own compendium as he proceeds. This is a forerunner of a more practical and less time consuming Böckelmann-type compendium where a learned and dedicated teacher produces the necessary aid for his students.

4.2 Johannes Christenius (1600-1672) — Rusius’ successor
Johannes Christenius succeeded Albertus Rusius at the Athenaeum Illustre, Amsterdam in 1659. His inaugural oration De Erroribus multorum Jurisprudentiam discentium et qua via sit eundum was delivered on 13 November, 1659, about two months after his predecessor, Rusius, delivered his inaugural De jejuna quorundam et barbara iuris compendiari at Leiden (16 September, 1659).

51 Böckelmann, Compendium. See Ahsmann-Feenstra BGNR Leiden, pp 62-64, nos 32-44.
53 Van Eck Principia. See Ahsmann BGNR Utrecht, pp 73-74, nos 79-85.
54 Voorda J, Differentiae iuris Romani et Belgici secundum ordinem Digestorum strictim expositae et auditorum causa evulgatae, Utrecht 1745. See Voorda Ad Ius Hodiernum.
55 See on the life of Böckelmann Chapter V. 1.1. and 1.2..
56 See Hempenius-van Dijk, Matthaeus I (passim).
57 (Notes and remarks on the four books of the Emperor Justinian’s Institutes of Law.) Amsterdam, 1657.
58 (A synopsis of the Institutes of law as far as they are still in use today.) pp 385-407.
60 (on the errors of many who learn jurisprudence and what route should be followed).
61 (on the barren and barbaric method of teaching law by certain persons).
Christenius covered some of the same points as Rusius. Indeed, the same points recur in several inaugural addresses of this period. He laments the decline in law studies. This is attributable firstly to the misconception that Roman law has nothing to offer the modern Dutch lawyer, and equally that Latin is irrelevant. It is not appreciated that Latin is the bond (vincula) which binds the Christian world, as indeed is Roman law.\textsuperscript{62} Both constitute a monument more lasting than bronze.\textsuperscript{63} Secondly, the students themselves are ill-prepared (illotis manibus).\textsuperscript{64} Law cannot be learned separately from its background and without knowledge of classical history, rhetoric, Latin, etc. Further, students get bogged down in trying to reconcile all the apparent contradictions in the Corpus Iuris and hence it turns out that they do not know the essentials, since they have learnt the inessentials.\textsuperscript{65} The last error is that inadequately prepared students rush into disputation, in order to achieve their degree as soon as possible. First, a student must know what the law is, what is meant by ownership, obligation, contract, action and exceptions.\textsuperscript{66} He concludes by emphasising yet again the need for a sound classical foundation and familiarity with the Digest title De verborum significatione (D.50.16). The purpose of his law courses is to produce lawyers who will be able to play a responsible rôle in the Amsterdam world of business. He took little or no interest in legal humanism.

4.3 Cornelis van Eck (1662-1732)

Certainly, subsequent to Böckelmann’s Compendium, other, similar works, came into being and for our purposes the most significant is Cornelis van Eck’s\textsuperscript{67} Principia Iuris Civilis of 1689,\textsuperscript{68} not least because of van Eck’s links with Böckelmann, Huber and Noodt.

Van Eck had registered at Leiden on March 2, 1680 and apparently was taught briefly by Böckelmann prior to the latter’s death on October 23, 1681, but he, like many others, may well have continued to use Böckelmann’s Compendium (1679) for his own studies and been inspired by it to write his own version for the Digest. Presumably, van Eck’s relations with Böckelmann were amicable for it was van Eck who saw to the posthumous publication of Böckelmann’s De Differentiis Iuris Civilis, Canonici et Hodierni in 1694. In his Praefatio to the Differentiae (p liv) van Eck speaks of Böckelmann with respect and affection.

In 1686 van Eck moved to Franeker. Relations with Huber were strained almost from the first. Huber, however, did recognise van Eck’s ability. According to van den Bergh\textsuperscript{69} it was van Eck of whom Huber wrote on p 457 of the Eunomia Romana “A man of greatest discretion and learning to whom jurisprudence owes much and has hope of owing more”,\textsuperscript{70} but the two men were destined to battle furiously over a number of issues, both academic and poetic.\textsuperscript{71} In his inaugural oration at Utrecht, 1693, van Eck [p 17], extending the olive branch, said: “before I left Frisia . . . I laid

\textsuperscript{62} Christenius De Ernibus, pp 7-9.
\textsuperscript{63} Monumentum aere perennius, Horace, Odes III, 30.1.
\textsuperscript{64} Christenius De Ernibus, pp 12-13. See also Voet Ad Pandectas, De Statutis 1.1.1.
\textsuperscript{65} Evenit ut necessaria ignorant, cum non necessaria didicerint. Christenius De Ernibus, p 13.
\textsuperscript{66} Christenius De Ernibus, p 14.
\textsuperscript{67} Cornelis van Eck, 1662-1732. See van den Bergh Van Eck, pp 37-54.
\textsuperscript{68} Principia juris civilis secundum ordinem Digestorum in usum domesticum scholarum seu collegiorum, quae recitant, vulgata et in duas partes divis 1689. See Alumnai BGNR Utrecht, pp 73-74, nos 79-85.
\textsuperscript{69} Van den Bergh Van Eck, p 41 and ft. 55.
\textsuperscript{70} Summi vir judicii et doctrinae, cui jurisprudentia multum debet et debendi spem habet.
\textsuperscript{71} It is probably coincidence that the title of van Eck’s speech at the termination of his Franeker rectorate of 1692-1693 was entitled De studio poetice conjungendo cum studio juris Romani. Cf. Huber’s inaugural address Franeker, 1665) . . . literas humaniores cum jurisprudentia esse conjungendas. Huber also wrote poetry, eg for Crusius’ inaugural disputation. Maybe the two men had more in common than they would admit.
aside those hostile weapons and those darts threatening other darts, which the mind shudders to remember.\textsuperscript{72}

On the other hand, van Eck and Noodt were friends, and it was Noodt who had occupied the place left vacant on Huber’s departure for the Hof van Friesland. Van Eck wrote a laudatory verse for Noodt’s provocative inaugural oration of 12th February 1684, so that there could be little doubt that Huber regarded van Eck as an ally of Noodt’s. Van Eck’s reputation was almost entirely based on his \textit{Principia Juris Civlis}. The work was not officially labelled a \textit{Compendium} and indeed it has several minor aspects which are not commonly to be expected in a compendium but nevertheless it was certainly regarded as and referred to as a compendium.\textsuperscript{73}

In his \textit{Oratio (inauguralis) de ratione studii juris recte instituendi} of 1693 given at Utrecht on the 11th September\textsuperscript{74} van Eck has something to say about compendia. On the one hand he advises his students that in order to reach the harbour safely and to avoid shoals lurking in the vast sea of Roman Law they should steer a middle course between two extremes. They will never reach the peak of jurisprudence by neglecting their classical studies and by clinging to the sterile, barren and limited compendiary road.\textsuperscript{75} On the other hand, to avoid using good and lawful compendia and to strive immediately to enter the inner and most difficult shrines of jurisprudence while the mind is still ignorant and uncultivated, is to court shipwreck. The middle way is to use good compendia which lead to the clear sources of law and not to the turgid streams of the interpreters which do not help but lay traps for the uninitiated. Led by Justinian and his compendium they will follow the royal road and will then come to a full understanding of the law and achieve their goals. The metaphor which van Eck uses to underline his use of compendia is that of an artist who first sketches in the outlines and then adds the details and colour (p 21).

5. CONCLUSION

As stated in the opening paragraph, this chapter is a selection of aspects of legal education which have a direct bearing on Huber’s \textit{Dialogus} and the issues addressed therein. It makes no attempt to present a history or discussion of the international background to these issues and if further information is desired, there are a number of works by eminent scholars which may be consulted. Some are listed in the Bibliography III.

\textsuperscript{72} \textit{Antequam Frisiam relinquerem . . . deposui illa infesta arma et tela minantia telis quorum animus meminisse homin.}

\textsuperscript{73} E.g. when van Muijden thanked van Eck for a copy, he referred to it as a compendium. See further van den Bergh \textit{Van Eck}, p 51, ft. 60.

\textsuperscript{74} See Ahsmann BGNR Utrecht, p 74, no 89.

CHAPTER IV
THE AUTHOR — ULRIC HUBER (1636-1694)

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

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

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

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

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

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

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

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

While Huber was preparing to defend his thesis, his father, Wissenbach and other well-wishers were, unbeknown to him, manoeuvring to acquire a chair for him at Franeker. There was no vacancy in the law faculty but the chair in eloquentia, historia specimina tulerat ab eo edidit in memorabilibus illo praefato Neoptoritensi Flandria, . . . ultima seculi superioris anno deinceps Politicum Centurio meruit sub Henrico Julius Brunsvicensium Duce; unde natus in Friesiam delatus atatem ulterius annos LXXXI produxit. (His grandfather was Henricus Huber from the canton of Zurich; he came to these parts on the occasion of the Spanish-Dutch War; he served as an officer under Dutch command and in the last year of the century displayed his courage in that famous Battle of Nieuwpoort in Flanders (30th June, 1600). Then he served as an infantry officer under Henricus Julius, Duke of Brunswick. Having returned to Friesland, he lived there until his 80th year.)

8 See Postma and van Sluis Auditorium Academiae Franekerensis, p 609, no 5154, and Album studiosorum Franeker, p 252.

9 See, for example, Huber’s inaugural lecture (1656) in the edition of his Auspicia Domestica (Oratio I.), p 102. Tu quidem Beatiissime Wissenbach iussit etiamnum vivere semper; nam fas non censo motter vocare qua tua mortalitas magis finita quam visa est; quin et latius in memoria et sermone hominum veritabere, postquam ab oculis recessisti, sed nos publicae vocis silentium, nos gravitatis, sanctitatis, doctrinae fulgentissimam unius, nos Solem Academiae nostrae — Tu supra invidiam es — occidisse lugemus. (You indeed most blessed Wissenbach, are even now alive and you will live for ever; for I do not think it right to call it death by which your mortality is ended, rather than your life. Indeed, you will abide more widely in the memory and speech of men after you have departed from our eyes, but we mourn the silence of your public voice, the shining star of your dignity, your virtue and your learning; we lament that the Sun of our University has set. You indeed are above envy.)

10 See Album Studiosorum Utrecht, p 42.

11 See Plate IV for a photograph of Huber’s bulla promotionis. This was kindly provided by Theo Veen from a copy in his library. A nice comment from Professor Chunio (the Primarius of Law at the time and Huber’s praeses at his promotion) was “Weiss Gott . . . es gibt noch einnen (sic = einen) Professor in Holland”. See Veen Recht en Nut, p 55 and p 281.
et politica was vacant and it was to this that he was appointed. Huber had hoped for an academic appointment but this one did not entirely delight him as he would have preferred law.\textsuperscript{12} Besides, although he always enjoyed the Humanities he felt somewhat unsure of his ability to teach Rhetoric and History. But the die was cast and after spending four months (June — September 1657) in Straatsburg with Professor J.H. Böckler\textsuperscript{13} preparing for his new responsibilities, on 30 November 1657 he assumed his new position with an inaugural oration \textit{De bona mente sive de sincero genuinae eruditionis amore}.\textsuperscript{14} Unfortunately, this oration has not survived. It would be fascinating to learn his perceptions on genuine learning as early as 1657. But the speaker’s subsequent career certainly exemplified his sincere love of true learning.

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

The appointment to the Faculty of Arts was only a stepping stone to higher things. As early as 1660–1661 Huber was \textit{Rector Magnificus} and later again in 1667–1668 and in 1677–1678. In 1662–1663, when Laurentius Banck,\textsuperscript{15} then \textit{Professor Extra-ordinarius} of Law died, he was given the opportunity to move towards legal teaching. It was decided not to fill Banck’s post but to farm some of the deceased’s work out to Huber. Thus he busied himself with legal collegia and disputations. Three years later (1665) Wissenbach died, his colleague Guilielmus Cup\textsuperscript{16} became \textit{Professor Primarius} and Huber bade the Arts Faculty farewell. As \textit{Professor Ordinarius} he was to lecture on the \textit{Institutes}, a subject that remained basic to his future teaching of law. It was at this juncture that Huber delivered his inaugural oration on the links between classical literature and jurisprudence (19 September, 1665).\textsuperscript{17} Two years thereafter, on the death of Cup (1667)\textsuperscript{18} he obtained the chair of \textit{Professor Primarius} with the responsibility for teaching the \textit{Digest}. But undoubtedly the eight years that he spent teaching History and Rhetoric laid a sound foundation for his legal courses and one he deemed a necessary foundation for his law students.\textsuperscript{19} Following an abortive approach from Leiden\textsuperscript{20} in 1670, he extended his teaching programme to include the \textit{Ius publicum universale} (general public law). This was breaking new ground and resulted in much of Huber’s most significant contribution to the legal thinking of his day.

Ambition still drove Huber and in 1679 he decided to abandon the university at Franeker for the \textit{Hof van Friesland} in Leeuwarden and a position as Senator (councillor). This was a major step up the social ladder and established Huber as one

\begin{itemize}
\item\textsuperscript{12} Why Huber hoped that a vacancy would occur in the law faculty is not clear as the current incumbents, especially Wissenbach, were not likely to move elsewhere.
\item\textsuperscript{13} Böckler, J.H (1611-1672), Professor at Straatsburg.
\item\textsuperscript{14} (\textit{De bona mente et on the true love of genuine learning.})
\item\textsuperscript{15} Banck, Laurentius (1611-1662) \textit{Professor Extra-ordinarius} Franeker (1647–1662).
\item\textsuperscript{16} Cup, Willem (1604-1667) \textit{Professor at Franeker} (1647-1667).
\item\textsuperscript{17} See Feenstra \textit{BGNR Franeker}, pp 49-50, nos. 133, 134.
\item\textsuperscript{18} Huber delivered the funeral oration on Cup on 29 January 1667. See \textit{Auspicia Domestica (Oratio XII)}, pp 265ff; Feenstra \textit{BGNR Franeker}, p 51, no 138.
\item\textsuperscript{19} See \textit{Dialogus}, p 51f Huber’s inaugural oration, passim and especially pp 103ff; also \textit{Oratio II passim}, \textit{Oratio IV passim} and the \textit{Digressiones}.
\item\textsuperscript{20} See Veen \textit{Recht en Nut}, Bijlage VIII.I p 337 for the Curators’ letter dated 26 August 1670.
\end{itemize}
of the Frisian “patriciate”, but nevertheless this move does not appear to have satisfied him. It did, however, provide material for his influential Heedensdaegse Rechtsgeleertheyt, of which the first edition appeared in 1686.21 This work, written in Dutch, not Latin, was directed towards those in practice and is enriched by reference to a number of decided cases — some of which were based on Huber’s own notes. It is important for our purposes to remember that in 1684 Huber had already produced Beginselen der rechtskunde gebruikelijk in Friesland, which served virtually as a compendium of his Heedensdaegse Rechtsgeleertheyt.

In 1681 Huber was again approached by the University of Leiden, again he refused the position but decided instead to return to his own alma mater. The Franeker University authorities were reluctant to lose him to Leiden or any other university and as usual he succeeded in driving a beneficial bargain.22 He now carried the honourable title of ex-senator (Out-Raetsheer); had the right to sit in the academic Senate (the college of ordinary professors), where he took precedence over all but the Rector Magnificus. He was not required to give public lectures but was free to teach students at home, on Roman Law, on General Public Law (ius publicum) and on Frisian Law. He was encouraged to publish on all these topics as indeed he did.23 Furthermore, to his basic but ‘princely’ salary of 2000 guilders per year he added the fees for his private tuition and with his reputation the students hammered a path to his door. This, understandably, did not endear him to his colleagues. The university authorities resented Huber’s practice of taking on as private students men who had not enrolled at the university; he moreover encouraged his students to question the jurisdiction of the university. He was seen by Noodt and others as one who boosted his own ego by denigrating his colleagues before students who were not in a position to judge for themselves24 but who certainly enjoyed academic scrapping. There were also polemics based on religious and philosophic differences. Huber was strictly orthodox25 and convinced that Cartesian reasoning did not apply to law or law teaching. Noodt, for example, was less dogmatic and more open-minded.

Soon after his return to the university Huber, as was allowed to him, delivered four orations in his home. The first (7 April 1682) concerned the comparison of Frisian Law with Roman law, the second (27 April 1682) is directed only at his students. The States of Friesland decided that: uitj consideratie van desselfs hooge geleertheijt ende andere seer besondere qualiteijten willen voolommen desselfs verteck nae andere universiteijten buiten de provincie . . . met sijne schriften, die hij gereet heft en van tijt tot tijt geven sal maeken te illustreren het ius civile, mitgaders het ius publicum ende speciaal het ius statutarium van dese Provintie, sal oock aen de studerende jeught dier faculteijt acess geeven . . . invoegen als hij tot meeste nut der Studenten ende luijster vande Academie sal vinden te behoeven. See Veen Oratio III, p 13, ft 70. (Sel ai non sum ego Professor, ne quidem Honorarius, sed longe supra vesterm Ordinum.)

21 See Feenstra BGNR Franeker, pp 73-75, nos. 212-218. 22 It would appear from Huber Oratio II, p 63 that Huber was offered the title of Honorary Professor but making various, and possibly specious, excuses, he agreed to accept the title Ex-Senator and be placed in rank above the other professors and only below the Rector Magnificus. In Huber Oratio I, p 7 the speech he made on returning to academic life, before an impressive body of civic dignitaries, 7 April 1682, he remarked: There, indeed, have been elsewhere instances of Professors who have been promoted from a chair in Law to the Senatorial Court; but of those who returned from the Court to Academia, there has hitherto been found not one. (Extirte quidem et alia exempla Professorum, qui e cathedra Themidos in Senatorium Tribunal evecti fuere; qui vero e Senatu rursus ad Academiam se contulerit, adhuc repertus est nemo). Perizonius, in his book Errores XIII Ex centum et triginta (p 9), writes: (But you say “I am not a professor, not even an honorary professor, but far above your rank”), cited in Veen Oratio III, p 13, ft 70. (Sed ais non sum ego Professor, ne quidem Honorarius, sed longe supra vesterm Ordinum.)

23 On 24th February, 1682, three years after he was appointed as Senator to the Hof the States of Friesland decided that: mijt consideratie van desselfs hooge geleertheijt ende andere seer besondere qualiteijten willen voolommen desselfs verteck nae andere universiteijten buiten de provincie . . . met sijne schriften, die hij genet heft en van tijt tot tijt genet sal maeken te illustreren het ius civile, mitgaders het ius publicum ende speciaal het ius statutarium van dese Provintie, sal oock aen de studerende jeught dier faculteijt acess geeven . . . invoegen als hij tot meeste nut der Studenten ende luijster vande Academie sal vinden te behoeven. See Veen Oratio III, p 14, ft 71.

24 See van den Bergh Noodt, p 56. “Noodt to van Eck, 3 October 1693.”

25 See Veen Observationes, p 148f; van Sluis Roell, p 60 ff.
students and concerns his plans for teaching the *ius civile*, the third (6 May 1682) justifies his approach to the *ius publicum*. Deriving from *Oratio II* is an undated *Oratio IV* which provides a defence against those who criticise, or may criticise, his plans as laid out in *Oratio II*.

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

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

1.2. Vitringa’s *Oratio Funeris*

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

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

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

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

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

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

2.1 Sources considered

In order to put into perspective Huber’s statements about teaching and learning law as expressed in the 1684 and 1688 editions of the *Dialogus*, it is necessary to consider the views he expressed elsewhere and as far as possible to see what relevant information can be drawn from a selection of his printed works — firstly from printed versions of certain orations he gave on his teaching policies — secondly from a number of the books he published, especially in the addresses to the reader (*Lectori*) and the Introductions (*Praefationes*).

17th Century orations were essentially a once-off statement tailored to the requirements of a particular audience on a particular occasion, be it a funeral, a rectoral installation or a public lecture. These speeches might or might not be revised later and published and this is the form in which they have come down to us.

37 See Vitringa *O.F. Huberi*, p 18 *parus illi nius, infrequens cahtimus* ([he was] sparing of a smile and seldom laughed).

38 See *Dialogus*, pp 37-44, 50-58; *Oratio II, Oratio IV* passim.

39 See *O.F. Huberi* p 56.

40 For example Huber’s oration on *De bona mente sive de sincero genuinae eruditionis amore* delivered when he assumed the professorship in Rhetoric at Franeker (30 November 1657) seems to have sunk without a trace.
Here we are concerned with inaugural orations. It was usually a statement by a newly appointed professor of his didactic values and plans for teaching. Huber’s inaugural oration of 1665 is a classic example. Closely related to this oration are a number of addresses which he gave at his home after being re-appointed to the University of Franeker in 1682. Of these two, outlining his mature teaching policy, will be discussed below.

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

2. Huber’s general publishing strategy regarding student aids.43 It was not uncommon for a publication to develop out of the theses or propositions drawn up for disputations44. Certainly, Huber considered disputing a major means to prepare students for practice, and collections of his disputations were published, sometimes with the names of the respondents, sometimes without. Later these could be added to,45 reprinted46 and ultimately developed into a more sophisticated and professional work.47 For example, the *Lectiones juris contractae* was first published anonymously in 1678, then revised after testing it in practice and published as the *Positiones sive lectiones juris contractae* (1682 and 1685) and the *Positiones juris secundum Institutiones et Pandectas* (1686).48 Finally, the *Axiomatum juris specimen ex Institutionibus* from pages 478 to 484 of the *Positiones* (1685) was transplanted to pp 755-759 part III of the *Praelectiones juris romani* of 1690.

Thus a short text could be revised and reprinted, or greatly enlarged, then reprinted several times, even under different titles. The *Praefatio* from the first edition could be used without alteration for a later revised edition. Paragraphs from earlier works were sometimes inserted verbatim without any indication of their original context. On several occasions,49 Huber comments that he started a piece of work, left it for some time, then revised it or added to it before publishing. For example in the *Praefatio* to the 1698 edition of *De iure civitatis*, Huber writes that he dared to put into print his first thoughts, just as they flowed into his hastening pen, to test them by the judgment and opinions of others and then to republish more carefully worked out editions.50

3. HUBER’S ORATIONS ON TEACHING LAW

Huber delivered a number of orations regarding his teaching policies. The three which are particularly relevant to our discussion here are his inaugural oration of 9 September 1665, and the two which he delivered in 1682 in his home on his
A Dialogue on the Method of Teaching and Learning Law

return to the University of Franeker after his spell at the Hof van Franeker. The inaugural oration was apparently printed in 1665 by Johannes Wellens in Franeker but the only known copy, at the Bayerische Staatsbibliothek, Munich, is incomplete. Several years later it was reprinted with a somewhat altered title as Oratio V in the Auspicia domestica of 1682, and again in 1746 as part of the Opera minora, edited with notes by Abraham Wieling. The two orations of 1682 referred to above were first published in the Auspicia domestica (1682) as Oratio II and Oratio IV. The first is Huber’s statement of how he will use the otium (leisure from official duties) at the university. It was delivered on the 5 May, 1682, and outlines his teaching plans. The second to be discussed, Oratio IV, provides a refutation of the criticisms Huber expects for his plans as expressed in Oratio II. This oration is not dated but presumably followed shortly after Oratio II. Both were reprinted in the Opera minora of 1746. The above three, as well as the Dialogus of 1688, are reprinted in Christian Gottlieb Buder’s De ratione ac metodo studiorum iuris. There are slight discrepancies in the texts but nothing of great significance.

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

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

51 The first (1665) edition was apparently entitled Oratio inauguralis habita Franekerae cum ex ordina Eloquentiae et Historiarum cathedra solenniter in Juridicam deducetur, ex historia juris romani uttiusque studi conjungendas a.d. xiii. Kal. viibr. MDCLXV. See further on the various titles, Feenstra BGNR Franeker, p 50, nos 133-134.

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

53 Auspicia domestica exactione in quibus otium quod Illustres Frisiae Ordines ei apud Academiam suam fecerunt occupare constitut. Accedunt amoeniora quaedam alia, Franeker 1682.

54 Opera minora et ratione, juris publici et privati (Lesser and more rare works on public and private law) (1746). See Feenstra BGNR Franeker, p 96, no 286. It is the 1746 edition which was available to me. Wieling suggests (see Huber, Oratio X, p. 201, ft 54) that, had death not intervened, Wieling intended to write something about the Dialogus, maybe to include his words in the Opera Minora. He says Qua de se alias dicemus ad Dialog. [unn]. Auctoris de ratioc. [o] [su] jur[a] (on this matter we shall speak elsewhere with reference to the author’s dialogue on the method of teaching law).

55 Oratio II, habita domi ipsius, . . . qua expostulavit quibus nibus otium suum apud Academiam sit occupatam (Oration II, given at his home . . . in which he states how he shall employ his time free from official duties at the university). See Feenstra BGNR Franeker, p 64, no 183; p 66, no 187; p 96, no 286.

56 Oratio IV, qua respondetur ad objectiones quae moveretur adversus institutum oratione II commendatum. (Oration IV in which a reply is presented to the objections which are raised against the practice commended in Oration II). See Feenstra BGNR Franeker, p 66, no 187 and p 96, no 286.

57 De ratione ac metodo studiorum iuris illustriam et praestantissimorum iurisconsultorum selecta opuscula (selected short works by illustrious and outstanding jurists and their methods for students of law). Jena, 1724. The collection contains writings by others eg J. Maestertius and A. Schulting. See Feenstra BGNR Franeker, p 95, no 285; Ahsmann and Feenstra BGNR Leiden, p 154, no 345; p 222, no 609.

58 See above (Life of Huber) for Huber’s responsibility for some of Banck’s work after the latter’s death in 1662. Huber was professor of eloquence, history and politics from 1657 to 1665, as well as lecturing and holding disputations in the Faculty of Law. In March 1665 he was appointed to lecture on the Institutes and in March 1667 he became Professor Primarius and taught the Digest as well as public law.
Huber opens his speech, as was customary, by paying tribute to his former teacher and predecessor, Johannes Jacobus Wissenbach (1607–1665). Wissenbach, he says, will live forever in men’s memories and in the affections of all who knew him; he was the Sun of our University (Sol Academiae Nostrae). For our purposes we note that he attributes to Wissenbach’s wise and learned influence the policy that informed his own academic life thus far — a first-hand knowledge of Latin and Greek, of history, rhetoric and antiquities is desirable and useful before proceeding to the more serious, and maybe less pleasant, study of law. Nor should the delights (amoenitates) of the classical world be abandoned during legal studies. This advice he was passing on to his students for he was deeply persuaded of its value, as he hoped to show in his oration.

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

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

Moreover, there is one interesting passage in this oration where, drawing on Suetonius, he remarks that one of Julius Caesar’s great new schemes for the

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59 See Huber Oratio V, p 102. Later, in his funeral oration on Willem Cup (d. 1667), Huber refers to Wissenbach as homen illud Scholae, decus et gloria Themidis (that light of the University, the splendour and glory of Themis). Huber Oratio XII, p 266. See Feenstra BGNR Franeker, p 51, no 138, p 96, no 286.

60 See Huber Oratio V, p 103. nec unquam a Legali severitate eruditas amoenitates separavit. cf. Dialogus, p 52 . . . cum ad Leges se conferunt, earum studium potest esse tetricum et aspersum . . . (when they betake themselves (from the humanities) to the law, they think the study thereof boring and harsh.)

61 cf. D.1.2.2.1, sine lege certa, sine iure certo, . . . omniumque manu a nigibus gubernabantur.


63 Fors omnis publici et privati juris. Livy Histories, 3.34; 3.37. Subsequently two more tables were added and thus the laws of the XII Tables were cut on tablets of bronze (or ivory) and set up in a public place.

64 See Huber Oratio V, p 107; cf. Dialogus, p 51 for the need for students to practice rhetoric.

65 See Huber Oratio V, p 112 and especially note 8; also Huber’s Oratio de Paedantismo (1678), see Huber Oratio X, p 208 and ft 67.

66 See especially Cicero De Oratore, passim, Quintilian Institutio Oratoria passim and Tacitus Dialogus de Oratoribus, passim. This dialogue, now considered attributable to Tacitus (not to Quintilian), is the earliest of Tacitus’ works.

67 cf Dialogus, p 56.

68 Suetonius De Vita Caesarum, Julius Caesar, 44. 2 . . . ex immensa diffusaque legum copia, optima quaque et necessaria in paucissimos confere libros (to reduce the best and most useful of the immense and wide ranging number of laws into a very few volumes).
improvement of the city was to reduce the unnecessarily large mass of laws by selecting the most useful and compiling them into a few books. Huber laments Caesar’s untimely death and states that Caesar’s natural talents were superior to those of Justinian, and that Sulpicius was more learned than Tribonian. This statement is repeated almost verbatim in the Dialogus.

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

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

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

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

It is of interest to note the following: Ulric Huber’s Eunomia Romana was published posthumously in 1700 by his son, Zacharias. In the notes to the reader, p 2ff, written by Zacharias, the first sentence of the Greek text of the constitution ΔΕΔΩΚΕΝ is cited to the effect that Justinian claimed that the idea of revising the old laws had never before been conceived by any ruler, followed by the Latin text (Constitutio Tanta) which reads: quod nemo ante nostrum imperium umquam speravit neque humano ingenio possibile esse penitus existimavit (a thing which no-one before our reign ever hoped for or seriously considered possible for human capacity). Zacharias then notes that Suetonius seems to have been wrong when he attributed the plan of revising the laws to Julius Caesar! Hoc quidem falsi arguere videtur Suetonius (Suetonius seems indeed to argue this incorrectly).

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

Quaestor Caesar, habita domi ipsius . . .qua exponit quibus rebus otium suum apud Academiam sit occupaturus. a.d. v. Kal. Maj, MDCLXXXII. (Oratio II given at his home on 27 April 1682, in which he sets out the topics with which he will occupy his leisure at the university). See Feenstra BGNR Franeker, pp 64-66, nos 182-188; pp 95-97, nos 285-286.

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

His oration of 27 April is a straightforward, businesslike statement of his proposed methods (let us call it the Methodus Huberiana). He opens it by stating that the purpose of these domestic collegia is to help his students to become competent jurists who will bring glory to the university because, in the world of practice, they will be able, in the words of Cicero77 respondere, cavere, scribere (to respond, to advise and to write). He defines these three skills in terms of the rôle they play in public life — ‘to respond’ when consulted about a legal controversy, and to explain what ought to be done or what not done; ‘to advise’ who, according to the nature of a particular case, can proceed, with suitable precautions against fraud and unforeseen damages; ‘to write’ refers to the former duty of a jurist to frame the formulae for actions to be used in court, but in Huber’s day it implied the drafting of any document. He knows full well that his critics will accuse him of producing legal technicians, not jurists imbued with understanding of jurisprudence,78 but his immediate goal is to cope with the demands of practice. Jurisprudential theory will come later. It is his sincere desire to help his students achieve this realistic goal by the public and royal road. He will speak from his own experience, gained both when studying and after many years of teaching and three years in the court. The approach must be by definitions, divisions, summaries.79 There are no secret entrances to legal knowledge, just hard work, revision, memorising and testing oneself by disputing. He does not recommend all compendia as such, but there are two exceptions — firstly, the compendium of Böckelmann (whom he does not name but whom Zacharias Huber in his footnote no. 5 to Oratio II clearly identifies)80 and secondly his own Positiones81 based on his already published Lectiones iuris contractae. Certainly, students must start with the Institutes and a compendium thereon and then proceed to the Pandects, which should at this stage be studied comparatively superficially, omitting glosses and commentaries, especially those by modern writers. The students are merely approaching the threshold of the Temple of Themis. However, if anyone wishes to enter the inner sanctuaries of Themis, that will be stage II82 not to be achieved without much sweat (sine multo sudore). However, time is valuable and the proper use of compendia is essential. He recommends his own compendium on the Institutes, Lectiones iuris contractae, which had been printed while he was with the Hof and comprised part I of his later Positiones.83 The section on the Pandects is still

77 Cicero De Oratione 1.48.212. See ft 104 in the Dialogus.
78 Huber Oratio II, p 64 Tu nobis Jusconsulatum forensum atque practicam formare paras, nos saltem de Theoria, doctrinae Academicae laboramus. (You are preparing to train for us pleaders for the courts and practice, we, at least, are working with theory, learning and academic issues), and p 67 Non ignoro multa esse quae adversus hanc methodum discendi docendique moveri possunt (I am not unaware that there are many arguments which can be raised against this method of learning and teaching).
79 Huber Oratio II, p 66 panis multis diece (to say much in a few words) or, as Justinian says subtilliter (plainly, simply). Huber does not use the word compendium here.
80 See Huber, Oratio II, p 70, ft. 5.
81 See section 4.1.
82 cf. Dialogus, p 57.
83 Positiones sive lectiones iuris contractae secundum Institutiones et Pandectas, ad primordia disciplinarum usumque seculi adtemporatae (Short statements or passages of the law according to the Institutes and the Pandects adapted to the first stages of the study and to the usage of our day.) See Feenstra, BGNB Franeker, pp 59-60, no 171; pp 67-69, nos 191-196. Veen Exercitia, p 138 ft 61.
unpublished, but the contents will feature in the disputations he is planning.\footnote{Huber valued disputations as an excellent method to help students master the material and have it on the tips of their tongues in arguments. He also used disputations as “dry runs” for his published works. See Veen *Exercitia*, pp 127–160 passim.} This will treat of topics not covered in the *Institutes*. He does, however, remark that in his classes he will, where appropriate, refer the students back to the relevant passages in the *Institutes*. This will reinforce the material covered there and serve as welcome breathing spaces. (loc. . . . in quibus respirare liceret).

Further, Huber mentions various contemporary writers such as Treutler,\footnote{Treutler, Hieronymus (1565–1607). Professor at Herborn; he wrote *Selectae disputationes ad ius civilis Justinianaeum*, Marburg 1596.} Bachovius,\footnote{Bachovius Echtius, Reinardus (1575–c.1640). *In Institutionum juris Justiniani libros quattuor commentarii theoretici et practici*, Frankfurt (1628) and *Notae in Treutleri Disputationes*, 3 vols, Heidelberg 1617–1619. A truly ponderous work!} Struvius\footnote{Struvius, Georg Adam (1619–1692) Professor at Jena, 1646–1667 and 1674–1680. His *Syntagma iurisprudentiae secundum ordinem Pandectarum consecutum*, Jena 1658, contains 50 annotationes to Digest titles. These annotations are divided into theses and this is the book discarded by Huber. In 1670, he wrote a most successful, *Jurisprudentia Romano-Germanico forensis Jena*.} and Zoesius.\footnote{Zoesius, Henricus (1571–1627). Born at Amersfoort in 1571, he studied at Louvain and later lectured there. He wrote a massive *Commentarius ad Digestorum . . . libros 50*, Louvain, 1688 and a shorter commentary on the *Institutes*, Venice 1757.} Most, for one reason or another, are not suitable for students in the early stages of their studies. In fact, some of these works may be compendia of a sort but they are flawed. Some do not relate to the law of Friesland, others are prolix, or unacademic; many writers merely use the Pandects as a springboard for their own ideas. Of course, these are written by scholars of outstanding merit and glory but they are not suitable for his purposes. Reading widely, and often indiscriminately, will extend the course to unmanageable lengths, and the students will be lost in a morass of ideas. The *Positiones* and the *viva vox* of Huber himself will keep the students on the straight road to success.

3.3. The second *Oratio* of 1682 (*Oratio IV*)

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

Many of the arguments were later included in the *Dialogus* and therefore they will only be outlined briefly here. Students who expect that in his private classes\footnote{cf. *Dialogus*, p 50.} he will show them a secret entrée to his methods are foolish. The only secret to success is hard work, thorough preparation, attention in class, revision and memorising so that the basic principles, as expressed in the words of the *Corpus Juris*, not in those of a compendium, come readily to the tongue. Practice in disputing is essential.\footnote{cf. *Dialogus*, p 54.} Those who suggest that by using compendia all students can become doctors in a few months\footnote{cf. *Dialogus*, p 8.} are promising the impossible. There is no need for unnecessary obstacles and delays but three or four years are the minimum. On the other hand, there is no sense in谴责 all compendia. The accusation that the sterile style\footnote{cf. *Dialogus*, p 23.} of compendia deprives the legal students of an appropriately florid style of speaking and writing is not necessarily valid if students have a rich background based on classical sources and continue to read the ‘delights’ (*amoenitates*) of history and the

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\footnote{84 Huber valued disputations as an excellent method to help students master the material and have it on the tips of their tongues in arguments. He also used disputations as “dry runs” for his published works. See Veen *Exercitia*, pp 127–160 passim.}
\footnote{85 Treutler, Hieronymus (1565–1607). Professor at Herborn; he wrote *Selectae disputationes ad ius civilis Justinianaeum*, Marburg 1596.}
\footnote{86 Bachovius Echtius, Reinardus (1575–c.1640). *In Institutionum juris Justiniani libros quattuor commentarii theoretici et practici*, Frankfurt (1628) and *Notae in Treutleri Disputationes*, 3 vols, Heidelberg 1617–1619. A truly ponderous work!}
\footnote{87 Struvius, Georg Adam (1619–1692) Professor at Jena, 1646–1667 and 1674–1680. His *Syntagma iurisprudentiae secundum ordinem Pandectarum consecutum*, Jena 1658, contains 50 annotationes to Digest titles. These annotations are divided into theses and this is the book discarded by Huber. In 1670, he wrote a most successful, *Jurisprudentia Romano-Germanico forensis Jena*.}
\footnote{88 Zoesius, Henricus (1571–1627). Born at Amersfoort in 1571, he studied at Louvain and later lectured there. He wrote a massive *Commentarius ad Digestorum . . . libros 50*, Louvain, 1688 and a shorter commentary on the *Institutes*, Venice 1757.}
\footnote{89 cf. *Dialogus*, p 50.}
\footnote{90 cf. *Dialogus*, p 54.}
\footnote{91 cf. *Dialogus*, p 8.}
\footnote{92 cf. *Dialogus*, p 23.}
humanities. Here, in contrast to his stance in his inaugural oration, Huber declares that regrettably there is no space in a law course for such Digressiones.

Students, it is alleged, under Huber’s system will learn the law, not from the clear fountains of the old law, but from bogs and marshes, but clearly, says Huber, the old law texts must be used in conjunction with his compendium. Further, if students think that when they have memorised sections of compendia and the answers to a few trite questions they are qualified to act as jurists, this is not Huber’s intention at all. Further, his critics argue that if a compendium is necessary, then there is Justinian’s compendium — the Institutes — what more or what better can be wanted? Moreover, the critics will argue, Justinian forbade the writing of commentaries, but allowed only indices and paratitla. To this Huber replies, as in the Dialogus, that modern students need help even with the Institutes and definitely with the Pandects. Certainly, it is contempt of Justinian if rules other than those of the Corpus Iuris are taught, but on the other hand the law of 1682 is not the law of 533, and students must understand how to apply the principals to modern situations. The question of imparting a dry and inelegant style to students is raised and Huber repeats his policy of a sound classical foundation.

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

4. TWO OF HUBER’S BOOKS CONCERNING TEACHING LAW

4.1. The Positiones of 1682

The Positiones, 1682, is the fulfilling of the promises made in the Lectiones iuris contractae, 1678 and of the plans expounded in the Orationes II and IV as summarised above. In the Praefatio to part I (on the Institutes) of the 1685 edition of the Positiones, Huber states that he will not repeat here what has already been stated before. However, he wishes to make it clear that this is a text on theory not practice
A Dialogue on the Method of Teaching and Learning Law

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

4.2. The *Digressiones* of 1670

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

106 Horace, *Ars poetica* 335 et seq.
107 Thomasius, Christianus (1655-1728) used the *Positiones* as a basis for *exercitia disputatoria* in Leipzig (1683–1685). He added scholia to the edition printed in Frankfurt, 1685. See Feenstra BGNR Franeker, pp 67-68, no 192.
108 ... *hoc factum in Dialogo, de juris studio nuper emisso*. This is a reference to the recent publication of the *Dialogus*, 1684.
109 Huber *Positiones*, p 3, § 14 of the second Praefatio ... *commodum erit reperire loca in itinere vasto, ubi resinane licet et jacunda repetitioe comum quae pridem tenebat, disastere taedium quod iter quinquaginta librorum inexpertis pari*. (It will be agreeable (for the students) to find places in the vast course, where they may get their breath and, by pleasant revision of that which they already know, dispel the monotony which a course of 50 books produces for beginners).
110 cf. Huber’s inaugural address (1665); see Huber *Digressiones*, pars II. Lib. I cap. I p [1].
111 See Huber *Digressiones*, p [2] of the Dedicaio. *Observationes primum Humaniores* appellabam quia tales initio dumtaxat exceptem constitueam. Postea mixtis nou paucis quae vix hoc nobis tuer poterant *Digressiones quod erant dicere malii*. (At first I called these *Observations* “classical” (*humaniores*) because at the beginning I had decided to excerpt only these. Afterwards, no few which could scarcely justify this name were included and I preferred to call them *Digressiones* (deviations) which in fact they were.
Book I, chapter I on page 447. In the first chapter of Part II Huber reiterates his original perception that it was desirable to mix various classical observations from history, philosophy and even sometimes philology with his basic lectures on the *Institutes*. But these, he decided, were to be read apart from his actual lectures and hence were to be called *Digressiones*. He largely eschewed textual emendations for the sake of his students who needed a firm foundation of law before embarking on such exercises, and from his own point of view only essential conjectures and emendations should be considered and anything less had no place in a collection of *Digressiones*. And very fascinating these *Digressiones* are, ranging through the Greeks and Romans to the writers of his own day. Grotius rubs shoulders with Dion (Cassius), Cujacius with Cicero, van den Sande with Homer. Here, too, he again warns his students that he does not intend to venture on emendations and considers that rash and foolish conjectures as practised by some of his contemporaries will lead to endless uncertainty. As is typical of this period and of Huber’s writing, he is not here specific as to who and what. Further, Huber used the *Digressiones* to argue points of fact and points of law, drawing on classical and contemporary writers as their views suited his arguments.

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

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

4.3 Conclusion

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

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

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112 This is the text used for this translation.

113 Huber *Digressiones*, p. [3] of the *Praefatio*. *Ceterum in calce Distriben de Ratone juris discendi atque docendi obiit publatam, haie operi Digestionum, cum ipsa nihil quam Digestio sit, adscripsit.* (However, at the back to this work of Digestions we have added the formerly published Distribe about the method of learning and teaching law, since it is actually nothing but a Digestion).

114 See Gane *Jurisprudence, Note on the Author*, p xix, “Next to Grotius he was probably the greatest as he was certainly the most prolific Dutch jurist”, often cited by Veen, eg Veen *Oratio III*, p 15 and Veen *Redit in utri*, p 5.

115 e.g. Parts of *De genuine aetate Assyriorum*, Feenstra *BGNR Franeker*, pp 48-49, nos 130-131, resurface in 1692 in the *Institutiones Historiae Civilis*, Feenstra *BGNR Franeker*, pp 92-93, nos 274-278.

116 See above 1.1; and p. 1, ft 2 in the English translation of the text.
students but certain of his contemporaries suggested that Huber was in fact more concerned with his own reputation. It has not been possible to find any comment, eulogistic or critical, emanating from his students, but perhaps the popularity of his *Collegia Domestica* after 1682 is, in itself, conclusive evidence.

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

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

5. HUBER AS A HUMANIST

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

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

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117 For a discussion of Huber and the Dutch Elegant School see van den Bergh Noodt, pp 108-124.
119 Van den Bergh Noodt, p 113, ft. 25.
but on the desire of the critic to achieve a particular result. Noodt, on the other hand, is the archetypal legal humanist of the 17th century and held a central position in the Dutch Elegant School. However, his penchant for emendations ingenii ope (with the aid of conjecture) was criticised not only by Huber but also by Perizonius and van Eck.121

Huber did not entirely disparage the philological work of the legal humanists, but when he is arguing about its place in teaching law for practice, he understandably rejected the indiscriminate emphasis, as he saw it, on minutiæ which students could not appreciate and did not need. He also had his reservations about the techniques used by some of the enthusiasts, many of whom he saw as philologists rather than jurists122.

6. WHY THE DIALOGUE FORM?

In view of Huber’s previous writings the question may well be asked “Why did he chose the dialogue form for this particular statement of his didactic policies?” The only other occasion when he wrote a dialogue was in 1675. Then his anonymous Weegschaal van redenen over het verplaatsen der Academie123 was a dialogue between a burgher of Franeker and a burgher of Leeuwarden over the question of moving the University of Franeker to Leeuwarden. It was similar to many polemical pamphlets of the day. But our dialogue is rather different. It is closer to Huber’s academic writings.

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

6.1 The classical Dialogues

Diogenes Laertius124 defines a dialogue as “being composed of question and answer on some philosophical or political subject in accordance with the characters of the persons introduced and the proper diction”.125 The question and answer format and the participation by a number of speakers enable the various aspects of the problems under discussion to be viewed from different perspectives without necessarily coming to a definite conclusion. It avoids the aridity and detached impact of abstract thought. Often, the speakers are not impersonal embodiments of a particular viewpoint but real historic persons, men of standing who have or had an interest in the subject and who express their views with their own diction, usually in informal, colloquial and pleasant language — with due regard to the norms of polite behaviour. The result is a relaxed but telling presentation, allowing for digressions. It is worthy of note that for the Greeks, rather than for the Romans or later the 17th century intellectuals, conversation was a natural and accepted feature of social intercourse among men.

120 Van den Bergh Noodt, p 113.
121 See van den Bergh Noodt, p 120, ft. 69.
122 Cf Cujacius’ description of Connanus “doctissimus vir sed non juris” cited in Stein Elegance in Law, p 251.
123 See Feenstra BGFR Franeker, p 58 no 166.
124 Diogenes Laertius (3rd century AD) wrote a history of philosophy including the lives of the philosophers. This work is of value today as it includes much information about lost philosophers and their works.
125 Diogenes Laertius Plato III 48.

1 Εστι δε διδαχησις εξ ηρεσιων και ἀποκρίσεως συγκειμένης περὶ τῶν τῶν φιλοσοφομένων καὶ πολιτικῶν μετὰ τῆς πρεποῦσης ἡμοίως τῶν παραλομβάρων προσώπων καὶ τῆς κατὰ τὴν λέξιν κατασκευής.
The dialogue of the Greek world had its roots in every-day society, in the colloquial give and take of the streets and in the leisurely discussions of well-to-do men. The drama adopted and adapted dialogue to its needs, especially to the repartee of the Comedy. The Sophists, developing the question and answer form in their argumentations and embellishing their dialogues with verbal tricks, were concerned with the techniques of persuasion. Which brings us to Socrates and the Platonic dialogues, where the purpose — or so Plato gives us to understand — of Socrates’ dialogues was to expose ignorance and thus to encourage others to discover the truth for themselves — the dialectic method. With Aristotle the dialogue lost its conversational character and became largely a series of speeches. Lucian of Samasato (120–200 AD) inherited the form of the Platonic dialogue but put it to the service of satire, exposing humbug, whether that of the Olympic gods, or the philosophers and the teachers of rhetoric or of the man in the street with his little foibles. Another first century writer of dialogues was Plutarch (c. 46-120 AD). He is best known for his parallel Lives, but he also wrote fourteen dialogues on everyday issues. The παιδικὸς εκπαίδευσις (on the education of children) is said to have had an influence during the Renaissance. Among the Romans, dramatic dialogue largely replicated that of Greek New Comedy. It was Cicero who established the dialogue as the medium for philosophical, political and rhetorical discussion and in the next section his impact on later writings will be treated in more detail. Tacitus’ (c. 55 AD?) dialogue De Oratoribus was the first of his works and was composed about 80 AD. It examines the decline in oratory and was appropriately written in a Ciceronian style. Apart from featuring in the early novels, such as Petronius’ (d. 66 AD) Satyricon and Apuleius’ (c. 123 AD) Metamorphoses or Golden Ass, the dialogue largely disappeared from the literary scene, exceptions being Macrobius and Seneca the Elder. In the late Renaissance it was revived in Italy and France as a vehicle for satire and humour.

6.2 The Renaissance Revival

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

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

126 The παιδικὸς εκπαίδευσις is nowadays considered of doubtful authenticity. See the Oxford Classical Dictionary (1950) p 707.
127 Apel, Johannes (1486-1536) was the leading Protestant legal Humanist in Wittenberg.
128 Gentilis, Albericus (1552?-1608?) was born in Italy. He studied at Perugia where he became a Doctor of Civil Law. Having converted to Protestantism, he left Italy and eventually settled in England. From 1581, he lectured in law at Oxford and from 1587 until his death he held the Regius Chair of Civil Law. He is remembered chiefly for his De iure beli libri tres (1589), a forerunner of Grotius’ De jure Belli ac Pacis (See the 1993 Scientia Verlag, Aalen, edition of Grotius’ De iure Belli ac Pacis and especially R. Feenstra’s Annotationes Novas).
Evidence does not suggest that Huber was familiar with Gentilis’ work. If he was, it made little impact. Huber’s light and informal approach is far removed from Gentilis’ ponderously and inelegantly expressed sentiments.

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

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

6.3 Huber and the Platonic and Ciceronian Dialogue

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

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

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

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129 Coing’s reference to Gentilis in his ‘Note on Dialogue’ (see Coing Die juristische Fakultät, p 548) is presumably the result of the Turin edition of 1937 which reinstated the text.
130 See i.a. Israel The Dutch Republic, passim, especially p 608.
131 See Feenstra BGNR Franeker, p 58, no 166 for Huber’s Woegschaal van redenen over het verplaatsen der Academie van Franeker naar Leeuwarden [1675].
132 Plato appears in the Apology [38b] where he and others offer to stand surety for Socrates’ fine of 30 minae. In the Phaedo he is mentioned as being absent on Socrates’ last day [59b].
133 Lucius Licinius Crassus (consul 95 B.C.) was an eminent orator, whom Cicero greatly admired. The other members of the group are Crassus’ father-in-law, Marcus Antonius (143-87 BC); Scaevola, the Augur (Consul 117-82), a celebrated jurist and two young men, Gaius Amelius Cotta and Publius Sulpicius Rufus, for whose benefit the precepts in the De Oratore are delivered.
134 Aristotle (384-322 B.C.) is said to have written a number of dialogues during his early years, but none are now extant. Diogenes Laertius in his Lives of the Philosophers informs us of his life and works as they were known to him.
A Dialogue on the Method of Teaching and Learning Law

which dominates Cicero’s dialogues, and is reflected in Huber. The only faint trace of the Socratic aim of provoking his audience to question assumptions is in Huber’s Praefatio135 to his students where he remarks that they will evaluate the merits of each argument but in fact they do not do so in the discourse, as they are purely an impersonal audience. Huber’s legal thinking leads him to see the discussion as a case before a court with Crusius as plaintiff and Böckelmann as defendant and Crusius must state his case clearly before Böckelmann replies.136 However, this structure is not continued throughout the piece.

The settings for Plato’s dialogues are generally indoors but in the case of the Phaedrus this pattern is broken. Socrates and Phaedrus meet on the outskirts of Athens, paddle in a stream, the Ilissus, and soon arrive at a cool and shady spot beneath a spreading plane tree where they sit and talk.137 Cicero consciously reproduces the plane tree in De Oratore138 where the participants, having bathed, eaten and rested on the day of their arrival at Lucius Crassus’ country villa in Tuscany, on the following day take a stroll until they reach a spreading plane tree whereupon Scaevola, recalling Plato’s Phaedrus, suggests they sit under the tree. There they commence a discussion on oratory with — as Cicero remarks — their accustomed courtesy. The country villa, the water and the plane tree are duplicated in Huber,139 although the Old Rhine is hardly a stream like the Ilissus and it would be hard to visualise Huber and his learned friends paddling in its waters as do Socrates and Phaedrus. Similarly, Cicero’s Brutus or De Claris Oratoribus is set on a patch of grass near Cicero’s house in Rome. Nearby is a statue of Plato.140 Other dialogues take place in country villas.

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

135 Dialogus, Praefatio, p [iv], de meritis singularum existimabilitis. (You will decide about the merits of each argument).
136 Dialogus, p 7 Cum enim tu Actoris, ego Rei partes sustineo videor, non habet res facultatem ut defendendi rationes incentur antiquam litis intentio apte, certe, iure potestate et absoluuta fuerit. (For since you seem to be assuming the rôle of plaintiff and I am upholding that of defendant, the situation will not arise where the case for the defence is begun, before the indictment has been appropriately, specifically and clearly stated and bought to a conclusion.)
137 Plato Phaedrus [229]. Ως Δείπνησίσαμεν γετοῦ τὸν Ἐλισσοῦν ἵππων, ὅπων ἂν δοξήν ἢ στρατηγὸν καθισαμέθα ... ΦΑΘ. Ὅρας ὅν ἔκτινη τινὰ ὑπσηλότερην πλατάνον; (SOCRATES: Let us turn aside from here and go along beside the Illissus. Then we will sit down peacefully wherever it seems good. PHAEERDUS: Do you see that very tall plane tree?)
138 De Oratore VII. Car non unimassumus, Crassus, Saretium illum qui est in Phaeido Platonis nam me haec tua platanus admirum ... etc. (Why, oh Crassus, do we not copy the great Socrates who features in Plato’s Phaedrus for your plane tree reminds me of this?) Scaevola incidentally remarks that his feet are hurting him.
139 Dialogus, p 5.
140 See De Claris Oratoribus § 6. . . . tum in pratulo propter Platonis statuam consulémus. (Then we sat down in a little field near a statue of Plato.)
141 Dialogus, p 49.
Regarding the hypothetical dating of dialogues, the early Socratic dialogues concerning the last days and the death of Socrates are treated as contemporary; the later dialogues were written not long after the events which gave rise to the discussion although Plato is by no means historically punctilious and indeed in *Menexenus* he attributes to Socrates opinions on events which occurred after his death. Cicero is more historically aware. For instance, *De Oratore*, written in 55 B.C., is supposed to have taken place in 91 B.C. and is based on the events of the day. The speakers were well-known, as were their views. By 55 B.C. all had died, thus giving Cicero a modicum of flexibility. Certainly Huber, too, needed to create the impression that the *Dialogus* took place during the lifetime of the chief speakers. Crusius died in 1676, Rusius in 1678 and Böckelmann in 1681. Hence the suggestions of 1671 or 1672 for the date of the actual discussion. For fuller discussion of the chronological issues which arise in the *Dialogus* see below, Chapter VII.

6.4 Conclusion

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

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142 Plato, *Menexenus* § 244.
143 Crassus died in 91 B.C., Marcus Antonius in 87 B.C. and Quintus Mucius Scaevola in 82 B.C.
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 Dialogus; 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 Ruisius will be subjected to investigation as will the behind-the-scene voice from the unnamed Noodt.

1. JOHANN FRIEDRICH BÖCKELMANN1 (1632-1681)

1.1. Böckelmann in real life

Johann Friedrich Böckelmann2 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, (Epistola ad lectorem), by Böckelmann. This was subsequently published together with the disputation.4

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: Böckelmann(us), or Beuckelmann, as in the deed of purchase of his property. Also he sometimes appears in the literature as Johannes Fredericus 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”; minimaly on NNWB 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. The Album Scholasticum Academiae Lugduno-Batavae, MDCXXV-MCMXL, Leiden 1941, is invaluable as far as it goes. For Böckelmann’s publications, the standard and excellent reference work is Ahsmann-Feenstra BGNR Leiden. See Plate VII.

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.
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 facilem 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 Electoris Palatini Domini mei Clementissimi gravioribus consiliis negotiorum istsa immersus fui ut et telam coeptam et omnem disipulumorum avaram 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 Comminii et Electoris 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 Adrianus Wijngaarden, the father of the Adrianus Wijngaarten of the Dialogi, Wijngaarden 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 praeceps controversiarum quae in singulis titulis ocurrunt, praeside Joh. Frederico Wijnghamanno. 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 Justiniani libri XIX published by Felix Lopez of Leiden. The first 6 books were a reworking of the Exercitationes ad Pandectas. In 1694 this work was expanded and re-issued.

7 Appendix C.

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 1688 but in 1689 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 Leidsche 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 Mattheus 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 Wolbrandsz. 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. Kneppehout van Serkenburg, 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 ἐμφυτεύομαι, 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); Gotius’ Inleidinge, 2.40, 3.18; Van Zurck Codex Batavus, Effpagten 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{21}) to one Nicolaes Clignet of Leiden. Böckelmann's executors were Theodorus Kraene, Prof. of Medicine and Johannes Mullerus, minister of the \textit{Hoogduitse} congregation at Leiden, together with the guardians of Böckelmann's minor heirs who lived abroad.\textsuperscript{22} 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*. . . convivium pisciculorum extra urbem ad quod Nobil. D. Böckelmannus praeedium suum concessit, ibique celebratum}
\textsuperscript{26} See \textit{Dialogus}, p iii, 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]. Primum ergo Pandectas docere caepi per precepta et regulas satis consitas quis primum calamo excepta Auditories sed et temporis jacturam et sanibendi tacitum fugientes, quotquot poterant edita Heidelbergae excitationes nostras sibi comparare, deficientibus autem jam exemplariis obtine me nugas, eam densum et edicarum telamque non utra 6. librum contextam, pertececm. (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 BGNR Leiden, 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 duodecim tabularum (D. 1.2.1) and not infrequently in later writers, condemning the ill-prepared students who cannot cope with law.

33 cf. Dialogus, p 13 and p 42, where Huber says that compendia writers must have digested the material.

34 See Böckelmann, Compendium, Praefatio p [6]. Cum Sisypho vacuum velutum.

35 p 6 Nic minun cum ars haec plerunque exececetur sine online sine modo et sine ratione.

36 Bachovius Echtius (Bachov von Echt), Reinardus, c. 1573-1640. Inter alia he wrote In Institutionum juris Justiniani libros quattuor commentarii theorici et practici, Frankfurt, 1643.

37 Mynsingerus (Mynsinger von Frundeck), Joachim, 1517-1588. He was known for his Apotelema, hoc est corpus perfectum scholiorum ad Institutiones Justinianae pertinientium, Basel 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”.39

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.40

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.41 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.42

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 Justiniani 39 Constitutio Imperatoriam § 7. 40 For further discussion of the Roads metaphor see below section 1.3.1. 41 Böckelmann, Compendium, Praefatio p [23] Post 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 tuum prospere abolvendum . . . monstrabo vobis quam viam qua et ipse potissimum incessi . . . Non perrepto vobis cum viam qua et ipse potissimum incessi . . . sed via communi magni potius procedam.
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 (emblemata) 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 Nescire, nec difficiliter (neither late nor with difficulty); that over the via prava (wrong route) declares aut sero aut nunquam (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 to her inner sanctum only a few priests and not many mortals.

The first step, the first year, is labelled Princip(i)is Jur(is) (basic principals of law); the second Pandectae Juris certi (non-controversial texts from the Pandects); the third Ius controversium (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

See Plate VIII.

See Plate IX. For these I am indebted to Prof Dr Remco van Rhee of the University of Maastricht.

As can be seen in the Latin below Böckelmann says the right hand path is the via aperta 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.

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.

Böckelmann, Compendium, Praefatio, [19] . . . videtis Emblema in dextra (sic) parte referens viam aperti, quattuor gradibus intersectorum, qua nec sero nec difficiliter ad perfectam iuris scientiam eunt Studiosi, nullis sanctis gravibus nec singulis, alias post aliam agentes; in sinistra (sic), arduam montis praecipitatum, sebitibus repuluis impeditam, quam unius, omnium simul portans, nullus obstante, modo aut ratione ingressus, aut sero aut nunquam, certe non sine ingenio labore et molestia summa emeatim, ad miserrimum citius quam scientiam perveniat. Et tamen hac regia est via . . . quasi Diva nostra paucis tantum sanctis, non multos mortales, ad summum sanctuarium admittit voluptatis. (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 other side is a difficult route on a precipitous mountain blocked by brambles 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.

See Böckelmann Compendium, Praefatio [p 15].
(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. 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). 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 *Via Regia* is the one now recommended, but here the *Via Regia* of serious study and sober minded associates is contrasted with the “*Via Voluptatis*” in the company of drunken, quarrelsome and gluttonous youths.

Huber, too, has his *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 *Via Regia*. In the *Dialogus* he is much more specific. In his own persona, he says that the *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 *Via Militaris*, the military method of cutting knots with a sword!

Now let us consider what Noodt has to say on this. 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, *Via Regia*.

1.3.2 The *Compendium-Dispendium* antithesis

Twice in the *Dialogus* we encounter the epigram *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.

On page 17 (1688) Böckelmann adverts to the fact that Crusius/Noodt has rephrased the epigram to read *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 *damnum* as a synonym for *compendium* (p 6 and p 17; 1684, p 11 and p 24).

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

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50 Böckelmann O.F. Crusii, p 14 aliam, aliam longeque rectam magis viam instat Crusii.
51 Böckelmann O.F. Rusii, p 21 aliam longe viam ingessum est Rusius noster.
52 Böckelmann O.F. Rusii, p 16 cum temulentis rixosisve juvenibus aut heluonibus.
53 See *Dialogus*, p 41.
54 See van den Bergh Noodt, p 164; Noodt *Corrupta Jurisprudentia*, especially pp 619-620.
55 Lewis and Short *A Latin Dictionary* (1980 impression) derives *compendium* from *compendo* = to weigh together, to make a profit by saving. Thus to make a *compendium* means to “make a gain, saving” hence “to shorten or abridge profitably”. *Dispendium* from *dispendo* = to weigh out, to pay. Hence *dispendium* is a cost or loss and once in Virgil *Aeneid* 3.453 ‘a waste of time’.
56 1688, p 6 and p 17; 1684, p 11 and p 24.
57 Feenstra 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.
dispendium (and compendium as the opposite of dispendium), 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 oration 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 dispendium were not included in the 1684 edition but were added in the 1688 Digressiones version (p 9 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 dispendia of that most sacred science. This, presumably, is referring to the contents of the Digressiones, not to the Dialogus.

Van den Bergh 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, used those exact words in combination qui isto modo captant compendium, nac illi plerumque hic dispendium 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 dispendium saying that some people wish to lead students astray after a fatuus ignis and pro compendio magnum studiorum vestrorum det dispendium (after an ignis fatuus or will o’ the wisps lead them astray and instead of a compendium give them a dispendium.) Huber himself uses these terms in his Oratio II and Oratio IV and writes of achieving the basics with the least expenditure of time and effort (minime temporis operaque dispendio) and more trenchantly, in Oratio IV, there are some persons who condemn aucta compendia tamquam mera dispendia studiosorum (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) dispendium 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 selective representation of the man himself. Huber and Böckelmann had first met in Heidelberg and the friendship there established had continued. It was

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58 Noodt Corrupta Jurisprudentia, p 621.
59 ... quam nihil quam totidem dispendia 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, 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. 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 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, 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 (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 non illotis manibus as

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66 See Feenstra Böckelmann, p 140.
67 See Dialogus, p 9
68 See Dialogus, p 12 and ft. 35; p 13 and ft 37.
69 See Dialogus, p 15, ft 41 of the English text and the references there cited.
70 This note must inevitably be brief because little has been written on the life and works of Crusius. See van den Bergh, Elegante Schule, p 177. He merits 30 lines in NNBIW III (1914), 269; half as much in A.J. van der Aa’s Biographical Dictionary of the Netherlands and casual references in other secondary literature. Perhaps the most useful information comes from Böckelmann’s Oratio Funebre of 27 July 1676.
A Dialogue on the Method of Teaching and Learning Law

Böckelmann put it.\textsuperscript{71} During his student days at Franeker Crusius encountered both Wissenbach and Huber. When Wissenbach died in 1665, Crusius contributed a poem to his memory.\textsuperscript{72} The 22 September 1669 saw Crusius, aged 25, defending his \textit{disputatio pro gradu, De Pactis et Conventionibus}\textsuperscript{73} and to honour the occasion Huber contributed a laudatory poem.\textsuperscript{74} The friendship thus established between Crusius and Huber continued, if we are to believe what Huber writes in the \textit{Dialogus}, but how sound was that friendship?\textsuperscript{75} 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 \textit{Dialogus}, despite Huber's protestations of good will towards the Crusius persona, he passes several derogatory comments. Crusius intrudes on his chat with Böckelmann (p 2), is critical of his \textit{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 \textit{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 \textit{Iuris Utriusque Doctor}, Crusius was appointed \textit{lector} at Leiden. On 20 November 1670 he became \textit{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\textsuperscript{76} because his naturally weak constitution was further strained by excess study and too little exercise. His funeral oration\textsuperscript{77} 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 \textit{Dialogus}. But of this more anon.\textsuperscript{78}

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 \textit{De Pactis et Conventionibus} as printed in Everardus Otto's \textit{Thesaurus juris romani, continens rariora meliorum interpretum opuscula}, Leiden, 1725, p 672g–672m\textsuperscript{79} 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

\textsuperscript{71} See Böckelmann \textit{O.F. Crusii}, p 14. \textit{non illos manibus} (not with unwashed hands).
\textsuperscript{72} See Postma and van Sluis \textit{Auditorium Academiae Franekerensis}, M 1665.1 p 534.
\textsuperscript{73} See Postma and van Sluis \textit{Auditorium Academiae Franekerensis} G 1669.6 p 441.
\textsuperscript{74} See Ahsmann-Feenstra \textit{BGNR Leiden}, p 84, no 117.
\textsuperscript{75} See \textit{Dialogus}, p 2.
\textsuperscript{76} Böckelmann \textit{O.F. Crusii}, pp 20-21.
\textsuperscript{78} See below Chapter V. 2.3.
\textsuperscript{79} See Ahsmann-Feenstra \textit{BGNR Leiden}, pp 83-84 no 116.
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 prefaced 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
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**

3.1. Wijngaerden’s academic career and early life

Adrianus Wijngaerden, son of Adrianus van Wijngaerden and Lysbeth Ardiers, was born in Leiden and was baptised in the Pieterskerk (22 April 1648). On 1 February, 1666 he enrolled as “Adrianus Wijngaert, Lugduno-Batavus, phil.” at the University of Franeker. It was there he met and studied under Huber as mentioned in the *Dialogus*. In 1669, while at Franeker, Wijngaerden defended three disputations *De substitutionibus* under Huber as *Praeses*. 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 *Disputationum juris fundamenta*. At some stage after 1670 Wijngaerden moved to Leiden where, as Huber tells us in the *Dialogus*, he was

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giving private lessons.\textsuperscript{95} 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 \textit{disputatio juridica inauguralis pro gradu}.\textsuperscript{96} The subject was \textit{De vectigalibus}, the \textit{Rector Magnificus} was Arnoldus Sijen\textsuperscript{97} 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.\textsuperscript{98} On 3 June of that year, the register of the membership of the Reformed community of Leiden shows that his name was removed,\textsuperscript{99} possibly because he moved to the Hague to practise. Nearly two years later, 21 April 1676, we have mention of Wijngaerden, \textit{advocate voor den Hooven van Holant} in the Hague. He features as witness in two notarial wills. The first involved one Jacobus Naelhout (Naalhout) who left his moveable property to a certain Catharina Stolwijk of Rotterdam and the second involved the same Catharina Stolwijk who appointed Jacobus Naelhout her sole and universal heir to all she inherited from her mother.\textsuperscript{100} Apparently Wijngaerden was still in the Hague later 1676 as the notice of his intended marriage to Maria Stolwijk of Rotterdam was entered\textsuperscript{101} there on 26 July. Notice had previously been given to the \textit{Schepenen} of Rotterdam\textsuperscript{102} on the 18th 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 \textit{Haag Gemeentearchief}, the \textit{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.\textsuperscript{103}

\subsection*{3.2. Wijngaerden in the \textit{Dialogus} — a minor rôle}

Wijngaerden appears to have been one of the guests at the \textit{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

\textsuperscript{95} See \textit{Dialogus}, p 4, \textit{Praefatio} p iv — \textit{qui tum scholas domesticas Lugduni habere instituebat} (who had then begun to give private lessons in Leiden). But cf. Chapter VII.

\textsuperscript{96} See \textit{Molhuysen Bronnen Leidse Universiteit}, p 320. A copy of his dissertation is in the Leiden University Library.

\textsuperscript{97} Arnoldus Sijen (Seijen) 1640-1678 had been called to the Chair of Medicine and Botany in 1670. At the same time he was offered, and accepted, the position of \textit{Praefectus Horti Medic} to the Leiden \textit{Hortus Academicus}. It was in this latter position that he made his name teaching phyto-medicine. His early death was a loss to the science of medicine. See Veendorp H. and Baas-Becking L.G.M. \textit{Hortus Academicus Lugduno-Batavus 1587-1937}, Haarlem 1937, pp 78-82, Siegenbeek van Heukelom-Lamme. \textit{A. Album Scholasticum}, p 141, p 199.

\textsuperscript{98} See \textit{Album Advocatorum}, p 349.

\textsuperscript{99} See “The Register of outgoing certificates of membership of the Reformed Community of the Marekerk in Leiden” in the \textit{Archief Kerkenraad}, Leiden, inv. no 103A in the \textit{Regionaal Archief Leiden}.

\textsuperscript{100} The notary was Johannes Groenesteijn of the Hague. See inv. no 466, pp 289-289v and pp 290-290v of the \textit{Haag Gemeentearchief} (CBG).

\textsuperscript{101} See \textit{Haag Gemeentearchief}, Rechterlijk Archief, inv. no 751 p 93. It is not clear what the relationship was between Catharina and Maria Stolwijk. Were they sisters?

\textsuperscript{102} See the \textit{Digitale Stamboom Gemeentearchief}, Rotterdam.

\textsuperscript{103} In the 1684 \textit{Praefatio}, p [4] Wijngaerden is referred to as \textit{Hadriano Wijngarden Icto}. In the 1688 \textit{Praefatio}, p [2] the \textit{Icto} is omitted. Could it be that by 1688 Wijngaerden was no longer alive, or no longer a jurist? Or are we just faced with a typesetter’s problem and should we not read anything more into it? He, like the other speakers, might well have died before 1684.

\textsuperscript{104} See \textit{Dialogus}, p 5.
(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. 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 DIALOGUS 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. 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. 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. 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. 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 *paratitla* but no commentaries. 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 *Authenticae* to the *Codex*, and other authors wrote *summae* and glosses, which, says Huber, were nothing more or less than *paratitla*. Thereafter, commentaries made their appearance and reproduced the state of uncertainty which had prompted Justinian to codify and to prohibit commentaries. Chief among these commentators were Bartolus (1314-1357) and Baldus de

105 See Chapter IV. 4.2.
106 *Dialogus*, p 35.
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.
Ulbadis (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.”

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112 Dialogus, p 39.
113 cf. Huber Oratio II, pp 69f.
114 emendando corrupta Jurs 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.
CHAPTER VI
ALBERTUS RUSIUS AND GERARD NOODT

This chapter considers two characters, one of whom, Albertus Rusius, appears very briefly in the 1684 edition only. The other, Gerard Noodt, does not appear in person but his views dominate much of the discussion. What, we ask, was Huber's intention regarding Rusius' role? Regarding Noodt's non-appearance in person, but his impersonation by Crusius, there are a number of issues which merit investigation. Whether one can come to any firm conclusion remains to be seen.

1. THE CURIOUS INCLUSION OF ALBERTUS RUSIUS (1614-1678)
Albertus Rusius' appearance in the *Dialogus* is extremely fleeting and, moreover, it is only in the 1684 edition that he is mentioned, a total of four times, on each occasion linked with Crusius. In the case of three of these he is bracketed with Crusius by Böckelmann, and in the other Crusius himself refers to *Rusius et ego*. In the first two instances, an entire passage is removed from the text, and Rusius' banishment could appear to be entirely fortuitous. On page 47 of the Latin text of 1684 the phrase *Rusius et ego* appears but is excised in the 1688 edition, p 28. However, the verb is left as first person plural (*existimaremus*). This is probably careless editing. A somewhat similar situation arises on p 57 of the 1684 text where *Eoque vires eloquentiae et auctoritatis vestrae, Rusi atque Crusi, intendere debuistis*. appears on p 33 of the 1688 text in exactly the same form but without the *Rusi atque*, leaving the personal pronoun (*vestrae*) and the verb (*debuistis*) in the plural. However Rusius' contribution to the present debate is not the minimal role he plays but the attitudes and opinions he expressed almost 25 years before.

1.1. Rusius in real life
First let us see whether there is any clue to Huber's reasons for including and then excluding Rusius to be found in his life, as boy and man.

Albertus Rusius was born on 14 November 1614 at Emmen, Drente. He died, aged 64, at Leiden on the 19 December 1678. His father, Johannes, a minister at Emmen, was of French Huguenot extraction and his mother, Euphemia Ketwich, was the daughter of a patrician family in Overijssel. Albertus was the eldest of seven children and was named after his maternal grandfather, Albertus Ketwich. His maternal grandmother, according to Böckelmann's funeral oration, was so taken with his juvenile charms and intelligence that she adopted him, reared him in the considerable comfort of her home and prompted him to take the name Ketwich in addition to his own. Consequently, for much of his life he was known as Ketwich.

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1 See Plate X.
2 See Appendix A no 6, pp 68-69 (1684, p 45; cf 1688, p 28); Appendix A no 7, pp 70-71 (1684 p 47; cf. 1688, p 28).
3 Thus, O *Rusius and Crusius*, you ought to have directed the force of your eloquence and authority to the end . . . (the grammatical distinction is blurred in English thanks to the 2nd person singular and the 2nd person plural having the same form).
4 The most useful sources for Rusius' life and opinions are Böckelmann *Oratio in obitum Alberti Rusii* (1697), and Rusius’ inaugural oration, *De Jejuna quorundam et barbarae juris brevioria* (1659). Briefer notes are to be found in Feenstra-Waal *Leyden Lawyer Professors*, p 37, ft 147a; in van Miert *Illustre Onderwijs*, and in van Apeldoorn *Gedenkboek van het Athenaeum en de Universiteit van Amsterdam* (1632-1932), pp 128-9, p 668; NNBW II (1912) van Kuyk, *Rusius*, col. 1243. See, too, *Album Scholasticum Leiden*, p 130, p 198; Alshman-Feenstra BGNR Leiden, p 206, no 553.
5 See Böckelmann *O.F. Rusii*, p 11 infantiam suam pietate, bonis moribus, litterisque ita ornavit ut mox omnium assumpsit suae arteis adolescentibus palam praepuerum. (As a child he was so distinguished for piety, good habits and love of literature that as a young man he excelled among his peers.)
Rusius and Noodt

Rusius and it is thus he was registered at the University of Groningen (15 December 1633) and at the University of Leiden (25 June 1640) — Albertus Ketwich Rusius Drentinus. Before registering at Leiden, Rusius had studied at Deventer, Groningen and Franeker.

After a period at Leiden he made a foreign tour — chiefly to France and England. Unlike the tours made by most scions of wealthy families at that time, Rusius' tour was marked, not by 'wine, women and song', but by intense study of the customs, practices and character of the peoples he visited. In particular he visited places and people in any way connected with Antiquity. While away from home he graduated Doctor utriusque juris at Orleans on the 4 July, 1643. On his return to the Netherlands Rusius established himself as an advocate in Amsterdam (8 January, 1644). His academic career was initiated shortly thereafter when he was asked to give lessons at the Athenaeum Illustre in Amsterdam. This led in 1646 to an appointment as Professor Ordinarius as successor to Johannes Cabeliau, the noted philologist, whose lectures on law had been a failure. With his legal background and stimulating personality Rusius was a success and is in effect credited with establishing legal studies on a firm footing at the Athenaeum.

It was during the year 1649 that Rusius delivered the funeral oration for Gerhardus Johannes Vossius, the incomparable scholar and polyhistor who spent the first years of the Athenaeum and the last years of his life as professor of that illustrious school. For the next 10 years Rusius remained at the Athenaeum until, on the death of Arnold Vinnius (1588-1657) the Curators and Burgemeesters of Leiden offered him the vacant chair. After some negotiations concerning his salary and conditions of service, Rusius accepted, was appointed and delivered his inaugural oration on De jejuna quorundam et barbara iuris compendiaria (16 September, 1659). It was this oration which is relevant to our discussion and it will be considered below. Rusius' lecturing commitments at Leiden included lectures on the Pandects and also on feudal law. Moreover, among his various academic offices he twice held that of Rector Magnificus (1667 and 1672).

Unlike many of his contemporaries the urge to rush into print did not influence Rusius and the only product of his thoughts which we have is his inaugural oration. According to Böckelmann this was because he wished to avoid the slings and arrows of his fellow academics in their endless and indiscriminating polemics. He certainly had a wide range of friends among the learned, if Böckelmann's oration is any indication. 

Rusius appears to have been an amiable friend, a good teacher and a good father and family man. His death (19 December 1678) at the age of 64 followed shortly after that of his second wife, Marie de Vogelaer (28 October 1678).

1.2. Rusius' relationship with Huber, Crusius and Böckelmann

Prima facie there seems no good reason for Huber to have included Rusius in a very minor rôle in the 1684 Dialogus or to have removed him completely from the scene

[notes and references]

7 See Böckelmann O.F. Rusius, p 25. . . magna satis causa videtur multis . . . notos, ignotos, immo amicos, Collegius, necessario anno plusquam hostili aggrediantur et malevolentiam suam quiescantur quasi leges naturae, uti vinni vi repellere permittit, ut quoque eividerit a nostra sententiam, manta coeli mixt marea nobis permisisset. (It seems sufficient cause that they should attack those who are known to them, those unknown, friends, colleagues and relations with more than hostile intent, and pursue them with curses and malicious accusations, as if the law of nature which allows one to repel force with force, also had permitted us to make a great commotion, because of a difference of opinion. (lit. mix the seas with the sky, cf. Juvenal, Sat.2.25.)
9 See Böckelmann O.F. Rusius, p 24.
in 1688. However, on deeper investigation, certain perhaps interesting and potentially significant factors come to light. Unlike Crusius, Rusius in reality held very decided views on compendia, not all of them favourable, but certainly not all critical.

Huber seems to have had little or no personal contact with Rusius although his friends, Böckelmann and Crusius, were colleagues of Rusius at Leiden. At the time the *Dialogus* was purported to have taken place, 1671, both Crusius and Rusius were professors, neither had published much and both were apparently more concerned with teaching than with research, certainly not with major textual criticism. Crusius, it is true, was mentioned favourably for his reconstruction of the Rubric of the Edict *De Pactis et Conventionibus* in the first three editions of Gerard Noodt’s *Probabilia*, but then he, too, slipped from the text, not to appear again in later editions of the *Probabilia*. By 1684 all three professors were dead, and in no position to react to the views attributed to them for Huber’s polemic purposes. It was Böckelmann who had delivered the Funeral Orations for both Crusius and Rusius, providing rather more facts in the case of Crusius than of Rusius. In both instances, there was plenty of eulogy, as was to be expected. This can hardly have been a factor in Huber’s initially bracketing the two together.

In the *Dialogus*, Crusius, voicing the views of Noodt, is cast as the opponent of Böckelmann especially over the question of compendia. In the 1684 edition Rusius is bracketed with Crusius but the facts, as far as they are ascertainable, do not seem to support this position. The Rusius Funeral Oration, delivered on 7 March, 1679 (ie some years after the supposed *Dialogus*) gives no suggestion of any difference of opinion between the two colleagues. In fact, Böckelmann cites laudatory phrases from contemporary scholars. Rusius was most “erudite and outstanding”. “Most distinguished and well-versed in every kind of learning”, to repeat but two, and these glowing testimonies to his excellence continue throughout the eulogy. Achilles may have been lucky in the eyes of Alexander the Great to have had Homer as his praeco (herald) but praises of Rusius, as scholar, teacher and friend, were sung loudly by academics and students throughout the Republic.

In Böckelmann’s funeral oration he attributes certain attitudes to Rusius and endorses these himself, showing that he and Rusius had much in common. For instance, on p 16, he advises students to model themselves on Rusius, so that they may one day appear among the most eminent academics. They should follow his *Via Regia*, step in his footsteps and be worthy of service to the University and the State. They should not adopt the barbaric language of present day pettifogging and rapacious lawyers but should love wisdom, literature, history and all divine and human law. Not for them rip-roaring and riotous drinking bouts with quarrelsome and glutinous revellers, but sober intercourse with men of worth and learning, such as thought highly of Rusius and admired his erudition both in the humanities and in legal science. As a teacher, Rusius wanted not only to produce good and learned students but also to enhance the subject which he taught, to cleanse it of the accumulated foulness of the past and he scrutinized not only the content of Roman

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10 See *infra* Chapter VI, 2.3.

11 It appears that in 1668 or 1669 Noodt had attended some of Rusius’ public lectures but not his collegia (van den Bergh Noodt, p 23). Soon thereafter, in Utrecht, he attended Lucas van de Poll’s public lectures (van den Bergh Noodt, p 24). Did this experience in any way colour Noodt’s attitude to compendia?


14 cf. *Dialogus*, pp 8-9. These views, here attributed to Böckelmann, seem to reflect his own opinions, as well as Huber’s. cf. Rusius *De Jejuna Compendianus*, pp 16-17.
law but also the details of words, syllables and letters, not so much because textual criticism appealed to him of itself but because it was the means to a true understanding of the classical law.

1.3 Rusius on Compendia, 16 September 1659

Regarding compendia, it is evident that, unlike Crusius, Rusius undoubtedly did have opinions concerning the use or misuse of these texts and he aired them clearly on the occasion of his inaugural address when taking up the professorship of law at Leiden (16th September 1659). The title of his address was De jejuna quornam et barbaris iuris compendiariis (On the barren and barbaric legal compendiary teaching methods of certain persons).

In summary, Rusius (as with Huber and others in years to come) laments the low standards of school and pre-university education (one must not forget that he was for 14 years (1645-1659) at the Athenaeum Illustre and thus his inaugural address of 1659 can be regarded as containing his considered opinions). The students are not inherently stupid but lack true knowledge of Latin, even the Vulgar Latin of the Middle Ages and of the Neo-Latin of their own day. To say nothing of Greek. The universities must help inadequately prepared students to acquire the necessary linguistic facilities to read the great literature of antiquity. He emphasises the importance of Latin as the lingua franca of public and international communication. Many students have what we today would label an “attitude” problem. He partly blames the parents and especially the rich and politically influential parents who want their sons to obtain a qualification — not necessarily an education. Then, too, some of the teachers at schools and professors at the universities are lazy, ill-educated and money-grubbing. They are guilty of attracting students (and fees) by sending out touts who offer young men an easy means to obtain that much desired paper qualification. Many teachers are instites (peddlers) not institutores (instructors). They sell short and compendia are seen as the answer to the lazy student.

The situation clearly invites abuse and compendia easily compound it, especially when they are used stupidly and exclusively. Rusius certainly concedes that compendia have a place, both at the beginning of law studies and, let us note, at the end for revision purposes. He even suggests that students make their own compendia — what we today would call ‘notes’. It is the exclusive use of compendia which he deplores and especially of the dry as dust and poorly written compendia which kill the student’s interest and ruin his powers of expression. Moreover, law studies cannot be completed in a short time. Where using compendia produces a superficial and cursory knowledge they are harmful. When criticising the foolish use of inferior compendia, Rusius says “Those who grab at a compendium in this way, generally catch a waste of time”. Interestingly, Rusius, unlike Crusius in the Dialogus, does not come across strongly in favour of textual criticism. Rusius’ programme for law students is a middle way, and his views on compendia are to all intents and purposes moderate and generally conform to those expressed by Huber rather than those by Noodt. (Huber wrote his own epitomes and therefore must be regarded as a supporter of the

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15 When Rusius delivered his inaugural address (September 1659) he himself was 44 years old (b. 1614), Böckelmann 26 (b. 1633), Crusius 15 (b. 1644), Noodt was 12 years old (b. 1647) and Huber was 23 (b. 1636).

16 Rusius De Jejuna Compendiaria, p 19.

17 See Lipenius Bibliotheca Iuridica for compendia and compendia-type manuals.

18 qui isto . . . modo hic captant compendium, nec illi plerunque dispensium captant. Certainly this helps to counter van den Bergh’s allegation that it was Huber who invented the wordplay Compendium Böckelmann est nihil quam Dispensium (Böckelmann’s Compendium is nothing but a Waste of Time). See van den Bergh Noodt, p 166.

19 Dialogus, p 41.
methodus compendiaria.) In fact, Rusius sums up the situation very vividly when he likens a young student using a compendium to an intelligent traveller visiting for the first time a large and richly endowed city. He climbs into a lofty tower to get a survey of the general landscape before descending to detailed visits. Huber could only have approved that metaphor. Surely it was this eminently sensible view which disqualified Rusius from joining the Crusius/Noodt role?

2. GERARD NOODT (1647-1725)

If, as seems indisputable, the social and intellectual relationship between Huber and Noodt was fraught with personal antagonism, it is here necessary to give an outline of certain critical episodes which may well have a bearing on Huber’s spontaneous and aggressive response to Noodt’s inaugural oration, given on 12th February, 1684 on the causes of the decline of legal science.

2.1. Noodt’s early life

Gerard Noodt was born in Nijmegen on the 4th/14th September, 1647. It was there he was educated, both at the local grammar school and at the Kwartierlijke Academie of Nijmegen, probably from 1662 to 1668. Initially, he studied history and literature (chiefly Latin, rather than Greek authors) and classical philology, mathematics and philosophy. He followed some courses in law and concluded his law studies with two disputations without actually taking the degree.

In September of 1668 Noodt went to Leiden where he attended, among others, the lectures of Albertus Rusius. Continuing to Utrecht he attended public lectures by Antonius Matthaeus III and Lucas van de Poll. His next port of call was Franeker where he was created Doctor Juris, 9/19 June 1669, his promoter being Taco van Glins. After a short spell in practice, 1669-1671, Noodt, aged 24, took up a precarious position at his first alma mater, the ill-fated Kwartierlijke Academie of Nijmegen. He was probably more suited to academic life than to practice but his

20 Sed tironibus etiam iuris compendia, ab eruditis concinata, animum generali quadam idea imbuunt atque praeparant ad cognoscentia postmodum prolixiora et singula. Ia qui prudenter et curiose peregrinantur, delati in Urbe aliquam amplam et aedificiis aliisque operibus atque situ conspicuam, principio eminus ex turri quapiam aliove edito loco universam ejus faciem obtutu speculantur . . . Non igitur finem sed initium eiusmodi compendia dare debent Academico Iuris studio bonis artes suffulto

21 See Plate XI.

22 The sources used for the following sketch of Noodt’s life and academic opinions are primarily those by G.C.J.J. van den Bergh The Life and Work of Gerard Noodt (1647-1725), Geleerd Recht, and Die holländische elegante Schule. For a list of his writings see Ahsmann and Feenstra BGNR, Leiden pp 176-188.

23 The Kwartierlijke Academie of Nijmegen was established in 1655. It was in opposition to the University of Harderwijk in the quarter of Arnhem which had been founded in 1648 as the official university of Gelderland. Nijmegen’s decision to establish a rival to Harderwijk was prompted by the complicated internal politics of the quarters of Gelderland, but its legal diplomas were not recognised by the Court of Gelderland in Arnhem. The Academie declined further, battered by the disastrous events of 1672. Noodt was the last professor to remain and on 12 February 1678 he presided over the last promotion. See van den Bergh, Noodt pp 18-26.

24 For the history of the Academie and for Noodt’s relationship with it, see van den Bergh Noodt pp 18-26.

25 Matthaeus III, Antonius (1635-1710) Professor of Law at Utrecht, 1660-1672; Leiden, 1672-1710.

26 Van de Poll, Lucas (1630-1715) Lector 1667, Professor extra-ordinarius 1670, Professor ordinarius 1674.

27 Van Glins, Taco (1619-1673), Professor of Law at Franeker, 1667-1673. He was also the promoter of Crusius a few months later.
time at Nijmegen can hardly have been satisfying. In view of these early experiences his subsequent search for a fulfilling university post is understandable.

Van den Bergh gives a closely analysed discussion of Noodt’s attempt to move from Nijmegen (1679), where the Academie was on its last legs for political and financial reasons, to Leiden, Utrecht or Franeker. Van den Bergh argues that possibly the favourable mention of Crisius and Böckelmann in the early editions of Noodt’s Probabilia was an attempt to win favour with two of the Leiden professors.28 Rusius also played a negative role in Noodt’s career in that Noodt hoped to fill the vacancy caused by Rusius’ death in 1678. However, it was Huber’s move from the University of Franeker to the Hof van Friesland in February 1679 that gave Noodt the opening he was looking for and in September 1679 he was appointed professor.

2.2 Noodt and Huber

Noodt was eleven years younger than Huber and it would seem that the two men had first met in Leeuwarden shortly after Noodt achieved his degree Doctor Utriusque Juris. Huber had not attended Noodt’s promotion but was required to sign the diploma. So far, so good, although Huber was already at daggers drawn with Noodt’s promoter, van Glins, for Huber had autocratically demanded that before van Glins was appointed as Professor (1667) he should be examined by him (Huber).

At first Noodt seems to have been content with his new appointment (1679) and the relations between Huber and Noodt were comparatively calm.29 However, Noodt spent only five years at Franeker before moving on to Utrecht in 1684. The details of Utrecht’s preliminary and unsuccessful proposals to win Noodt have been adequately described by van den Bergh.30 It is also van den Bergh who interprets Noodt’s sudden decision to abandon Franeker for Utrecht in terms of the actions of Huber. Huber, as we have seen, was appointed Raadsheer (Councillor) in the Hof van Friesland (February 1679), and Noodt had obtained his chair. However, when, after three years, Huber decided to return to academic life, the deal which he negotiated with the university was extremely favourable. In addition, he had all the prerogatives of a professor, no obligation to give public lectures and, of course, the remuneration which redounded to him from his private collegia and other duties. Competition among professors for students and their fees being keen, Noodt’s income was almost certainly reduced, thanks to Huber’s popularity. His rank as ex-senator set him above all the other professors, and second only to the Rector.31 Huber’s exploiting of his new position vis-à-vis the university authorities led to some open conflict32 and much unpleasantness within the university community. This may well have induced Noodt to accept the offer from Utrecht and betake himself thither. That round appeared to have gone to Huber. Noodt, however, did not remain in Utrecht for long. On the 13 July 1686 he was officially appointed to the Leiden Chair of Private and Public Civil Law33 and Utrecht saw him no more.

2.2.1 Noodt’s views on teaching law as reflected in De causis corruptae jurisprudentiae, 1684.

For our purposes the most noteworthy event of Noodt’s brief stay in Utrecht (February 1684 to July 1686) was his inaugural lecture De causis corruptae
jurisprudentiae delivered on the 2/12 February. It is necessary to look more closely and to decide if there is anything radically new in his sentiments, particularly to see in how far and in what respects he blames the decline on the inadequacies of the students and their attitudes, on the professors and their incompetence or on the meagre didactic policy which is based on spoon-fed compendiary study and ignores the demands of textual emendation. Also to be considered is whether or not Noodt intended any criticism of Huber and his compendia.

After the usual introductory compliments to the university authorities and his colleagues, Noodt goes directly to the point. Why is the present state of legal science so mean and undistinguished when compared with the glories of the past century? There is nothing wrong with the law itself, nor with the intellectual capabilities of the present generation. Yet legal science is seen to contribute little or nothing to understanding the bonds of human society, nor to the practice of the courts.

In the past the understanding of law was built on a broad based knowledge of history and the origins of society and of the history of language and literature as well as of geometry, dialectics and philosophy. The modern students do not wish to appreciate that law did not spring from the earth overnight like a mushroom and that more is required of them than memorising a few rules from a compendium and the prepared answers to trivial questions. It is considered irrelevant and foolish to study textual emendation as a means to understanding and correcting faulty texts. The students are ill-prepared and enter the university without competency in Latin, far less in Greek; they do not wish to devote themselves to the study of Themis but, encouraged by their wealthy parents, they intend to enjoy themselves and obtain the necessary entrée to a well-paid position in law or, preferably, in government as quickly as possible. The professors, too, are to blame — many are ignorant, lazy and only interested in attracting fat fees for private collegia. Some even lead the young men to think that their goals can be achieved in a few short months.

It is at this point that Noodt argues against compendia and states that the students are being misled for “what is said to be speed is in fact delay and what is called a compendium is damage to wisdom”. Van den Bergh alleges that Noodt is here attacking his Utrecht colleagues, Johannes van Muijden and Lucas van de Poll who were champions of the newly introduced use of compendia. Johannes van Muijden was certainly the author of a *Compendium Institutionum* but the 1687 edition appeared anonymously, three years after Noodt’s inaugural attack. This does not, of course, mean that van Muijden was not using a draft in his classes. There is no mention of a compendium under the name of van de Poll but likewise this does not prove that he was not using his own unpublished material or that of his colleague.

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54 Oratio de causis corruptae jurisprudentiae Ultrajecti ad Rhenum pro concione dicta, Utrecht, 1684. It is of interest to note that among those who wrote laudatory verses for this inaugural there was one by C. Vitringa (Sn), Huber’s friend and supporter of his religious views.

55 Noodt Corrupta Jurisprudentia, p 619 funguin e tera natum proxima nocte.

56 Noodt Corrupta Jurisprudentia, p 619 illoii atque incauti.

57 Noodt Corrupta Jurisprudentia, p 621 quae festinatio dicitur mora est, et quod compendium vocatur, sapientiae damnum est. Note the use of *damnum* instead of *dispendium*. See above Chapter V. 1.3.2; cf. Dialogus, p 6.

58 See van den Bergh Noodt, p 164.

59 Van Muijden, Johannes (1652? — 1729) spent most of his life in Utrecht. His disputatio pro gradu was *De Societate* but otherwise his only printed works were compendia. However, in 1684 van der Muijden had not published any compendia. The first edition of his *Compendiosa Institutionum Justiniani tractatio in usum collegiorum*, Utrecht 1687, was published anonymously. It was reprinted three times during his lifetime and twice thereafter. His *Compendiosa Pandectarum tractatio* appeared in 1695 and 1718. Both works were in *usum collegiorum* (for use in collegia). See Ahsmann BGNR Utrecht, pp 98-99, nos 196–203.

60 Van de Poll, Lucas (1630–1713) spent most of his life in Utrecht. He became *lector* in 1667, Professor *extra-ordinarius* (1679) and *ordinarius* in 1674. His writings seem to tend to the political and he did not produce a compendium. See Ahsmann BGNR Utrecht, pp 117-119.
However, it is when studying the Pandects and the Codex that the compendia should be eschewed. Noodt, too, uses the metaphor of a road and a mountain; the old Royal Road is not so difficult and precipitous as when viewed from a distance. If approached in the right way, it proves to be smoother and comparatively manageable — with dedication and hard work! It is not for nothing that Noodt concludes his oration with the cry *Laboremus*!41

Van den Bergh, in evaluating Noodt’s inaugural address,42 remarks that “it is a rather traditional theme” . . . “a nice and well-ordered piece of rhetoric in which Noodt expresses his views on law and legal training with his usual vigour. He clearly sees the realities of university life in his day” and as “a self-conscious expression of the humanistic ideal of bourgeois culture in the Dutch Republic, from a jurist’s point of view.” The chief point which van den Bergh considers controversial is Noodt’s “sharp attack on the compendiary method”. He links Noodt’s opposition to the “newly introduced use of compendia, of which his Utrecht colleagues van Muijden43 and van de Poll were champions”.44 Considering the fact that Noodt delivered his address on 2/12 February, within a few days of arriving in Utrecht, it seems unlikely that it was in fact his future colleagues whom he was attacking (no names are mentioned). More probably he was aiming at his former colleague, Huber, who was known to be writing his own compendium (the *Positiones* which appeared in 1686) and had also discussed and supported compendia in his *Orationes* II and IV of 1682.

2.2.2 Huber vs Noodt continued

There was no question but that Huber and Noodt approached life, religion and law teaching from opposite sides. Huber was strictly orthodox, Noodt more open-minded. Each despised the other and frequently made critical comments in writing, Huber more than Noodt who was remarkably restrained, considering Huber’s considerable provocation. Huber was accused of encouraging his students to criticise and carp at Noodt’s opinions and thus to boost his own reputation among young and virtually ignorant law students.45 Other squabbles followed. One of the main points of contention was the rôle of textual emendation in teaching law. Noodt argued that a sound historical and philological background was necessary for true understanding of the *Corpus Juris*.46 The key to this inner meaning was the Humanist technique of textual criticism. Huber, on the other hand, was convinced that, as Justinian had said, there were no contradictions in the *Corpus Juris*,47 nothing should be done to disturb the established law and tampering with the text of the Florentine should be kept to a

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41 *Laboremus* (Let us get to work!)
42 See van den Bergh *Noodt*, p 161, p 165, passim.
43 Van der Muijden only produced his own compendium in 1687. See and Ahsmann *BGNR Utrecht*, p 99 nos 196-201; 202-203.
44 See van den Bergh *Noodt*, p 164.
45 See van den Bergh *Noodt*, p 56 — Noodt to van Eck, 3 October, 1693. UL Utrecht, MS 1000 . . . naer alleen ou wat te carperen bij jonge luiden die daer geen kennisse van hebben.
46 See Noodt *Corrupta Jurisprudentia*, p 619. Roman law did not come *velut imbrem de coelo eodem delapsum impetus aut tamquam fungum e terra natum proxima nocte* (like a shower falling from heaven in one violent rush or mushrooms sprung from the ground the previous night).
47 See for example, *Constitutio Tanta* (in princip.) *ut nihil neque contrarium neque idem neque simile in ea inveniatur. § 15 Contrarium autem aliquid in hoc codice positum nullum sibi beam vindicabit nec inventum. Constitutio Deo auctore § 4, . . . neque similitudine neque discordia debuita.
minimum. In the *Dialogus* there are three occasions\(^48\) when Huber clearly shows that he considers the obsession with *sigla* and *notae* unnecessary for potential practitioners.\(^49\)

A typical example of Huber's early approach to his differences of opinions with Noodt can be seen in the 1688 edition of the *Digressiones*, Part II, pp 551-552. This passage was written after 1684 but prior to 1688 as Noodt was at that time still a professor at Utrecht.\(^50\) It relates to D. 48.22.5 and Huber remarks that Professor Noodt, "his close colleague and friend has written a most elegant commentary\(^51\)on this fragment."

Huber begins by citing Noodt’s somewhat free emendations of what he (Noodt) considered to be copyists’ errors in the Florentine. Huber proposes to give his own understanding of the text and his reasons therefore. He prefàces his views by saying that the reader will then be able to choose\(^52\) which he prefers and warns him that “nothing is more harmless than such exchanges of opinions between friends”.\(^53\)

Huber then gives his *Responsio absque emendatione* for retaining the Florentine text unaltered. So far all is very polite. However, during his argumentation Huber hits Noodt below the belt by citing from the *Basilica* when he knows Greek is not one of Noodt’s strong points.\(^54\)

As time passed the “harmless exchanges” become more vitriolic, certainly on Huber’s part. Noodt maintained a more formal attitude, although, on occasion, he hits back. Let us consider Noodt’s response to Huber’s criticism of his emendation of D. 48.8.1.3, a controversial text on homicide and its punishment. Noodt’s emendation of Marcianus’ words had been condemned by Huber as being that of those “who are clearly far from the way of reason and Themis”.\(^55\) Although Huber had not mentioned Noodt specifically, Noodt replied extensively but calmly in his *Probabilia* 4.7 and 4.8 stating, first, that the "Most Distinguished gentleman Ulric Huber had considered that his (Noodt’s) opinion was far from the way of reason and Themis" and, in conclusion, that it remained for the reader “to consider whose opinion is further from the way of reason and Themis — mine or his”.\(^56\)

A major rumpus erupted over one of Noodt’s less happy emendations. In D.2.15.14 concerning the actions to which creditors of an inheritance were entitled, Scaevola gave an opinion contrary to that earlier expressed by him in D.2.15.3. In *Probabilia* 2.2, p 37 Noodt concludes that Scaevola gave the D.2.15.14 opinion in order to do his friend a favour.\(^57\) Huber, among others,\(^58\) reacted strongly and justifiably. "It must be said" he wrote "that this kind of criticism is completely new and odious".\(^59\) Clearly, neither professor could say or write the right thing and the sniping went on till Huber died.

\(^{48}\) See *Dialogus*, pp 8, 32, 47.
\(^{49}\) Van den Bergh *Noodt*, p 146. Van den Bergh considers that the above slights are specifically directed at Noodt. It is possible that Huber was critical of the entire process as can be seen from the general sweep of his criticisms.
\(^{50}\) See van den Bergh *Noodt*, p 303, ft 72.
\(^{51}\) Huber *Digressiones*, p 551. Gerardus Noodt, Juris. Et Antecessor Ultrajectinus, ad hunc textum scripsit elegantiissimum commentarium in lib. 3. cap. 3 probabilium.
\(^{52}\) Lector quod ipsi videbitur eliget, [53] ... nihil innocentius est quam ejusmodi permutationes opinionum inter amicos. cf. *Dialogus*, p 4 ft 14.
\(^{54}\) See *Dialogus*, p 30; van den Bergh *Noodt*, p 22.
\(^{55}\) See *Dialogus*, Vol. III, p 677 "procul a via rationis et Themidos absint qui..."
\(^{56}\) Noodt *Probabilia*, 4.8, p 82 "illud superstet, ut per te aetiones utius sententia longius absit a via rationis et Themis, mea an illius?"
\(^{57}\) Noodt *Probabilia*, 2.2, p 37... censuro Scaevolam non ex animi sui sententia respondisse sed ut amico rem gratam acceptamque faceret. (I consider that Scaevola did not reply in accordance with his true convictions but in order to do something pleasing and acceptable to a friend.)
\(^{58}\) See van den Bergh *Noodt*, p 256, p 299, p 304.
\(^{59}\) *Fatendum est hoc genus Censurae esse valde noverum et invidiosum, in Eunomia Romana. Ad Lib. II Pand. (D.2.15.14)* p 123.
After 1684 and the publishing of the Dialogus the relationship between Huber and Noodt deteriorated. Although Noodt did not react publicly, his friends were resentful of the implied criticism. Perizonius and van Eck, both longstanding friends of Noodt (and longstanding critics of Huber), wrote indignantly of the liberties taken and especially of Huber’s attack on humanistic scholarship. One should not allow the academic convention of referring to an opponent and his ideas in flattering terms, to blind one to the venom that often underlay such verbiage. Also, although the “learned friend” was sometimes, but not always, named it required little ingenuity on the part of their contemporaries to recognise the object of the invective. When criticising Noodt, Huber could write in his Digressiones “Nothing is more harmless than this kind of exchange of opinion between friends” and in the Dialogus, “Crusius” (Noodt) suggests with regard to Huber’s Digressiones “that we should forthwith tear them apart in a friendly fashion.” However, the question may well be asked, was it customary and acceptable to foist academic A’s views on academic B especially when they were in no way in keeping with B’s own views and when B had already died and was in no position to defend himself? This is, in fact, what Huber was doing to Crusius.

2.3 Noodt’s relationships with Böckelmann and Crusius as exemplified in his Probabilia

In order to try to disentangle Noodt’s real-life relationships with Böckelmann and Crusius, it is perhaps useful to look carefully at certain passages in various editions of Noodt’s Probabilia Juris Civilis. It is Book I which is relevant.

The Probabilia was produced in fits and starts. In summary, Book I appeared in 1674; in 1679 Book I was re-issued with a new title page and dedication, together with the first versions of Books II and III; Book IV was added in the 1691 and 1693 editions. There were subsequent issues in the Opera Varia of 1705 and in the Opera Omnia of 1713 and 1724. Posthumous editions are not under consideration here.

In his biography of Noodt, van den Bergh draws attention to the fact that “in Book I of the Probabilia, published in 1674, there are extensive laudations of two
Leiden law professors, G.C. Crusius and J.F. Böckelmann. These are occasional phrases, which will be suppressed in later editions”. In footnotes 63 and 64, van den Bergh cites the relevant passages, namely Probabilia 1.4.2 and 1.9.7 for Crusius and Böckelmann respectively. In footnote 65 he adds that Crusius “was left out in the edition of the Opera Omnia of 1713, Böckelmann already by the edition of 1691.”

The passage referred to above raises questions — what are these ‘extensive laudations’? and what ‘the occasional phrases’? Were these the only two places, both in Book I, where Böckelmann and Crusius were mentioned? and, most important, why were these references removed from later editions? An attempt to answer these questions will hopefully cast some light on the personal relationships of the Personae Dramatis.

Let us first consider Böckelmann, because he is the first to fall from grace. Book I chapter 9 of the 1674 edition of the Probabilia is concerned with instances where a lapsus calami (slip of the pen) or lapsus linguae (slip of the tongue) produces a result other than that originally intended. Noodt cites a number of examples from Plautus, Virgil, Cicero and Augustus, before turning to Roman Law and Ulpian in D. 9.2.5 and title 7 of the Collatio Legum Mosicae et Romanorum. This leads on to discrepancies in the penalties consequent on killing a thief. The concluding section 7, which is where Böckelmann features, is a prediction that his, ie Noodt’s, criticisms of the “Greats” such as Tribonian will be displeasing to many of his readers and regarded as disrespectful of the Civil Law but, says Noodt, these men were but human and all human beings sometimes slip, even Homer nods. Then he writes sed finio, but “I am concluding; for my most noble, excellent friend Professor Johannes Fredericus Böckelmann, a man of the utmost dignity, wisdom and authority, and most esteemed in these learned studies, has already adequately dealt with this question and has discovered several faults in the writings of the Ancients.” And Noodt then cites Böckelmann’s Prolegomena to his Annotationes ad Pandectas § 4, and his Tractatus de Actionibus (3.16 p 242). Noodt concludes by commenting that “it does not seem to be the part of an intelligent person to add anything to so great a man”.69

In the next edition, 1691, this section was omitted and replaced by a citation from Quintilian, Institutiones Oratoriae 10.1. This is an excerpt from the chapters where Quintilian is advising his students how to develop their command of language. Here he recommends not only listening to orators declaiming in the courts and studying forensic oratory, but reading the best authors and reading them thoroughly. However, (and this really is the only justification for this citation), the student must not assume that every word which proceeds from a great author is perfect, for Demosthenes70 and Homer nod, and great men are but human. Nevertheless, the student must be careful not to criticise indiscriminately, he may well not understand what the great man is saying. It is better to approve of all, rather than disapprove of all.

Maybe this is little more than an attempt by the author to fill the gap in the typesetting left by removing the Böckelmann passage. The two passages are of

67 Böckelmann and Crusius had held these positions since 1670.
69 Sed finio. Iam enim pridem Nobilissimus atque Excellentissimus ICtas & Antecessor Johannes Fredericus Böckelmannus amicus meus, Vir profecto gravitate, prudentia auctoritate summa studiisque doctrinarum Specatiissimus profligavit hanc sententiam satis, naevosque praeterea complures veterum detexit in prolegomenis ad Pandectas § 4 et in tersissimo atque utilissimo illo tractatu de actionibus c.3. part. 16. pag. 242. ut tanto viro aliquid velle adjicere hominis esse videatur non intelligentis. (Probabilia 1.9.7).
70 Demosthenes (384-322 B.C.) was a famous Athenian orator, particularly renowned for his attacks on Philip of Macedon. Hence the use of the term “Philippics” for an invective. Cf Philippics against Antony.
approximately the same length, and although there are minor typesetting differences in the first part of the chapter, this replacement would not have required great adaptation. Its relevance to the entire chapter is less obvious but that is partly the nature of *Probabilia* and the humanistic approach. The issue now is what prompted Noodt to dismiss his friend and colleague — noble, wise and highly esteemed as he was?

Before embarking on an attempt to discover Noodt’s motives in scoring out Böckelmann after his complimentary introduction of his colleague, let us take a look at the Crusius’ position in the *Probabilia*. Crusius too was a professor at Leiden from 1670. In the editions of 1674, 1679, 1691 and 1693 and 1705 Crusius appears Book I, chapter 4 § 2. The 1691 and 1693 editions do vary slightly from the 1674 and 1679 editions but for our purposes these variations are of minor importance. Noodt’s chapter 4 of Book I concerns liability and care owed in the case of the *actio pignoratitia* (the action on a pledge) and in *commodatum* (loan for use), and Noodt here produces his beautifully simple emendation of *ut* to *at*. The opinions of various authorities, Accursius, Contius, Cujacius and Jacob Gothofredus are refuted but the coup de grace is administered in § 2, when Noodt writes that his conjecture is reinforced by the knowledge that his friends, most excellent scholars, support him and among them is the well-known Georgius Conradus Crusius, Professor at Leiden, who is most learned, most knowledgeable, and he has identified a similar flaw in D.45.1.101 where he would emend *obligari* to *obligare*. In the 1691 and 1693 edition this same section appears in toto with only minor alterations.

Now let us see whether any useful deductions can be made from the above considerations. Perhaps the first question is “Why were these two professors introduced into the *Probabilia* at all?” Van den Bergh remarks that from about 1674 Noodt was hoping for a position other than that he held at Nijmegen and that the publishing of Book I of the *Probabilia* was part of an attempt to attract the favourable attention of the other universities, particularly Leiden, and enhance his reputation as a scholar. Was it to further this end that he included the “laudations” of two Leiden

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71 No attempt has been made to check the differences between the 1674 edition and the 1691 edition. There will undoubtedly be many minor variations and information on the major differences might be illuminating as to Noodt’s thought processes during the intervening years, even on his relationships with his colleagues, but this does not concern us here.

72 Van den Bergh says that 1693 is a title page edition of 1691 but see Osler *Dies Diem Docet* pp 211 and 214. Copies of both 1691 and 1693 editions are available in Cape Town, 1691 from the Library of the High Court, Cape Town; 1693 from the Genke Library of the University of Stellenbosch. A very brief collation of the sections relevant to this paper suggests that they are indeed the same text and the same setting. Only the title pages and the preliminary pages are different.

73 See van den Bergh *Noodt*, pp 153f for Noodt’s emendation of *ut* (as) to *at* (but); Huber *Eunomia Romana*, pp 54ff.

74 *atque inter eos etiam Vito Clarissimo Geogio Conrado Crusto, Icto & Antecessori Lugdunensi immense doctus, renumque antiquarum instructo plurima atque varia scientia . . .*

75 Voet *Ad Pandectas*, 4.4.52, attributes this emendation to Simon van Leeuwen (1626-1682) in his Notes to Gothofredus, 1663 but declares that this trifling amendment of a single letter might seem not so unreasonable were it not that, if it were allowed, it would make Modestinus utterly foolish. . . . *placuit nonnullis, interque eos Simoni van Leeuwen in additamentis ad notas Gotofredi ad d.l. 101 pro obligari restituendum esse obligare, id est alios sibi obligatos reddere* (It pleased some, and among them Simon van Leeuwen in his additions to Gothofredus’ notes ad D. 45.1.101 that *obligare* (to bind) should be restored in place of *obligari* (to be bound), that is to render others bound to themselves).

76 e.g. 1674 reads *Ceterum visa mihi est hae conjectura multo probabilior, ex quo sensi Vitis optimis . . .* 1691 and 1693 read *Probabilis mihi haec (quid enim dissimilem conjectura est, sed visa mihi est adhuc probabilior ex quo sensi . . .* and further *qui eam labeculam hand multo dissimilum dephehessis se aliquando et diluisso signifcabit . . . becomes qui mihi signifcabit etiam se labeculum . . .* These may well just be typesetting alterations with a slightly different emphasis and it is not my purpose here either to translate these or to subject Noodt to a detailed cross examination of his motives.

77 Van den Bergh *Noodt*, pp 28ff.
professors? If so, the exercise was futile, as, in fact, the Probabilia appeared in 1674, only after the Leiden post was filled.78

The cause of Noodt's displeasure (if displeasure it was) with Böckelmann probably occurred after 1679, when Book I was reissued together with Books II and III. The event which immediately springs to mind is the publishing of Böckelmann's Compendium Institutionum Justiniani in 1679. This manual, as we have seen, became very popular despite the attacks made on it by certain professors who strongly disapproved of the policy of summarising and simplifying the law and claimed it was compendia which corrupted legal science. In his inaugural oration, De Causis corruptae juris prudentiae, of February 1684, Noodt launched an attack on compendia. This, it is said, was directed against compendia, as used by his Utrecht colleagues, Johannes van Muijden and Lucas van der Poll. However, van Muijden only wrote his own Compendium Institutionum subsequently (1687) and then published it anonymously (Was he afraid of criticism from Noodt?). Van der Poll never wrote a compendium. Surely we may therefore assume that Noodt is here inveighing against compendia written by Böckelmann or Huber?

In the case of Crusius it is more difficult to see why he was dropped from chapter 4. Crusius was, it would appear, an inoffensive young man. Certainly no rival to Noodt, and the section with his name was left in until at least 1693 — nearly 20 years after his death. Possibly the excising of that section was a printer's decision, rather than an indication of Noodt's disfavour. But from 1705 onwards the second last section of Book I, chapter 4 disappears entirely — his excellent friends, Professor Crusius, the emendation obligare for obligari — all are gone. There is, at this point, no attempt to replace the two pages removed. Likewise, all mention of Crusius had disappeared from the chapter head. However, there a short note plura infra lib. 4.c.3 (more below book 4, chapter 3) concludes the summary and this may possibly be the clue to the change.

Book 4 of the Probabilia was added in the 1691 edition and in chapter 3 Noodt replies at some length to Christfried Wächtler's criticism of his (Noodt's) famous and much commended emendation of ut to at in D.13.7.31.1. This had first appeared in 1680. Noodt refutes Wächtler's argument without mentioning Wächtler's name or that of any other contemporary. He merely writes these things will be clear to everyone, but to him who wrote notes on my Probabilia they will not be clear. 80

It was in 1686, after the death of Crusius (1676) and of Böckelmann (1681) that Noodt moved to Leiden with his new wife Sara Marie van der Leur. Although Crusius and Noodt were both created doctor juris in 1669, with Taco van Glins as promoter there is no evidence to show that their relationship was anything more than academic. Likewise there is no evidence to suggest a close friendship with Böckelmann. However, in Huber's mind Leiden, Rusius, Crusius, and Noodt were clearly linked.

3. CONCLUSION

This chapter has treated of two very different aspects of the Dialogus. Rusius was not, it would seem, well known to Huber; his links were with Böckelmann and Crusius.

78 It is to be noted that in the Dialogus (p 3) Huber's refusal of a position at Leiden evoked favourable comments both from Böckelmann and Crusius, but after all Huber was writing this!

79 Christfried Wächtler (1652-1732) was a German advocate, who wrote on theological as well as legal matters, much of his work taking the form of reviews and letters for the Leipzig Acta Eruditorum (see Chapter VIII for further discussion of journals). Noodt's Probabilia elicited some praise but also criticism, especially of Noodt's ut/at emendation of D.13.7.31.1. For further details see van den Bergh Noodt, pp 297-300.

80 Haece cuique liquent, sed illi qui ad Probabilia mea notas scriptit, non liquent.
Huber’s initial, 1684, bracketing of him with Crusius appears to have been based on nothing more than the fact that the two men were colleagues at Leiden. However, the demands of Crusius’ rôle did not allow him and Rusius to speak with one voice as appears to have been the intention in the 1684 edition. Rusius would have been a better partner for Böckelmann, as their views on compendia, at least, were not very different. Perhaps here we should grant Huber a chance for second thoughts, in a work that was certainly composed, as has been discussed elsewhere, in haste. The irony, however, is that Huber’s alterations to exclude Rusius from the 1688 edition were not tidy, as can be seen above.

Noodt’s story is very different. Although Noodt was not mentioned by name there was no doubt about the rôle Huber cast for him. Crusius’ disguise was thin and generous quotations — the actual words — from Noodt’s inaugural address *De causis corruptae jurisprudentiae* given at Utrecht (12th February, 1684) left no-one in the dark. As mentioned above, Perizonius wrote to a friend in September of that year objecting to Huber’s attack on Noodt (by means of Crusius) and on all who practice textual criticism. Although Noodt’s address did not contain any radically new sentiments it may well have provided Huber with exactly the material he was looking for, words with which he could oppose Böckelmann.

One is tempted to suggest — a pure conjecture — that Huber was drafting the *Dialogus* and perhaps considering using Rusius’ inaugural oration, in Crusius’ mouth, to oppose Böckelmann. Certainly, the title of the Rusius’ address *De jejuna quorundam et barbarae juris compendiarum* suggested a lack of sympathy with compendia but the oration was not actually a denigration of compendia and besides it was over 25 years old. Then, suddenly, his ex-colleague Noodt opened his mouth in Utrecht and presented Huber with much more suitable material. The fact that by using Noodt’s address he could attack him and all who practised textual criticism was a bonus. The result was the hastily composed 1684 edition with Rusius only receiving his coup de grace with the revised edition for the 1688 *Digressiones* and the patent imposition of Noodt’s sentiments on Crusius.

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81 See van den Bergh *Noodt*, p 302.
CHAPTER VII
THE HISTORIC BASIS OF THE DIALOGUS — FACTS OR FANTASY?

While wrestling to impose some dating system on the Dialogus and to fit it into its immediate social and historical setting one is struck by the lack of dates and references to events outside the cocoon of university life. For example, if indeed the Dialogus took place in the summer of 1671 or 1672 it is surely extraordinary that no mention is made of the upheavals of that rampjaar when the United Provinces were in a state of almost complete collapse, suffering military disasters and immediate threat of invasion, economic stagnation and the great crash of the Amsterdam stock exchange. In March of that year the English navy had attacked the returning Dutch convoy, France had declared war in April, and in June Utrecht welcomed the invading French. In Leiden, likewise, the authorities were preparing to surrender to the enemy. Where the popular unrest was not defeatist, there was intense anger against the authorities, especially those who contemplated capitulation. Popular dissatisfaction peaked in August, and with the killing of the De Witt brothers saw the beginning of radical change.

A first reading of the Dialogus creates the impression that here we are dealing with a more or less true report of a real event. At the beginning there are many homely touches to round out the picture — Huber going to Leiden to visit his old friend Böckelmann during the summer holidays, their reminiscences interrupted by Crusius, a colleague of Böckelmann’s and an ex-student of Huber’s, Böckelmann’s sprung carriage which took them to his country estate beside the Oude Rijn. An initial pointer to a specific date is that Huber writes that Crusius opened the discussion with some critical comments about his (Huber’s) Digressiones “which in the previous year I had extracted from my lectures on Justinian’s Institutes”.1 This implies that, as the first edition of the Digressiones appeared in 1670, the discussion took place in 1671. A further factor supporting the summer of 1671 is the reference to Huber’s refusal of the Leiden position which benefited Böckelmann and Crusius. Both men were appointed Professors in 1670, Böckelmann on the 8th November 1670, and Crusius on the 20th November 1670. Consequently the date of 1671 has generally been accepted and certainly the evidence at the beginning of the Dialogus supports this date.

However, there are certain inconsistencies which become apparent as the Dialogus proceeds and these will be enumerated below.

1. There are two fixed points which can easily be established.2 The first edition of the Dialogus was published in September 1684 and the Digressiones version in 1688. Internal evidence clearly indicates that much of the text of the Dialogus only took shape after Noodt’s inaugural oration of 12 February 1684. This oration without question was the trigger which produced the first edition in September of that year and in all probability the work was finalized during the summer holidays of 1684. On p iii of the Praefatio to the 1688 Dialogus Huber refers to a promise made to his students previously but the actual time frame is somewhat vague. It is possible that he is referring to a remark in Oratio II or IV (1682) or to that in the Positiones.

1 Dialogus p 3.
2 Further it is worth remembering that Crusius died on 31 March 1676 and Böckelmann on 23 October 1681. Nothing is as yet known about when Wijngaerden died. Noodt certainly was alive. He only died on 15 August 1725.
2. The *Orationes Domesticae* of 1682 clearly foreshadow the *Dialogus*. Lengthy passages of the *Dialogus* are taken directly from the *Orationes* and the content is much the same, except for the occasional insertion into the *Dialogus* of *Amoenitates* and *Digressiones* which Huber has excluded from these *Orationes*. Similarly, paragraphs and ideas are borrowed from Huber’s earlier writings, such as his *Tractatus de Temporibus ante Cynum* (1662) and the *Positiones* (1682).  

3. With regard to Böckelmann, he certainly took up his position as Professor in Leiden in October 1670. Before that he was in Heidelberg. He died in Leiden on 23 October 1681. That is before the final writing of the *Dialogus*.

4. The statement on p 3 that the discussion took place at Böckelmann’s country estate throws a spanner in the works. As is clear from the life of Böckelmann (and the documents included in Appendix C), Böckelmann bought the *erfpacht* (emphyteusis) of the two adjoining plots of land at Hazerswoude on the 25 April and 27 June, 1676. This is confirmed by the entry in Molhuysen’s *Bronnen* of the University of Leiden III p 342, to the effect that on the 14 July 1676 Böckelmann hosted a *vismaaltijd* on his estate. One can only wonder whether this was supposedly the occasion of the dialogue on teaching and learning law which took place under the Platonic plane tree, or does one assume that these were literary flourishes not based on fact? Did Huber attend that *maaltijd*? Clearly, the date 1671 for the actual dialogue is excluded. Did Huber go to Leiden in the summer of 1676? Furthermore, as Crusius died on 31 March 1676, we are here faced with a conundrum. He could not have been present at any party in the summer or autumn of 1676.

5. When we come to publications, a number of obstacles emerge. Böckelmann’s *Compendium Institutionum* first appeared in print in 1679. It is true that he taught the *Institutes* in his private *collegia*, at first dictating but as this proved a waste of time, he decided to revise and publish. On page 6 of the *Dialogus*, Böckelmann talks as if his *Compendium* was already a fait accompli. He remarks “it has now almost developed into an epigram that ‘Bockelmann’s *Compendium* is nothing other than a waste of time’”. The *Compendium* was published in 1679 in Leiden by Felix Lopez. Would it not seem that a published edition was a prerequisite for such an epigram to be current?

6. The minor role played by Wijngaerden further muddies the water. In the introductory section Wijngaerden is described as an ex-student of Huber’s, as he undoubtedly was, (in Franeker 1666–1669), who was then giving private lessons in Leiden. As we know that Wijngaerden defended his disputation pro gradu on 13 March 1674 and shortly thereafter (June 1674) left Leiden and moved to the Hague as an advocate, it is highly unlikely that he attended the *vismaaltijd* of 14 July 1676 in his rôle as a young tutor, asking for advice on helping his students. In fact, from archival evidence he was busy preparing for his marriage to Maria Stolwijk of Rotterdam.

7. At the end of the *Dialogus*, p 58, Böckelmann produced a copy of the *Journal des Sçavans* and refers to two articles. The earlier of 18 January, 1666 presents no problem, but that of 30 August, 1672 rather negates the postulated date of the summer of 1671.
So, where does this leave us? The final product of the *Dialogus* undoubtedly dates from the summer of 1684, but the work appears to be a pastiche introducing relevant passages from Huber’s earlier writings. Was there perhaps a preliminary draft dating from the early 1670’s vividly reflected in the atmosphere of the first pages? Is there external evidence that Huber went to Leiden in 1671, in 1676 or even later? Regrettably it seems that the answers are in the negative and we are left with the conclusion that possibly Huber was indulged in a phase of creative writing — a bit of *digressio*.
Chapter VIII brings us to a discussion of a change of direction in Huber’s *Dialogus*. The greater part of the debate hitherto has been concerned with issues closely related to the teaching of law. Suddenly, towards the end, Huber introduces an apparently disconnected discussion of the pros and cons for jurists of the *Journal des Sçavans*. This, the first learned journal, appeared in France in 1665 and heralded the publication of other similar periodicals leading to the many scientific journals of the present day. The value of the Journal was, according to Huber, somewhat controversial. He makes Böckelmann introduce the topic by producing a copy, entitled *Ephemerides Eruditorum*, and declaring that the editors and contributors recommend writings of little or no significance and virtually neglect legal works of greater worth. Various views follow. However, before investigating why Huber decided to include the *Journal des Sçavans* in his *Dialogus* it is necessary to give a brief survey of the history of the Journal and of its importance in the Republic of Letters.

1. THE REPUBLIC OF LETTERS

The milieu in which the *Journal des Sçavans* came into existence is known to history as the Republic of Letters. This movement started in the early 16th century, initially as small groups (*cabinets*) of like-minded scholars meeting to share their thoughts and to discuss subjects of common interest calmly, unemotionally and in an atmosphere of tolerance. Their ideal was a supra national “community” of scholars, rooted in humanistic culture but discussing the new scientific, philosophical and even religious developments. With the voyages of discovery, the world of fascinating natural phenomena expanded and to a certain extent ousted theological issues. Unfortunately, but inevitably, the high idealism of the early days tottered and gradually fell away. By the last decades of the 17th century, national differences were exacerbated by the waning of Latin, the lingua franca of learned men, and the waxing of national languages, the medium for the new and popular Enlightenment. Further, the behaviour of the new generation of learned men did not always live up to the high standards of the founders. Feelings and expressions of envy, hatred, and competition were far from the ideal.

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1 Information on the *Journal des Sçavans* has been hard to come by in Cape Town and I have been dependent on Prof. Paul Nève and Prof. Jan Hallebeek for the following works. Pride of place goes to Prof. Dr. J.A.H.G.M. Bots for two works, his *Republiek der Letteren* (1977) and *La République des Lettres* in which he collaborated with Françoise Waquet (1997). Also Laeven, A.H., *De Acta Eruditorum*, 1986; O’Keefe, C.B. *Contemporary reactions to the Enlightenment Journal des Savants* (1974); Morgan B.T., *Histoire du Journal des Savants depuis 1665 jusqu’en 1701*, (1928); *Dictionnaire des Journaux 1600-1789*, Sgard (ed) 1991. And last, but by no means least, a number of articles from the early issues of the Journal itself.

2 This apparent deviation appears on pp 103-111 of the 1684 edition and on pp 58-62 of the *Digressiones* edition. The two versions are almost identical except for two small additions to the *Digressiones* version. See further section 4 below.

3 The title *Journal des Sçavans* was used from 1665 to 1682; *Journal des Savants* from 1683 to 1686; *Le Journal des Sçavans* from 1687 to 1696, and variations thereafter.

4 It seems from Bots *Republiek der Letteren*, p 4, that Erasmus (c. 1466-1536) was the first to use the term *republica literaria*, and its synonyms *sodalitas literaria*, *imperium literarium* and *orbi literaturae*.

5 See Bots *Republiek der Letteren*, p 22, “Rond 1700 worden de geleerden zich in Europa er steeds meer van bewust dat hun idealen en aspiraties onrealiseerbaar blijken te zijn.”
2. THE ORIGIN AND PURPOSE OF THE JOURNAL

For many decades, in the 16th century, one of the major problems for scholars was communication. This was particularly prevalent among scientists in all fields; to a lesser extent among jurists. One solution, favoured by the jurists, was to use the introductory addresses to the reader (hopefully a learned colleague) and the Praeletiones as a means to discuss a new publication and its purpose. Another, favoured by the scientists, was to establish learned societies, with journals and corresponding members, leading to the series of specialized, scientific journals which we know today. The *Journal des Sçavans* (1665) was the first tentative step, and it is this which was the object of discussion by Böckelmann, Crusius and Huber in 1684.

2.1 The early years

This learned journal was first printed in Paris (January 1665) with the privilege of Louis XIV (dated August 1664), under the patronage of Colbert, the first editor was Denis de Sallo (1665–1666) and the publisher Jean Cusson (1665–1714) of the rue Saint-Jacques à l’Image de Saint Jean-Baptiste. It was originally a semi-official agent of the government and its aims were to promote the arts and sciences of the Académie by providing succinct information about recent publications, inventions and discoveries, especially in the field of literature, science, astronomy and medicine. It was chiefly concerned with writings originating in France but gradually it included new publications from neighbouring countries.

The first instalment of 5 January 1665 clearly stated that its aims were to list the most important books published in Europe, and to say of each book what it contained and to whom it would be useful, to include obituaries of eminent scholars and letters from contributors to announce experiments and inventions in the fields of science, technology and medicine and finally to publish the most important sentences of secular and ecclesiastical courts and the titles of books censored. This last point was dropped after a while. Ostensibly, the editorial policy was to provide information about new works, rather than to praise or criticise the articles were not “book reviews” in the modern sense. It was for the reader to evaluate. The ideal was not necessarily observed, as can be seen from resumés of Swalve’s *Ventriculi* and of Groenewegen’s *De Legibus Abrogatis* discussed below. Certainly the journals could not avoid reflecting something of the opinion of the editors, even if in no other way than by the selection of material.

Initially, the journal found it difficult to get started and the early years are a history of ups and downs. For one thing censorship in France was stringent and it was somewhat problematic to produce a weekly or monthly instalment of even 12 pages. In the latter half of the year 1665, there was a gap of several months until, under the editorship of Abbé Jean Gallois (1666–74) and of Abbé Jean-Paul de la Roque (1674–1687) the journal became established and defined its parameters. Hot on the publication of the journal a spate of learned journals followed — the *Philosophical Transactions*, also in 1665 (London), the *Giornale de’ letterati* in 1668 (Rome), the *Acta Eruditorum* in 1682 (Leipzig) and the *Nouvelles de la République des Lettres* in 1684.

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6 Colbert, Jean-Baptiste (1619-1683) was at that time controller of finances under Louis XIV. A great administrator, law reformer and member of the French Academy, he was instrumental in establishing the Académie des inscriptions et belle-lettres (1663) and later the Académie des sciences (1666).

7 De Sallo, Denis (1626–1669).

8 See the Avis de l'imprimeur au lecteur of the first issue.

9 The Académie Française was founded in 1635 by Richelieu.


11 On Ventriculi see Appendix D.II.

12 See *Dictionnaire des Journaux*, no. 710, pp 645-654.
The Ephemeredes Eruditorum 135

(The United Provinces). Some concentrated on specific topics, such as the Jesuit Journal de Trevoux (1701), and other more specialised scientific journals. The Journal des Scavans (or Savants) was one of the most influential journals of the 18th century but that stage falls outside our period which is concerned with its first three decades.

2.2 The Northern Netherlands after 1669

The editors’ plan to provide information about new publications and by so doing to strengthen intellectual bonds, was a very real service to the men of letters. At that time it was no simple matter to find out who was writing what. Public libraries were non-existent, books from other countries were expensive and not easy to obtain, censorship was stringent and varied from country to country, particularly with regard to topics concerning religion and ecclesiastical control. In this regard, the Northern Netherlands, by contrast to France, was a comparative haven of tolerance, although the regents were semi-tolerant on matters of religion. It was this reputation for tolerance that attracted the French Huguenots after the Revocation of the Edict of Nantes (1685) and other refugees in search of a modicum of freedom of thought and expression.

The United Provinces enjoyed relative freedom of the press and became the hub of the book trade. It was in Amsterdam after 1669 that the Journal des Scavans unencumbered by censorship, was re-edited, reprinted, often including a number of issues in one cover. Pagination differed, as did the size of the volumes, being octavo, while the Paris edition was quarto. Some volumes, attributed to the publisher Pierre le Grand, others to Daniel Elsevier. It has been claimed that Pierre le Grand was a pseudonym of the house of Elsevier, but as is conclusively argued by van Eeghen, this was not the case13. Pierre le Grand (1634-1712) was certainly closely associated with the Elseviers, both personally and professionally, and it would seem to van Eeghen that from about 1662, Elsevier printed on commission to le Grand. The position regarding the Journal des Scavans is complicated. Reprints of the Paris editions of parts 1-7 (1667-1679) which appeared during the years 1669-1680 with the address “A Amsterdam Chez Pierre le Grand”, were printed by the Elseviers. After Daniel Elsevier’s death in 1680, the Blaeu company took over.

2.2.1 The Latin version — the Ephemerides Eruditorum

A further complication involves the title Ephemerides Eruditorum. What exactly was this libellum (small book) discussed by Böckelmann? Is Huber, writing in 1684, using the Latin name in his Latin dialogue? Or was Böckelmann actually holding a copy of the Latin version produced in Leipzig? There seems to have been at least two Latin editions with the French translated into Latin by Dr M.F. Nitzsche of the University of Giessen. The first Latin edition, appearing in 1667, contained the French versions of 1665 and 166714. The second covered the years 1666 to 1668 and appeared in 167115. Whether there were subsequent issues is not known to me.

There are certain pointers that may argue that it was the 1671 edition which Böckelmann produced, the chief of which is that the Latin Ephemerides Eruditorum was produced as 12mo, indeed a libellum, whereas the French and Dutch editions were usually quarto or octavo. This edition contains the Latin version of the résumé

13 Van Eeghen, De Amsterdamse Boekhandel 1680-1725, III, pp 111, 204-205.
of Swalve’s book the *Ventriculi querelae et opprobria* which first appeared in the Paris edition of 18 January 1666 (pages 37–38) but not that of Amerpoel on the *Cartesius Mozaizans* from the Paris edition of 1677. In the *Dialogus*, page 58, the word *alibi* perhaps indicates “in another book”. Certainly the date of 1671 precludes an article dated 1677.

A further obstacle arises with regard to the headings of the articles. Huber’s version (p 58) gives the author of the *Ventriculi Querelae* as A.S. Med. Doctoris Amstelodam, the Paris and the *Ephemerides* (of 1671 edition) as *opera* “Bernardi Swalve Med. Doct. Amstelodami”. A similar oddity occurs with Amerpoel. Huber gives his initial as N, whereas the French edition of 1677 clearly says his name is Johannes. Is this a deliberate omission by Huber or just careless editing? The fact that this is repeated in the 1688, the 1696 and the 1724 editions argues for a deliberate omission.

3 THE JOURNAL THROUGH THE EYES OF THE PERSONAE DIALOGI

It is in the concluding section of the *Dialogus* (pp 58–62) that Huber, through the person of Böckelmann, suddenly introduces the *Ephemerides Eunditumum*. When considering the various comments made regarding the *Journal*, one must remember first that it is Huber himself who is writing the *Dialogus* and it is he who is allotting the various opinions to each of the personae. A survey of the titles of reviews and articles published in the *Journal* prior to 1684 do not suggest any personal animosity to Huber or the others. One must also bear in mind that Dutch legal authorities, even professors from the University of Franeker, were not foremost in the minds of the French editors.

Huber prefaces the discussion by stating that this type of booklet is well-known and needs no introduction. Böckelmann complains that the writers of the resumés present worthless writings and either omit or sketchily pass over works of great value. He cites as examples of trivia a note on a book by one Bernard Swalve, a Dutch doctor from Amsterdam, concerning the diseases of the stomach. (What he doesn’t say is that the review mocks the work and covertly indicates that it is worthless.) Then Böckelmann refers to a book by J. Amerpoel, a *dominee* from Wier, in which the author attempts to reconcile Genesis with the views of Descartes. Amerpoel’s book was published in 1669 and only reviewed in 1677 in the issue of 30 August, several years after the author had died (1671) and several years after the *Dialogus* was supposed to have taken place. This résumé is a longer and comparatively balanced recital of the contents. From Böckelmann’s point of view it is the treatises of the truly learned which are ignored, in favour of such insignificant writings of unknown writers.

To this Crusius replies that the writers of these journals are not men of learning and that their judgment of the books or their observations on politics etc. are of no real significance. He personally would prefer that his works and those of eminent jurists were not associated with these journals but if it were important to Böckelmann, he suggests that Böckelmann should himself provide the editors of the
news-sheets with a résumé of his next work and accompany it by much flattery of the Journal — a somewhat cynical attitude.

Huber, speaking in his own persona, is more moderate. He considers it unwise to alienate these editors whom he describes as men of 'elegant talents'. The result could be that the editors would attack the jurists and condemn their writings, thus endangering their reputations. He suggests that the Germans might be more receptive of legal works. Is Huber here thinking of the recent appearance of the Acta Eruditorum published after 1682? Even here the number of legal reviews were few. Huber does not want jurists to be excluded nor yet specially promoted. The duty of the editors of the journals is to give a simple statement of the contents of a new book and in this way provide the readers of the journals with a survey of what is being written and what could be of interest. Although in general, the speakers' comments may be dismissive. Huber himself is interested to learn what is being written in various fields. However, the number of reviews concerning matters legal are few and far between in the early editions and it would seem that Huber is justified in his arguments that the jurists, being also part of the republic of letters, should be better represented.

3.1 Comment on Dutch legal writing in the Journal and in the Ephemerides Eruditorum

Although Böckelmann claimed that there was a marked lack of legal articles in the Journal des Scavans one of the early issues contained a résumé of Simon Groenewegen’s Tractatus de Legibus Abrogatis et Inusitatis in Hollandia. This is the second, Nijmegen, edition of 1664. Despite the official policy of dispassionate reporting, the résumé is critical and compares Groenewegen unfavourably with French jurists such as Bugnonius (1540–1590) and Mornacius (d. early 17th century). The chief thrust of the review is that Groenewegen copies Bugnonius and Mornacius that he concerns himself with trifles (bagatelles), such as the Emperor Leo’s Novel 58 regarding the biblical injunction on eating food made from blood, and ignores questions of great significance. Certainly, Groenewegen’s work is not free from flaws and the first two editions of De Legibus Abrogatis, those described here, are in many ways inadequate. However, one must remember that Groenewegen was concerned with the Roman law as abrogated in Holland, not France, whereas the perspectives of the Journal and its contributors are from Paris. It is of interest to see that the book was obtainable in Paris (et se trouve à Paris chez Piget).

Another legal work of interest to Dutch jurists, Antonius Marullius’ 1665 edition of the Codex Theodosianus with the massive commentary by Jacob Gothofredus, also received a notice in the instalment of that year. This is a factual résumé of the predecessors of the Codex Theodosianus, ie the Codex Gregorianus and the Codex Hermogenianus and the summary is in general impartial. Further, in volume 1 of 25 January 1666, there is a favourable résumé of Grotius’ De Iure Belli et Pacis of 1625, from the first edition it was customary for the editors or contributors to receive correspondence which was listed and summarised.

19 From the first edition it was customary for the editors or contributors to receive correspondence which was listed and summarised.
21 Bugnonius (Bugnyon), Philibertus, Legum abrogatarum et inusitatarum in omnibus curis, terris, jurisdictionibus et dominii regni Franciae tractatus (First edition 1563).
22 Mornacius (de Mornac) Antonius. Observationes ad Quattuor libros Codicis (Paris, 1635) and ad posteriores octo libros codicis (Paris, 1640); Observationes in XXIV libros Pandectarum (Paris, 1616).
23 The first edition was Leiden, (1649), the second Nijmegen, (1664), the third Amsterdam and Wesel, (1669), much enlarged and corrected by the author before his death.
24 Gothofredus (Godefroy), Jacob (1587–1652).
26 Grotius (de Groot), Hugo (1583–1645).
which one must remember was originally published in Paris. A further indication of
the number of legal works submitted to the Journal is provided by a glance at the Bibliographia sive Catalogus Librorum which in the year 1685 were brought to the
attention of the editors. Under the classification of legal works on pp 568 and 569 we find several of interest. Of the 20 legal works listed, there are German (eg Berlicius\textsuperscript{27} Decisions Aureae, Struvius\textsuperscript{28} Syntagma juris Feudalis) and Dutch. Here we find the third edition of Simon van Leeuwen’s\textsuperscript{29} Censura Forensis, theoretico-practica id est totius Juris Civilis Romani usque recepti et practice methodica collatio of 1685 (Amsterdam). Also Laurent Theod. Gronovius’ Emendationes Pandectarum juxta Florentinum Exemplar examinatae (Leiden). And mirabile dictu Ulric Huber’s Positiones sive lectiones juris contractae.\textsuperscript{30} A search through Feenstra BGNR Franeker produced a number of potential candidates but the place of printing (Leipzig and Frankfurt), and the size, octavo, eliminated all but no 192 on pp 67-68. There, under the heading Positiones sive Lectiones iuris contractae met scholia van Chr. Thomasius\textsuperscript{31} The edition published in 1685 in Leipzig and Frankfurt. It was indeed octavo, unlike the earlier and later editions which were 12 mio.

4. POSSIBLE REASONS FOR HUBER’S INTRODUCTION OF THE EPHEMERIDES ERUDITORUM

Prima facie Huber’s introduction of the Ephemerides Eruditorum (the Journal des Sçavans) seems out of character with the rest of the Dialogus, but one must give Huber the benefit of the doubt and assume that he had a purpose — even if only to add a touch of variety. Let us first consider his views.

As said above Huber was in actual fact the author of all the faceted comments voiced by Böckelman, Crusius and himself. (To date, I have not succeeded in tracing any opinions by the other Personae so can only attribute them all to Huber.) The dialogue form lends itself to opposing views and it may well be that Huber’s long experience with student dissertations enabled him to see both sides of an issue before giving a conclusive judgement. Here he puts into his own mouth a sensible and balanced view. It is in every scholar’s interest to be aware of what others are writing and thinking. No purpose will be served by offending the editors of and contributors to the Journal. He realises that editors and contributors could well be ignorant about legal matters but they could easily become hostile if the jurists openly resented their treatment at the hands of the journals.

In how far can one consider Huber, a member of the orbis literati? Certainly, both in the Dialogus\textsuperscript{32} and in his other writings he reiterates the ideal of tolerance and good manners in his relationship with other scholars. But, need one ask, in how far does he observe that standard? For Huber, tolerant discussion was not usually an option. When he felt differently, especially on matters of religion, he felt strongly and said so. A specific instance, one of many, is his behaviour on the occasion of G.W. Duker’s theological promotion at Franeker (1686) where he so raged at the candidate that the rector was obliged to intervene.

What of Huber’s complaints that there were only insignificant books mentioned in the Journal and a dearth of legal writings? Certainly, the books cited by

\textsuperscript{27} Berlicius, Matthias (1586-1638) Professor at Leipzig.

\textsuperscript{28} Struvius, Georg Adam (1619-1692) Professor at Jena.


\textsuperscript{30} See Appendix D V.


\textsuperscript{32} See Dialogus p 14 and ft 14; Noodt Praelectiones III p 677.
Böckelmann, Swalve’s *Ventriculi* and Amerpoel’s *Cartesius Mosaizans* appear trivial but that was the point of the argument. The fact they were written by Dutchmen adds an apparent insult to serious Dutch writers. It is not easy to evaluate the dearth of legal writing. Statistics suggest that pre–1684 less than 10% of the resumés were of legal writings. (Later, in the 18th century, it may well have been different.) It is to be noted that the Dutch reading population were not particularly interested in what they regarded as French fripperies, nor were the French concerned with the well-established Dutch legal system. In particular there was little new in Dutch legal writings, nothing to titillate a readership keen on novelty. Huber was probably right in considering that Dutch legal writings would be more appealing to the Germans. The *Acta Eruditorum*, first published in Leipzig in 1682 by Otto Mencke, was probably more to his taste and vice versa. By and large, the readers of the *Journal* were not specialists, and law did not have the appeal of novelty. On the other hand, Huber himself was not interested in scientific developments. Is there any ground for suggesting that Huber felt excluded from the Republic of Letters? Certainly on page 62 he writes that the Germans will consider the jurists part of the world of letters. Probably here Huber is fighting for recognition on behalf of the profession as a whole. It seems unlikely that he himself felt personally slighted. However, he clearly states that jurists must not cadge for inclusion. It is true that, when first he wrote the *Dialogus* of 1684 his *Positiones* had not been mentioned. It only appeared in the 1685 edition, and certainly it is not one of Huber’s most significant works. The question arises “Who tipped the editor off?” Huber himself? Or more probably Thomasius? History does not provide an answer. Further it is worth noting that the listing of the *Positiones* occurred after the first edition of 1684, but before that of 1688, but there is no change in Huber’s attitude. In fact, the two versions are almost identical except for two small additions to the *Digressiones* version. There on page 60 Huber says that editors could ignore works “which have come into being with much labour”. The second addition is voiced by Crusius who concludes by stating that he would prefer his work not to be mentioned in the *Journal*.

A possible reason for Huber’s concern with learned journals could be that in the years just before he published the *Dialogus* there was an increase in the number of journals and dictionaries, published internationally. Had he written a decade earlier, he might not have felt the urge to discuss these products of the Republic of Letters or felt threatened by the exclusion of the jurists. It is not possible to argue that Huber’s interest in the *Journal* was linked to his didactic concerns. The *Journal*, or the *Ephemerides* version, was not likely to be of interest to the students in his classes. Nor can one argue that he felt threatened regarding his research and publications. In general, his attitude is slightly patronising.

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33 A possible exception is that as a result of the 30-Years War (1618-1648) there was increased interest in the *Ius Gentium* and the relations between belligerent nations as voiced by Grotius, *De jure Belli et Pacis* (1625). A brief summary appeared in the issue of 25 January, 1666. See Morgan *Histoire du Journal*, pp 170–171.

34 1688 p 62 *ordinem nostrum pro parte aliqua litterati orbis*.

35 1688 p 60. See Böckelmann’s remark “I do not know what evidence you have taken from my words that leads you to think that I am complaining about my personal position rather than that common to all jurists.”
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 Cyrum² 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 Amoenitates 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 Amoenitates 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 immerse 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 doctissimi 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. And it is

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5 Cujacius on Commanus 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 Nut, passim and Kossmann Political thought, passim.
8 Van Sluis Roell, pp 59-79.
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 Leyden 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"14

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 *Digressiones*. 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 *Digressiones* in 1696, see Chapter II.3. It is C.G. Buder’s *De ratione ac methode 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

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 dono agam aegi maximus, sed et pariter nostrae gratiae gratulatorius juris docendi methodo (quam non nulli non ita pridem satis fecevoir concutulatam ac potrribum inventam) tam nervose ac erudite verba faciens, ut, quid solida posset in adversum eponi, haud equidem videam. De successore CI Noodt altum hactenus apud nos est silentium, nisi quod de quibusdam Jurisdictione Franekeranae candidatu disseminata tam dudum fana etiamum duraet. sed qua spe eorum quisquis foreauer qua fretus sit fulucia, ut tibi, Vir Amplissime, prouul dubio iam privatim innoctat, sit nobis quaque tandem de eventus innoctesat. Vale, Vir Amplissime, et me amas. Lugduni Bat. 6 December Amplissimi nominis tui cultum perpetuum 1684 Johanne Voet*

15 In fact he states, p [5], that he wanted to include Barbeyrac’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 Barbeyrac, 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*.
Conclusion

143

included, two are devoted to Huber. Part I no. II being the Dialogus, and Part II no.
IV providing the Orationes IV, V and VII. There are also two by Barbeyrac, one
each by Maestertius, Schilter and Schultingh. 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
Muijzen’s Compendiosa institutionum Justiniani tractatio, Westenberg’s Principia secundum
ordinem Institutionum, van Eek’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, based his These
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 Eek’s
Principia Juris Civilis. Also Joannes van der Linden, an advocate in Amsterdam, was
writing a scheme for persons unacquainted with the law, but desirous of legal
knowledge. 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.” 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 civilis 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 Voet 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., Regtgeleerd, practicaal en koopmans handboek, ten dienste van regters, praktizijns,
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 106. Qui proficere cupit, multa legere debet, non multos, πολύνοντων exerce potius quam
πολυλογίαν. (See Plato Laws, 641.E.)
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.
APPENDICES TO PART II

I WHO IS WHO? AND WHAT IS WHAT? IN THE DIALOGUS

To avoid cluttering the text and also to avoid irritating readers who are well familiar with the persons and places referred to by Huber, I have included, as an Appendix to part II clarifying notes on such names as Marcus Tullius (Cicero), the Lapiths, Donellus, etc. These have been listed in alphabetical order. The notes below cover only those persons and places mentioned in the 1684 or 1688 editions. In general the information provided has been selective and relates only to its significant for the Dialogus. They are not intended as encyclopaedic articles. Those who want to investigate further will, I hope, have access to the standard reference books and to more recent literature.

The page numbers cited here are those of the 1688 edition, unless otherwise indicated. See Index to Proper Nouns.

Accursius, Franciscus (1182-1263).
Accursius was born near Florence in 1182 and died at Bologna in 1263. He was intimately associated with law studies at Bologna where he studied under Azo (q.v.) and where he, in turn, lectured to law students on the law of Justinian. His most important work is the ‘Great Gloss’ or Glossa Ordinaria, in which he revised and correlated the glosses of his predecessors so well that his Gloss became as authoritative as the texts themselves. Huber cites him, p 38, as being the most distinguished of the Glossators, and the Accursians and on p 31, as being unable to handle Greek.

Alciatus (Alciati), Andreas (1492-1550).
Alciatus is said to have been born at Alzano near Milan in 1492, to have studied at Pavia under Jason de Mayno and to have died in 1550. He was in turn professor at Avignon, Bourges, Bologna and Ferrara. It was Alciatus who gave a humanistic direction to legal studies and his influence was extended by his pupils, Budaeus (q.v.) and Zasius (q.v.). He was instrumental in founding the law school at Bourges. He is mentioned here (p 39), together with Zasius and Viglius (q.v.), as being one who wanted to link the knowledge of ancient law to the needs of his age.

Alcibiades (c. 450-404 B.C.).
Alcibiades was a talented but unreliable young Athenian whose career, military, political and diplomatic, was a series of impetuous successes and equally impetuous disasters. He is introduced here (p 40) not because of any personal interest but purely for the cheeky remark attributed to him by Plutarch.

Amerpoel (Amerpool, Amerpoll), Johannes (died 1671).
The work here referred to is Johannes Amerpoel’s Cartezius Mosaizans seu Evidens et facilis conciliatio philosophiae Cartesii cum historia creationis primo capite Geneseos per Mosem tradita, Leeuwarden, 1669. At the time of publishing Amerpoel was dominee of the Reformed Church in Wier. He was an ardent Cartesian who attempted to reconcile the philosophy of Descartes with Genesis. His work was reviewed in the issue of the Journal des Sçavans of 30 August 1677, and this review is one cited by Böckelmann (pp 58 and 60).

Annaeus Florus (2nd century A.D.).
Annaeus Florus is accredited with a four-book history of Rome extending from the foundation of the city to the establishment of the empire (20 A.D.). William Ramsay in the Dictionary of Greek and Roman Biography and Mythology, Vol. II, p 176, ed. Smith, London, 1876, says “This compendium, which must by no means be
regarded as an abridgement of Livy but as a compilation from various authorities, presents within a very moderate compass a striking view of all the leading events comprehended by the above limits”. An edition by Gruterus and Salmasius (q.v.) was published in Heidelberg (1609). Florus is mentioned here (p 13) in the context of epitomes.

Aristotle (384–322 B.C.).
Aristotle was born in 384 B.C. at Stagirus in Chalcidice, and died in Chalcis in 322 B.C. He entered Plato’s (q.v.) school in Athens at the age of 17, where he stayed until Plato’s death in 348 B.C. (?). After travelling in Greece and the islands Aristotle taught the future Alexander the Great. Only some of his prolific output of scientific and philosophic works is extant, but they have established him as a most influential and significant writer of the Ancient World. Aristotle, together with Plato, is mentioned on p 12 of the Dialogus to illustrate authors whose works are too difficult for beginners in philosophy.

Attaliota (Attaliata, Attaleiates), Michael (early 11th century A.D.).
Michael from Attala was a judge and proconsul in Constantinople. He was a contemporary of Michael Psellus (q.v.) and is known for his description of the Battle of Manzikert (1071). He is cited in the Dialogus on p 36 for his opus de iure (1073), an epitome of 35 (?) titles of law, which was commissioned by the Emperor Michael VII Ducas. It was translated from Greek into Latin by Leuenclavius (q.v.) and published in Volume II of his Ius Graeco-Romanum.

Augustinus (Agustinus), Antonius (1517–1586).
Augustinus was born in Saragossa in 1517 and became Archbishop of Terracina where he died in 1586. He studied in Spain and Italy and became a noted antiquarian, a celebrated jurist and a prolific writer. Huber mentions him in passing on p 39, as being one who added classical literary and philological references to his teaching of Justinian’s Corpus Iuris.

Authenticae
The Authenticae are selections from the Authenticum (q.v.), subjoined to the appropriate constitution of Justinian’s Codex

Authenticum — see Novellae.
Azo, Porcius (Soldanus) (c. 1150–1230).
Azo was born in Bologna. He was a pupil of Johannes Bassianus and himself lectured to Accursius (q.v.). He was one of the most important of the Bologna glossators. One story tells that he had 10,000 students and was therefore compelled to lecture out of doors. There is the saying ‘Chi non ha Azzo, non vada a Palazzo’ (He who has not Azo, doesn’t go to Court). He is mentioned on p 38 as having written summae which Huber declares are actually paratitla.

Bachovius Echtius (Bachov van Echt), Reinardus (1544–1614).
Bachovius was born in Leipzig in about 1544. He was Professor at Heidelberg and wrote several competent works, e.g. Tractatus de actionibus (1623) and a commentary on the first part of the Pandects. He is mentioned here, p 41, by Huber for his attack on Antoine Faber’s (q.v.) in his Rationalia anti-Faber. Huber reckons that Bachovius’ comment that Faber was born to corrupt jurisprudence (natum corrumpenda jurisprudentiae) was excessively critical.

Baldus de Ubaldis (1327–c. 1406).
Baldus was born at Perugia in 1327 and died in Pavia. He studied Civil Law under Bartolus and himself acquired an impressive reputation as a jurist and a teacher. He
lectured at Bologna, Perugia, Pisa, Florence, Padua and Pavia and wrote extensively. On p 39 Huber brackets him with Bartolus (q.v.) and condemns both for spurning Justinian’s ruling prohibiting commentaries and by writing responsa, consilia and various commentaries which debased jurisprudence and reduced it to a state of uncertainty.

Balsamon, (Balsamo) Theodorus (Antiochus) (d. 1204)
Balsamon, born at Constantinople, was a well-known Greek canonist and churchman. Among other works he is accredited with writing scholia on the Syntagma and the Nomocanon of Photius. In his scholia Balsamon discusses tactical questions and apparent contradictions and compares Justinian’s Corpus with the Basilica. Further he is also accredited, although probably erroneously, with the Greek collection of Ecclesiastical Constitutions, mentioned here, p 20 and p 36. These constitutions were compiled from the Digest, the Code, and the Novels. Leunclavius (q.v.) provided the Constitutions with a Latin translation which is to be found in Justelli et Voelli Bibli. Jur. Can. Vol. II. See also Fabrotus. An Antiochus Balsamon is mentioned by Tigerstrom, Berlin, 1891, as being the author of a manual, but Tigerstrom is not always accurate and there is no independent evidence. Thus it seems that Antiochus and Theodorus are the same man.

Bartolus de Saxoferrato (1314-1357).
Bartolus was born at Saxoferrato in 1314 and died in Perugia in 1357. Bartolus is the greatest of the Post-glossators or Commentators. He wrote extensively, and in Spain his opinions were considered conclusive. Nemo jurista nisi Bartolista (no one is a jurist unless he is a follower of Bartolus). This was a contemporary verdict but later the work of the Commentators came under fire from, among others, the humanists. This is the basis for Huber’s comment on p 39.

The Basilica
The Basilica (Βασιλικα) is an imperial codification of 60 books. It was initiated by the emperor, Basil the Macedonian (c. 826–886) and completed in the reign of his son, Leo the Philosopher (886–911) (q.v.). The Basilica combines the various titles of Justinian’s Codex, Digest, Institutes and Novellae into single titles each dealing with a particular topic. Basically it is a Greek summary of the Corpus Iuris although it omits certain outdated portions thereof and includes various constitutions, not found in the Codex. Some Basilica MSS have scholia, both Justinianic and post-Basilican. The Basilica is one of the most important sources for our modern knowledge and understanding of Justinian’s legislation. It is mentioned on pp 30, 36 and 57.

Baudius, Dominicus (Dominique le Baudier) (1561-1613).
Baudius was born in Rijssel. He studied randomly in Geneva, Ghent and Leiden. His early years saw him wandering around Europe, apparently without any determination or purpose. Later, in view of his undoubted talent but not legal knowledge, and determined touting for academic positions, he was appointed to various positions at Leiden (see Ahsmann Collegia en Colleges, pp 15–17) but failed to achieve anything. His immoral attitude and his extraordinary way of life made him a liability rather than an asset. Huber (p 40) calls him “a far from sound jurist” (Jurisconsultus minime validus) and (pp 42 and 43) describe him as a drunkard but with discerning talent (temulentus sed elegantis ingenii).

Blastares, Matthaeus (14th century).
Blastares was a monk in holy orders who composed an alphabetical compendium of the contents of the Canons. In each chapter there is usually a summary of both the
A Dialogue on the Method of Teaching and Learning Law

ecclesiastical law and also the secular law on a particular topic. This work, the Syntagma alphabeticum quo sub titulis literarum ordine digestis res omnes quae in sacris divinisque canonibus comprehendituri collatis etiam civilibus expositae sunt, is by no means flawless. Part of the Syntagma is to be found in Leunclavius’ Ius Graeco-Romanum. Huber introduces him into the 1684 edition (p 100) with Cedrenus and Harmenopulus, but removes him from the 1688 edition.

Brutus, Marcus Junius (85-42 B.C.)
The Marcus Brutus here named as one of Caesar’s assassins (44 B.C.) is notorious for his base ingratitude to his benefactor, Caesar, and here (p 16) is blamed for preventing Caesar from composing a Digest of Roman Law.

Budaeus (Budé), Guilielmus (Guillaume) (1469-1540).
Budaeus was born in Paris in 1469 and was a typical Renaissance humanist-jurist in that his knowledge of the Ancient World was soundly based on classical culture and on a sense of historical change. This dictated the quality of the notes in his Annotationes ad Pandectas (1508). His attempts to establish the text of the Pandects were not always correct and some were inspired guesswork. In fact he was more humanist than jurist and despite its name his Annotationes ad Pandectas is not a work on law. It is for these attributes that he is introduced on pp 21 and 39.

Catones
Some of the Cato family, especially 1) Marcus Porcius Censorius (234-149 B.C.) and 2) Marcus Porcius Uticensis were renowned for their rectitude and somewhat unpleasant characters. See Noodt De Causis corruptae jurisprudentiae, p 618 where he praises Cato and early jurists by contrast with “the moderns”. This reference only appears in the 1684 edition (p 28).

Cebes of Thebes
Cebes (Κέβης) of Thebes was first a pupil of Philolaus the Pythagorean, and then of Socrates (469-399 B.C.). He is depicted in Plato’s Phaedo as taking a significant part in the discussion. The present reference (p 17) is to his πιναξ, a philosophical explanation of a table on which the whole of human life is depicted. According to Cebes, while some young men are looking at the table and querying its significance, an old man joins them; he interprets the symbols to show that the proper development of our minds and the pursuit of virtue is the road to happiness. Even although some recent critics have suggested that the πιναξ is not the work of Cebes of Thebes, such argumentation would not have affected Huber. Cebes’ dialogue was popular in the 18th century because of its moral and ethical teaching and it was translated into several European languages. J. Gronovius produced an edition, Amsterdam, 1640.

Cedrenus, Georgius (11th century).
Cedrenus was a Greek monk but other than that nothing is known of his life. He is the compiler of a massive Σύνοψις ιστορίων of which the Latin title is Compendium Historiarum ab orbe condita ad Isaacum Comnenum (1057). This work and Cedrenus’ historical acumen have been severely criticised by modern scholars. Huber mentions him, together with Harmenopulus and Blastares on p 100 of his 1684 edition as providing information about Leo the Philosopher (q.v.).

Centaur and Lapiths.
Centaur and Lapiths are fantastic creatures, having the head and torso of a man and the lower body of a horse. They live in the woods and mountains of Northern Greece,
especially in Thessaly. The most famous of them is the wise and kindly Chiron. He has knowledge of medicine and other arts and was the teacher of famous men, eg Achilles and Jason. However, most centaurs are overly fond of wine and readily become lustful. On the occasion referred to here (p 44) they were invited by Peirithous of the Lapiths to his wedding feast. At the party they attempted to rape the Lapith women and a mighty brawl ensued, resulting in victory for the Lapiths. The sculpture on the pediment of the temple of Zeus at Olympia depicts the battle.

Cicero, Marcus Tullius (106-43 B.C.).
Cicero was born at Arpinum in 106 B.C. and was put to death in the prescriptions on the 7th December 43 B.C. He is rightly regarded as the greatest of the Republican orators (advocates) and writers. Not the least of his contributions to literary history was moulding the Latin language into a comprehensive and flexible vehicle of expression. Huber cites him on page 1, as an example of one who desired relief from the demands of public life so as to devote himself to leisure (otium). The reference on p 12 is not particularly relevant.

Collatio
The Collatio Legum Mosaicarum et Romanarum was composed between 390 and 428 A.D. It is an anonymous compilation comparing certain aspects of Mosaic law and Roman law. It is suggested here (p 10 and p 57), but erroneously, that it was written by Licinius Rusinus (q.v.).

Constantine VII Porphyrogenitus (905-963, reign 945-963).
Constantine Porphyrogenitus was the son of Leo the Philosopher and his mistress, Zoe Carbonopsina. The name ‘Porphyrogenitus’, i.e. born in the purple (palace) where empresses were confined, takes on additional significance considering the unequivocal status of his mother. The first 40 years of his life were devoted ‘to the one duty that took precedence over all the others: to survive’ (Norwich, J.J. Byzantium, The Apogee, p 141). During the period of his enforced retreat, he spent his time with books and philosophy. Although those studious inclinations and his own kindly nature did little to equip him for his rôle as emperor, his reign was reasonably successful and his literary efforts contributed greatly to our knowledge of the times. Apart from his De Ceremoniis Aulae Byzantinae, an encyclopaedia of Byzantine court ritual, he wrote a manual De Administrando Imperio and numerous lesser works. He is said to have seen to the completion of the Basilica (q.v.) and it is for this reason that he is cited on p 36.

Cujacius (Cujax, Cujas or de Cujas), Jacobus (Jacques) (1522-1590).
Cujacius was born in Toulouse in 1522 and died in Bourges in 1590. He studied law in Toulouse and began his lecturing career in 1547. A celebrated French jurist and humanist, he was probably the greatest civil lawyer of his time. He published copiously and it is for the high quality of his emendations, corrections, conjectures and restitutions that he is introduced into the Dialogus (p 39). Huber approves of his modus operandi, direct comparison of the relevant texts, supported by great learning and sensitivity to language but declares Cujacius did not know what paratitla were (pp 20 and 21).

Cyrus (ruled 559 B.C. – 529 B.C.).
Cyrus the Elder was the founder of the Persian empire. His reign forms a landmark in the history of the Middle East and provided Huber with a suitable cutting off point for his dissertation De Temporibus ante Cyrum. The history of the times before Cyrus was complex, interwoven with fables and romances and accounts of events
varied greatly. It is not surprising that Huber found it necessary to correct the flaws in such as Diodorus Siculus (q.v.) and Orosius (q.v.). Crusius on p 5 is asking why Huber does not continue this type of criticism.

Da Costa (de la Coste), Janus Baptista (Jean) (1560-1637). Da Costa was born at Cahors in 1560. He taught law there from 1584 to 1599 and again from 1631 to 1637. He had a reputation as an eminent scholar both in the Civil Law and the Canon Law. The reference here, p 20, is to his *In Decretales Gregorii IX summariæ et commentarii*, Paris, 1676.

Dio (Dion) Cassius (155-c. 235 A.D.) Dio Cassius wrote, besides a biography of Arrian, a history of Rome from the earliest days to 229 A.D. This consisted of 80 books. Of these not all have come down to us, and it is to the epitome of Xiphilinus (q.v.) that we are indebted for much information. However, on p 9 Crusius declares that it is Xiphilinus’ epitome which destroyed Dio Cassius.

Diodorus Siculus (wrote c. 60-30 B.C.) Diodorus of Sicily’s claim to fame is his 40 books of *Bibliothek* or Universal History, starting with the myths and legends of the earliest times and continuing to his own day, including a description of Caesar’s Wars in Gaul. Less than half of the books have survived in toto and there are fragments of some of the others. Diodorus claimed to have travelled widely and consulted documents so as to found his history on facts, but chiefly he relied on earlier writers. The result is an uncritical jumble of myth, history and fiction, misunderstood sources and contradictions. It is a compilation, but therein lies its importance. Diodorus frequently cited his sources and thus preserved material from writers whose works have perished. The edition of P. Wesseling, Amsterdam, 1746 with a commentary was often reprinted in the 18th century. On p 5 Crusius mentions that Huber corrected errors in his work.

Donellus (Doneau), Hugo (Hugues) (1527-1591). Donellus was born at Chalons-sur-Saone in 1527 and died in Altdorf in 1591. He studied at Toulouse and Bourges where he taught until the St. Bartholomew’s Night massacre of 24th August 1572, whereupon he fled to Heidelberg and in 1579 to Leiden. There he became Professor of Law from 1579-1587. His contribution to the study of Roman law in the Netherlands was great, especially thanks to his massive commentary on the Civil Law — the *Commentariorum de iure civili libri viginti octo*. This was edited with notes by O. Hilliger (q.v.), Rome, 1828-33. See Ahsmann — Feenstra, *BGNR Leiden*, p.115f, nos.247-253. Donellus is mentioned on p 15 for the summary by Hillinger and on p 39 as one who commented on the Roman Law.

Duarenus (le Douaren), Franciscus (François) (1509-1559). Duarenus was born in 1509 at Moncontour. He was the pupil of Alciatus (q.v.) and the teacher of Donellus (q.v.). He combined a knowledge of belles letters and of antiquity with a sound understanding of law. He is bracketed with Cujacius and Donellus (p 39) as concentrating on the Roman Law.

Durandus, Guilielmhus (1237-1296). Durandus was born near Beziers in 1237 and died in Rome in 1296. He studied at Bologna and after teaching at Modena became Bishop of Mende. In 1271 he wrote his *Speculum iuris* which treated of Roman-Canonical procedure. Thereafter he was known as ‘Speculator’ and as the Father of Practice, as Huber remarks (p 38).

Ennius, Quintus (239-169 B.C.). *Ennius noster* was highly regarded by the Romans as the ‘father of Roman poetry’. Certainly for his day he was a marvel of learning, being fluent in Oscan, Greek and
Latin. Unfortunately so little is left of his considerable opus that it is difficult for modern scholars to assess. Such fragments as remain are references, especially to his tragedies, to be found in later writers, such as Cicero (q.v.) and Quintilian (q.v.) Of the Annales, a history of Rome in 18 books, only six hundred lines remain. It was St. Augustine (Civitas Dei, II.21) who recorded the line summing up the character of Rome.

Moribus antiquis stat res Romana virisque.

Although Paul Merula, (1558-1607), published an edition of the Annales in Leiden, 1595, this was far from satisfactory. Fragments of the tragedies were, with notes by G.J. Vossius (q.v.) and Hesselius, included in the edition by Hieronymus Columba, Naples 1590. On p 7 Huber quotes from Ennius' Annales to emphasise a point.

Faber (Favre, Faure), Antonius (Antoine) (1557-1624). Antonius Faber was born at Bourg-en-Bresse in 1557 and died at Chamberg in 1624. He was for some years president of the Court of Savoy. Of his writings the most significant is probably the Codex Fabrianius (1606), but we are here concerned with his De erroribus pragmaticorum (1598) and Rationalia in Pandectas (1604-1626). Huber mentions Faber (p 44) when listing the qualifications necessary for emending the corrupt texts of the old law and Faber, says Huber, at the age of 24 lacked the knowledge and experience and was severely criticised by Bachovius (q.v.). On p 41 Huber says that Wissenbach used to discourage his students from reading Faber's conjectures.

Fabius

See Quintilian.

Fabrotus, (Fabrottus), Carolus Annibal (1580-1659). Fabrotus was born at Aix en Provence in 1580 and died in Paris in 1659. He lived and worked in France and is here cited for his notes on the Constitutionum Ecclesiasticorum (which was then attributed to Balsamo (q.v.)). The question is raised (p 20) whether these notes are, or are not, acceptable as paratitla.

Florentina

The Florentine Digest is the most famous manuscript of the Digest still in existence. It consists of two large quarto volumes written by Greek scribes in the 6th century, possibly as early as the early 1530's. The manuscript was formerly at Pisa (littera Pisana) but, after the capture of Pisa by the Florentines in 1406, it was taken to Florence where it has been cherished to this day. Much textual emendation was centred on the Florentina, and Huber discusses its merits and demerits (pp 40, 41).

Gaius (c 120 – c 180 A.D.).

Almost nothing is known of the personal details of Gaius noster, although there has been much conjecture. He apparently did not have the ius respondendi but was specifically named in Theodosius II’s Law of Citations 426 AD. His work was excerpted for the Digest and he was clearly considered a jurist of distinction. Moreover, his Institutes, an introductory manual, written in about 161 A.D., was used as the basis for Justinian’s Institutes. However, much of Gaius’ modern celebrity is associated with Niebuhr’s dramatic discovery of a palimpsest of his Institutes in the library of the Chapter at Verona in the early 19th century (1816). Huber’s knowledge of Gaius was based on fragments of his writings and he says (p 57) those must be used for comparative purposes.

Galen, Claudius (130-199 A.D.).

Galen, a celebrated physician from Pergamum, was born in 130 A.D. and possibly died in Sicily in 199. He has had a dominant influence on medical thinking from his
own day to the beginning of ‘modern medicine’ in the 18th century. He was one of the most learned men of the ancient world, an admirer of Hippocrates, and is accredited with 83 genuine works and a large number of doubtful authenticity; these concern not only medicine but also ethics, logic and, naturally, philosophy. His works on medicine were translated into Arabic in the 9th century. Innumerable editions and commentaries on various aspects of Galen’s work have been produced but not necessarily studied. Huber (p 12) says that he is not suitable for elementary medical studies.

Gronovius, Jacobus (1645–1716).
Gronovius was educated in Latin, Greek and law, mostly in Leiden. His young manhood was spent travelling in England, Spain, France and Italy. In Italy he was appointed to lecture in law at Pisa, an appointment he held for two years. Thereafter he was lecturer in Greek at the Hoogeschool at Leiden. However, his fame rests upon his written work, especially critical editions of the Classics and translations of Greek texts into Latin. His edition of Cebetis Thelani tabulae Graece et Latinae cum notis et emendationibus, was produced in Amsterdam, 1689. It is to this that Huber refers on p 17.

Grotius, Hugo de Groot (1583–1645).
Grotius was born at Delft in 1583 and died as a result of a shipwreck at Rostock in 1645. It is said that ‘In the annals of precocious genius there is no greater prodigy on record than Hugo Grotius’. And that was only the beginning. His intense political and religious sentiments landed him in Loevestein Castle from which his escape in a box of books is the stuff of which historic drama is made. Yet his lasting fame is based on his legal writings. Here Huber (p 46) is referring to an attack made on Grotius’ De Iure Belli et Pacis by Salmasius (q.v.). The two lines quoted on p 40 are from a poem to be found in the Praefatio to Grotius’ Florum Sparsio by G.C. Gebauer.

Harmenopulus (Harmenopoulos), Constantine (c 1310 – c 1380).
Harmenopulus, one of the last great Byzantine jurists, died in Constantinople between 1380 and 1383. He was the author of the Hexabiblos, a manual of Roman law as in force in 14th century Byzantium. Until the 19th century it was used as part of the legal tradition in Eastern Europe, eg in 1830 Capodistrias of Greece instructed judges to use the Hexabiblos as subsidiary law. The Denis Gothofridus edition, Geneva 1547, was the standard for the 16th century. Huber cites Harmenopulus (p 36) as one who wrote προκειμένα or manuals.

Hermogenianus (late 3rd century).
This Roman jurist is mentioned by Huber (p 14) as being the author of a collection of epitomes, the Iuris Epitome, in six books. He is cited in the Digest, (106 extracts). It is not probable that he was the man who composed the Hermogenian Code.

Hilliger, Oswald (1583–1619).
Hilliger, a German jurist and professor at Jena (1616–1619), is particularly noted for his work on Donellus’ massive Commentarii de jure civile. He edited it in an epitomised but still lengthy form together with extensive notes of his own. For the numerous editions of the Commentarii, with Hilliger’s notes, see Alshmann-Feenstra BGNR Leiden, p 117f, nos 251, 254-264.

Hippocrates of Cos (contemporary with Socrates 469–400 B.C.).
Hippocrates is a historic figure shrouded in mystery. He is commonly regarded as the ‘ideal physician’, the ‘Father of Medicine’ and a massive corpus of more than 60
works attach to his name. These deal with all aspects of medicine — diagnosis and prognosis, surgery and pharmacology etc. but from the 3rd century B.C. scholars, both medical and literary, agreed that these were not all the works of one man; however, they disagreed as to which were authentic, which forgeries and which problematic. Today it seems certain that most of the works in the Hippocratic Collection are treatises or notes by his contemporaries and successors. Nevertheless, the fame of Hippocrates was such that his birthday was celebrated in Cos, a vast superstructure of fabulous tales was constructed around his life and his status continued untarnished until, in the 20th century, the entire structure of Hippocratic medicine was challenged. But, says Huber (p 12), his works are not suitable for tyros.

Homer (8th century B.C.).

Our ignorance of Homer’s dates, place of birth and circumstances has given rise to much scholarship devoted to details of his personal life and more controversially to his methodology in composing the Iliad and the Odyssey. However, although the Alexandrian Chorizontes doubted whether both epics were composed by the same man, the traditional view prevailed until, in 1795, F.A. Wolf tried to show that the epics were in fact small songs describing single exploits of individual heroes. This started the flood of Homeric commentary which has waxed and waned, the present viewpoint tending to the traditional. Certainly, in the 17th century the generally accepted view was that Homer was the composer of both the Iliad and the Odyssey. Huber here, p 40, cites an anecdote from Plutarch concerning correcting Homer.

Horace, Quintus Horatius Flaccus (65-8 B.C.).

Horace was born in Apulia in 65 B.C., he died on his beloved Sabine farm in 8 B.C. He was the most famous Augustan poet, whose perfection of form, elegance of metre and tolerance of human nature have made his works immortal. He became the friend of leading literary figures in Rome and was one of Maecenas’ (q.v.) protégés. On p 14 Huber cites from Ars Poetica 335 et seq to emphasize the need for concise language.

Irnerius (c 1055 – c 1130).

Irnerius is accredited with establishing the study of law at Bologna and of writing glosses on the texts. We know something of his opinions as there are many glosses in Medieval MSS under the siglum for Irnerius. His name is associated, as here on p 38, with establishing the Authenticae.

Javolenus, Octavius Priscus (c 60-c 120 A.D.).

Javolenus was the leader of the Sabian School. His literary productions were mainly epitomes of former jurists, eg libri ex Plautio, and, for Huber’s purposes (pp 14 and 15), the ex Posterioribus Labeonis (an abridgement of Labeo q.v.). Javolenus’ Epistulae suggest that he was a competent and independent thinker, not a mere epitomiser.

Julius Caesar, Gaius Julius (102 B.C. — Ides of March 44 B.C.).

Julius Caesar’s reforms were purposeful but of necessity incomplete. He is known for his agrarian laws, sumptuary laws, his reform of the calendar, etc. Among his many proposals was a plan to compose a digest of all Roman laws (see Dialogus p 16) but the assassins’ daggers put paid to this as well as to other beneficial schemes. On the proposed Digest, see Suetonius, Lives of the Emperors, Julius Caesar § 44.

Julius, Julianus (6th century A.D.).

The jurist referred to by Huber (p 36) as Julius Patricius Exconsul et Antecessor Constantinopolitanus is almost certainly the Julianus who was indeed a professor at
Constantinople and was credited by some authorities with an *Epitome of the Novellae*. It is now agreed that this *Epitome* was written before the death of Justinian and Julianus translated his abridgements into Latin, where the *Novellae* were not originally published in Latin. The history of Julianus’ *Novellae* is intricately involved with the history of the *Authenticum* (q.v.). Alciatus (*Parerga*, II.46) refers to Julianus as *Patricius* and ex-consul. It is not known whence he derived his information, as contemporary records are lacking, but Huber presumably accepted Alciatus’ authority.

Jupiter, *Aequus Jupiter* (benevolent Jupiter) was the chief of the Roman gods. He had many attributes, being initially rural but rapidly, as *Jupiter Optimus Maximus*, becoming the protector of the city and the state. He was also the protector of the family and determined the course of all human affairs. He foresaw the future and events were the outcome of his will.

Justinian (Flavius Petrus Sabbatius Justinianus) (482–565 A.D.). Justinian was probably born in 483 A.D. in the village of Tauresium in Dardania; he died in Constantinople in 565. Justinian, Roman Emperor of the East, 527–565 A.D., and his consort, Theodora, need no introduction. In the *Dialogus* Huber is particularly concerned with Justinian’s educational reforms and refers to the *Constitutio Deo Auctore*, the *Constitutio Omnem* and the *Constitutio Tanta*. The references are often *ad lib.* rather than precise quotations. Huber is also concerned with emendations to Justinian’s *Corpus Iuris*, especially those not based on the Florentine (q.v.).

Justinus, Marcus (3th century A.D.). Justinus, the historian, produced what was considered to be an epitome of Trogus Pompeius’ *Historiae Philippicae*. This epitome was severely criticised generally for an apparently casual and cavalier caprice. However, it would appear from Justinus’ preface that he was not composing a systematic compendium but an anthology of extracts he considered of particular interest. The *editio princeps* of Justin’s anthology was printed in Venice, 1470, followed by one from the Aldine press, 1522. The most accurate editions were those of Graevius, Leiden, 1683 and of Gronovius (q.v.), Leiden, 1719 and 1760. See *Dialogus* p 13.

Labeo, Marcus Antistius (d. before 22 A.D.) Labeo was, according to tradition, one of the founders of the Proculian school. He was very knowledgeable, especially of the law and wrote copiously — *Responsa, Epistulae* etc. These works which remained unpublished at his death were subsequently edited as *libri posteriores* (40 volumes). Javolenus (q.v.) made an epitome of the *Posteriores*. Otherwise Labeo is known from quotations by other jurists and by excerpts in the *Digest*. (See pp 14–15 of the *Dialogus*.)

Lacones

The Spartans, or Lacones, lived in Laconia, in the south-eastern Peleponnese. They are known to history particularly for their military prowess. Here the reference on p 14 is to their brief, concise manner of speaking.

Lapiths see Centaurs.

Leo the Philosopher / Leo the Wise, Leo VI Flavius (886–912, reigned 865–912). Leo VI, surnamed *Sapiens* and *Philosophus*, was undoubtedly possessed of a first-class academic intelligence, even although much of his life has been severely censured by earlier, especially Victorian, historians such as Gibbon (*Rise and Fall*, p 740) for that uninterrupted series of intrigues, corruption and wars which marked
his reign. Huber mentions him on p 36 and p 57 for the Basilica (Βασιλικαὶ Διατησίματα), an imperial codification, consisting of 60 books, subdivided into titles and extracts from the Codex, the Pandects, the Institutes and the Novels, presented together under the appropriate title. Some outdated and superfluous sections of the Corpus Iuris are omitted, certain constitutions, not found in the Codex are included, and the entire work is translated into Greek. It was initiated by the emperor, Basil the Macedonian (c. 826–886), and probably completed in the reign of his son, Leo. About two-thirds of the Basilica is preserved. It is patent that this is and has been a significant text, both in its own right and as reference for critical studies of the Digest and the Codex. Some Basilica Mss. have scholia, both Justinianic and post-Basilican.

Leunclavius (Löwenklau), Johannes (1533–1593). Leunclavius was born in Westphalia and died in Vienna. He was one of the great scholars of his age and is cited here on p 20 as one of those who understood the original purpose of the Paratitla. The reference is to his Ius Graeco-Romanum tam canonicum quam civile (Frankfurt, 1593) or to his notes on Balsamo’s Collectio Constitutionum Ecclesiasticum.

Livy, Titus Livius (59 B.C.–17 A.D.). Livy was born in Padua and died there at the age of 76. Livy’s Annales, better known as Ab Urbe Condita libri was a monumental history of Rome from its foundation to 9 B.C. It consisted of 142 books of which only 35 are extant together with a smattering of fragments, excerpts and quotations. There is an epitome, dull and pedestrian, of which the author is unknown, although, as here (p 13), it is sometimes accredited to Annaeus Florus (q.v.). Livy’s purpose was primarily to write a history worthy of Rome and her greatness and secondly to support Augustus’ moral reforms with vivid word pictures of the great men of her past. The narrative is clear and pleasing; it holds the reader’s attention and has provided many generations of young people with their first introduction to the story of Rome. Modern historiographers, viewing Livy through professional eyes accustomed to analyse, evaluate, research and cite sources, are often critical of Livy’s methodology — or lack of it — but none can deny the compelling charm of his narrative and excellence of his style. The existing Mss of the Annales did not appear together at one time. During the early 16th century various books and parts of books were discovered in monastic libraries, mostly in Germany. At the time of Huber’s writing, humanist scholars were anticipating further discoveries. The most important of the Dutch scholars was Gronovius whose collated edition was published by Elzevier in 1665 and 1679.

Lothar the Saxon (Lothair III, 1087–1137, Holy Roman Emperor 1125–1137). Legend has it that Lothar III had prescribed the teaching of Roman Law and its use within the Imperial courts at the request of Irnerius (q.v.) or of Matilda of Tuscany. Thus the Holy Roman Empire exemplified its claim to be a continuation of the Roman Empire. H. Conring (1606–1681) in his De Origine Iuris Germanici (1643) argues that Roman Law had not been received thus from Lothar but by a slow process of assimilation. Savigny (1779–1861) likewise declared the legend unrealistic. Huber (p 38) regards it as a historical fact.

Maecenas, Gaius (d. 8 B.C.). Maecenas was one of the rich and cultured members of Augustus’ circle. For our purpose he is important as the patron of Horace (see Carmina 1.1.1) and Virgil (see Georgics 1.1–3. Hence a Maecenas (p 1) has become proverbially any generous patron, especially of art or literature.

Matthaeus I, Antonius (1564–1637). Matthaeus I was born in Hesse in 1564 and died in Groningen in 1637. He studied law at Marburg and Heidelberg. He was professor of law at Marburg (1605–1625)
until he moved to Groningen (1625-1637). However, Matthaeus I is nothing like as significant a legal writer as his son, Matthaeus II. He is mentioned here (pp 46-47) as having taught Wissenbach (q.v.) and exercised a sound form of textual emendation.

Menagius (Ménage), Aegidius Gilles (1613-1692). Menagius was born at Angers in 1613. He made his name as an advocate and legal writer. The work here cited, *Iuris civilis amoenitates*, Paris, 1664; Franeker, 1700, is a collection of elegant dissertations on various topics. Huber added to his 1688 edition a substantial section on paratitla including (p 21) sentences and phrases from Menagius’ *Amenitites*. Yet on p 61 of the 1688 edition and p 108 of 1684, Huber implies that Menagius’ *Amoenitates* was unknown to him.

Mezerayus (de Mézeray), François-Eudes (1610-1683) Born in 1610 and died aged 73, in Paris (1683) Mezerayus was a noted, if somewhat controversial French historian and historiographer. He belonged to the Académie Française and supported the idea of the literary and scientific journal, *Le Journal des savants*. In the 1688 edition of the *Dialogus* (p 15) he is mentioned because of his *Histoire de France* (3 vols. in Folio 1643, 1646, 1651). A second edition was printed with corrections by the author in 1685. The work was abridged, under the title of *Abrégé chronologique ou Extrait de l’histoire de France* in 1608 and reprinted several times thereafter. Mezerayus is not mentioned in the 1684 edition but appears in the 1688 edition with other modern historians whose works had been abridged but who had not suffered thereby.

Mornacius (de Mornac), Antonius (Antoine) (1554-1619). Mornacius is one of the French writers on practice. He wrote observations on 24 books of the *Pandects* and on four books of the Codex intended for use in the Courts. Huber (p 43) commends him heartily for his commentaries and emendations based on the law.

Munkerus, Thomas (1640-1681). Munker was born in Friesland in 1640 and died in Delft in 1681. He studied in Deventer, where his brother Philip was rector of the Latin School, and later at Franeker, where he disputed under the eminent theologian Nicolas Arnoldus (1651-1680). As rector of the Latin School in Delft he exerted considerable influence on classical and historical studies and his early death was a loss to education. Among his friends and correspondents, he counted Huber, Perizonius and Nicholas Heinsius. On p 30 he is introduced as one who might have taught Crusius/Noodt Greek. He wrote a dedication verse to Crusius on the occasion of the publication of his *Diatribe... de scriptura et sententia*. See Ahsmann-Feenstra BGNR Leiden, p 83, nos 115, 116.

Nestor Nestor of Pylos owes his fame to the Iliad and, to a lesser extent, to the Odyssey. He is portrayed as an old man, wise, just and kindly if somewhat ineffective and prone to give platitudinous advice. He is noted here (p 14) for his laconic eloquence but, as noted (ft 38) the citation applies to Menelaus, not Nestor.

The Novellae and the Authenticum. Novellae (Novels) are imperial enactments issued after a codification, eg the Theodosian Novels were issued after the *Theodosian Code* of 439 A.D. The Novels of Justinian, consisting of approximately 160 enactments were promulgated after the publication of the second Code (534 A.D.). Of Justinian’s Novels (168) most are in
Greek, 15 in Latin and 3 in both Latin and Greek. Julianus (q.v.) wrote a Latin epitome of 125 of Justinian’s Novels. The *Authenticum* is a collection, in Latin, of 134 Novels. Its author is unknown. He appears not to have been a jurist as many of the Novels are inaccurately translated. When the *Authenticum* first became known in the 12th century it was suspected to be a forgery but the glossators eventually declared it authentic. Hence the name *Liber Authenticorum*. In the schools it largely superseded Julianus’ *Epitome*. For a definitive discussion see Wallinga “*Authenticum* and *Authenticae*”.

Orosius, Paulus (early 5th century).

Orosius was a Spanish presbyter of Tarragona, much involved with religious politics in Spain, North Africa and Syria, but his importance for Huber lay in the fact that he wrote an apologetic History in 7 books. The purpose of this History was to counter the Gentiles’ argument that the sacking of Rome by Alaric (410) was to be attributed to the wrath of the pagan gods who had been displaced by the Christians. Orosius showed that such disasters had befallen men long before the rise of Christianity. To compose his *History* Orosius excerpted Justin (q.v.), Eutropius and other lost historians, including a lost epitome of Livy (q.v.) and of Tacitus’ *Histories* (q.v.). This is largely where the importance of the work is to be found. As a work of history it is fraught with defects, as was known to Sigonius and Lipsius and presumably to Huber (see p 5). The Havercamp edition, Leiden, 1738, was known to historians in the 18th century.

Papinianus, Aemilius (c. 140 — (executed by the Emperor Caracalla) 212).

Papinian was one of the most significant of the Roman jurists. He was both a practical jurist and a copious writer. In terms of Theodosius II’s *Lex Citations* of 426 A.D. in the case of a draw, Papinian’s opinion prevailed. This is testimony to the quality of his opinions which revealed deep understanding of the rôle of law and equity. There are approximately 600 fragments from his work in the *Digest*. In Justinian’s programme of revised law studies he addresses the method in which third-year students, still called ‘Papinianistae’, should learn Papinian’s *Quaestiones*, *Responsa* and *Definitiones*. See *Omnem* §4. Huber (p 9) blames Justinian for destroying the valuable works of Papinian.

Paulus, Julius (3rd century A.D.).

Paul was one of the jurists most copiously excerpted for the *Digest* (2080 fragments). He wrote approximately 320 books, comprising commentaries on earlier jurists such as Javolenus, Scaevola and Papinian and a great number of monographs on such subjects as wills and testaments, punishment, adultery, etc. The *Sententiae Pauli* is a work in 5 books which, it has been argued, is not the work of Paul but an anthology of his writing compiled by an unknown jurist in about 300 A.D. Paul is one of the jurists mentioned in the *Law of Citations* (426 A.D.). Cujacius (q.v.) commented extensively on Paul. Huber refers to him in the context of epitomes (pp 9, 14, 15 and 57).

Phaedrus (c. 15 B.C — c. 50 A.D.)

Phaedrus was born in Macedonia but was educated in Italy. He is noted as the writer of fables, often based on those of Aesop. The fables embrace jokes, moral tales and social comment. Here (p 46) he is cited by Crusius as saying that despite criticism, he will continue with his juridical criticism.
Placentinus (d. 1192).
Placentinus was a glossator but was also involved in practice. He was instrumental in founding the law school in Montpellier. He is mentioned on p 38 as one who wrote *Summae*.

Plato (c. 429–347 B.C.).
Plato, the philosopher, founded the Academy outside Athens. His name is introduced here on p 12, to indicate a scholar whose work cannot be studied directly, without preparation and assistance. For the Platonic Dialogue see the Commentary, Chapter IV.6.1.

Plutarch (c. 46–post 120 A.D.).
The work which has immortalised Plutarch’s name and which is of significance for this work is his *Lives*, forty-six parallel lives, a Greek together with a Roman. Plutarch is said to have quoted over 200 sources for his *Lives*, about 80 of whom are writers whose work is lost. The aim of this work is not history but biography with the characters illuminated by anecdote. It is to his life of Alcibiades that Huber refers on p 40.

Polybius (c. 203–c. 120 B.C.).
Polybius was a Greek from Achaea who spent 16 years as a hostage in Rome. There he became a close companion of Scipio Africanus, a member of the Scipionic circle and an admirer of Rome’s political and military achievements. His father had been a leading figure in the life of his home state and from early manhood Polybius had taken an active part in public life. Hence he was able to bring much first-hand knowledge of war and peace to the writing of his *Universal History* in 40 books. His purpose was to describe factually the expansion of Rome from the start of the second Punic War (220 B.C.) to the final conquest of Spain, Africa and Greece (146 B.C.). Of the entire work only 5 books have survived complete. There are a variety of excerpts in Livy (q.v.), Cicero (q.v.) and Plutarch (q.v.) and from this it is possible to assess the quality of his writing. His work had a strong didactic element, and completely lacked the vivid imagination and dramatic colour which historians such as Thucydides or Livy brought to their narratives. Partial editions and translations into Latin were produced in Italy as early as 1473. An edition by Gronovius (q.v.) appeared in Amsterdam in 1670. On p 9 Polybius is mentioned as a writer whose works suffered from abridgement.

Psellus, Michael Constantine (1018–1105).
Psellus was born at Constantinople in 1020. He died in disgrace in 1105. He was one of the most remarkable men of his generation, historian, politician, humanist, philosopher and classical scholar. His *Chronographia* is a valuable, and amusing, memoir covering the years 976–1077 but it is for his *Synopsis Legum* that he is cited here on p 36. The full title is given as *Synopsis Legum versibus iambis et politicis* and the laws are written in metric form.

Quintilian, Marcus Fabius (c. 35–100 A.D. or later).
Quintilian, the most celebrated of Roman rhetoricians, was of Spanish origin but was educated largely in Rome. His fame derives from his reputation as a teacher. Vespasian appointed him as Professor of Rhetoric and paid him a salary. It was after he retired in 90 A.D. that he wrote his *De Institutione Oratoria libri XII* which covers the education of an orator. Book I which treats of education in boyhood is a sane and sensible discussion which is of value even today. Books III to IX deal with the technical aspects of oratory. Book X is a brief review of Greek and Latin authors and
Quintilian’s evaluations are still cited by modern literary commentators. Quintilian’s style, as is to be expected, is clear and polished but not affected. There were several editors of the *Institutiones*, prior to the important Petrus Burman edition, Leiden, 1720. He is referred to in the *Dialogus* as Fabius (p 59).

Raevardus, (Reyvaert) Jacob (1535-1568). Raevardus was born near Bruges in 1535 and died there in 1568. He taught at Louvain, Orleans and Douai. His great erudition earned him the name ‘the Papinian of the Netherlands’. He is here (p 39) cited as one who drew on his knowledge of antiquity and philosophy in order to comment on the *Digest*.

Rufinus (Ruffinus), Licinius (3rd century A.D.). Rufinus was a jurist, 17 of whose excerpts feature in the *Digest*. In the Geneva edition of the *Collatio Legum Mosaicarum et Romanarum* (q.v.), a Licinius Rufinus is mentioned as the compiler. Modern scholars do not accept that this was Rufinus, the jurist. Huber (p 10 and p 57) does not question Rufinus’ authorship.

Rusius, Albertus Ketwich (1614-1678). Rusius studied at Deventer, Groningen, Franeker and Leiden. He became professor at Amsterdam in 1646 and at Leiden in 1659. His inaugural oration, given on 16th September 1659 in Leiden, was *Oration de Jejuna quorundam et Barbara juris compendiaria*, see Altsmann–Feenstra, BGNR Leiden, p 206, no. 553, and the Commentary, Chapter VI.1. He only appears in the 1684 edition of the *Dialogus*, on pages 45, 47 and 57.

Salmasius (Saumaise), Claude (1588-1653). Salmasius was born at Sémur in 1588 and died in 1653. He was one of the greatest French philologists of his day, but he was a difficult and aggressive scholar who indulged in verbal polemics. Attacks and counter-attacks raged. Here (p 44) reference is made to a diatribe concerning *mutuum* which involved Cyprianus Regneri ab Oosterga. During his time in Leiden he and Daniel Heinsius were constantly at daggers drawn. It is to his relations with Grotius that reference is made on p 46.

Scylla and Charybdis
Scylla was supposedly a barking sea monster with six heads with three rows of sharp teeth apiece and twelve feet. If a ship came within reach she would seize six of the crew at a time and devour them. Opposite Scylla’s cave was the whirlpool, Charybdis, which sucked into its maw all passing ships. These two hazards were supposed to be located in the Straits of Messina, although in fact there is no such phenomenon there. See Seneca, *Epistles* 79.1. Proverbially they symbolize a serious danger, as on p 17. See Homer, *Odyssey*, 12.73-107; 12.234-259.

Salvius — see Swalvè.

Suarez, Josephus Maria (1599-1677)
Suarez was born on 5 July 1599 and died in Rome 1677. He was Bishop of Vaison (France) 1633-1666; head of the Vatican Library 1668-1677. His major interests were antiquarian. On p 36 Huber mentions his *Historia Iuris Romano-Graeci sive notitia Basiliorum* (Rome 1637, Amsterdam 1663).

Suetonius, Gaius Tranquillus (c.69–140 A.D.). Suetonius was probably born in Rome. He appears to have been a lawyer by profession but his public career was undistinguished and his fame rests on his
surviving works, especially De vita Caesarum, biographies of Julius Caesar to Domitian. This work is important, not only because of its intrinsic interest but also because of the long-lasting impact it had on historiography. In writing of the emperors Suetonius draws on public documents, the writings of the emperors and of those who knew them, as well as eye witness accounts of specific episodes — the result being anecdotal, in fact often scandalously so, rather than historical in the modern sense. His style is generally straightforward, with few stylistic flourishes. Editions of the Lives of the Emperors are numerous. Before 1500, fifteen editions had appeared, ample proof that this was favourite reading. There is a edition by Petrus Burman, Amsterdam, 1736. On p 52 Huber recommends a full knowledge of Suetonius as a sound basis for Roman judicial antiquities.

Swalve, Bernard (1626-1680)

Bernard Swalve was a Dutch medical doctor and wrote the Querelae et approbria ventriculi, sive Prosopopoeia eiusdem naturalia sua sihi vendicantis et abusus tam dieteticos quam pharmaceuticos perstringentis, Amsterdam 1664. The work was reviewed in the Journal des Scavans of 18th January 1666 and it is one of the two reviews mentioned by Böckelmann (pp 58 and 60) in the discussion of the Journals.

Terence, Publius Terentius Afer (195?-159 B.C.).

Terence was an emancipated slave from Africa who was admitted to the Scipionic circle and was known for his comedies, based largely on those of Menander. He is noted for his subtle and elegant use of language and his ne quid nimis (nothing in excess) is quoted on p 51.

Themis

Themis is the personification of order as established by law, custom and equity. She lived on Mount Olympus, although she had sanctuaries in various places, such as Athens, Thebes and Olympia. For the Romans she became the goddess of Justice (and Prophesy). See i.a. Ovid, Metamorphoses, 1.321; 1.379 (for Themis and prophesy), 7.762; 9.403 (for Themis as goddess of Justice). She appears in the Dialogus (pp 27, 28, 40 and 49) as the personification of Justice.

Theodosius II (401-450 A.D.).

The reign of Theodosius II is noted for little except the compilation of the Theodosian Code (438 A.D.). This was a collection of imperial constitutions from the time of Constantine the Great (312 A.D.) and was modelled on the collections of Gregorianus and Hermogenianus. Where a constitution treated of several diverse matters, the separate parts were put under the appropriate title. The date of each constitution was provided and within each title they were arranged in chronological order. In the Western Empire part of the code was incorporated into Alaric’s Breviary, the Lex Romana Visigothorum and the relevant portions served as a basis for Justinian’s Code. On p 57 the Theodosian Code is bracketed with eg the Basilica as suitable for advanced study of the law.

Thuanus (du Thou), Jacques Auguste (1535-1617)

Thuanus was born on the 8th October 1553 and died on 7th May 1617. He came from a family which had served France in church and state. At the age of 17 he started studying law at Orléans, Bourges and later Valence, under Cujacius. Being widely travelled, and having served the state in several capacities, he was well equipped to write his monumental Historia sui temporis (History of his times) in 138 volumes, the first 18 books of which, covering the period 1545-1560, appeared in 1604. Later volumes appeared in 1607 and 1608. Although du Thou aimed at
producing a scientific and unbiased description of a stressful period of French history, his work was attacked and the volumes dealing with the wars of religion and the St. Bartholomew’s Day massacre were put on the Index Librorum Prohibitorum (9th November 1609). He was accursed of being a “False Catholic and worse than an open heretic”. To defend himself and his work, du Thou forbade any translation into French or other languages. However, after his death in 1617, a beginning was made with a partial translation into German. It is presumably in the context of compendia that he is mentioned by Huber, p 15 in the 1688 edition only. Huber’s argument is that compendia would not endanger the fate of the actual book.

Trebatius, Gaius
Trebatius was one of the later Republican jurists, the teacher of Labeo (q.v.) and a friend of Cicero. We know little of his work but he was highly regarded by the Classical jurists, which perhaps explains why Huber prefers him to Tribonian. See Dialogus p 16.

Tribonian (? — 544 A.D.).
Tribonian, the jurist, is one of the spectacular names in legal history. The story of his political life is irrelevant for us here (fascinating though it undoubtedly is). His importance for the Dialogus lies in his rôle as superintendent, gubernator, of the Digest (see Constitutio Tanta § 1). He was most learned, especially in the legal literature of the past and possessed a comprehensive library (Tanta § 17). He is regarded as the major figure in the compilation of the Corpus Iuris, acting as Justinian’s principal collaborator and adviser. In the 17th century his unsavoury reputation was in no small degree based on his prejudiced evaluation by Procopius (Persica, 1.24). However, his reputation has been greatly enhanced among recent scholars by T. Honoré’s Tribonian. On p 16 of the Dialogus he is compared to his disadvantage with Trebatius (q.v.), but on p 47 Tribonian is mentioned as the target of “Interpolation hunting”.

Trogus, Pompeius (1st century B.C.).
Trogus flourished under Augustus. The 44 books of his Historiae Philippicae describe the origins, rise and decline of the Macedonian monarchy. His sources were mainly Greek and the Macedonian story-line was used as a central theme on which to attach various excursions. Trogus’ style was elaborate and dramatic. Our knowledge of his work is largely thanks to the anthology of interesting passages drawn up by Justinus (q.v.). On pp 9, 12 and 13 it is argued that Trogus’ work was lost because of abridgement.

Ulpianus, Domitianus (assassinated 223 A.D.).
Ulpian was a contemporary of Paul, also a prolific writer and, like Paul, his writings constitute a third of the Digest (2460 excerpts, many of some length). Ulpian is said to have been a compiler rather than an original thinker. His major works were the Libri ad Edictum (81 books) and the Libri ad Sabinum (51 books). On pp 9, 10 and 57 there are complaints that much of his writing was lost thanks to Justinian.

Varus, Alfenus (1st century B.C.).
Little definite is known about Alfenus Varus, but he seems to have been a pupil of Servius Sulpicius Rufus and author of a Digesta in 40 books. There are 54 excerpts from Varus’ Digest in Justinian’s Digest. On pp 14 and 15 Huber argues that his work has been lost due to epitomes.

Viglius, Ulrich Viger van Aytta (1507–1577).
The Name Zuichemus or Zuichemus, van Zwickum, was added to Viglius because he was adopted by his uncle, the pastor of Zwickum. Although he was born near
Leeuwarden in 1507, he studied in France under Alciatus and lectured at the University of Padua. He discovered and published a MS of Theophilus’ *Paraphrasis*. A humanist and friend of Erasmus, he is here cited as an eminent jurist (p 39). A recent publication is Pikkemaat, J.G.B, *Viglius van Aytta als hoogleraar in Ingolstadt Nijmegen*, 2009.

**Vinnius, Arnold (1588–1657)**

Vinnius was born in 1588 near The Hague, studied law at Leiden and was professor there until his death in 1657. He is famed for his Commentary on the *Institutes of Justinian* (1642). The policy he adopted was to set out sections of the *Institutes* and attach lengthy comments and explanations, especially mentioning the contemporary position in Holland. Vinnius’ *Institutes* was reprinted many times with further commentary by Heineccius. It has rightly been regarded as a most useful standard work. Vinnius is here mentioned (p 15) for his *Jurisprudentiae Contracta*, based on Donellus, and on p 46 as a jurist ‘of wide scholarship’.

**Vossius, Gerardus Johannes (1577-1649)**

Vossius was one of the most important members of the Dutch Republic of Letters in the 17th century. His biographer, C.S.M. Rademaker (Vossius, p 352-3) sums up Vossius’ contribution to knowledge as follows: “Since it covered the entire tremendous terrain of humanistic learning, its great value lies first and foremost in this, that it contained everything that the past and his own time had discovered and developed, summarized in an extremely systematic fashion and provided with a commentary directed mainly to the actuality of Vossius’ own time. . . . Vossius’ books were sought mainly for the grand summary and systemisation of the scholarly information existing at that moment”. Rademaker cites Wickenden, *Historiography*, p viii. “He was not a fount of inspiration but a quarry of facts”. He is mentioned in the *Dialogus* (p 12) for his sterlning work especially in systematising history.

**Wissenbach, Johannes Jacobus (1607–1665).**

Wissenbach was born in Nassau in 1607. He was professor at Franeker from 1640 until his death in 1665, hence *Wissenbach noster*. He was highly regarded in the 17th and 18th centuries and is here (p 47) commended for his textual criticism, as in his *Emblemata Triboniani*. See Feenstra, *BGNR Franeker*, for his publications.

**Xiphilinus of Trapezus (11th century A.D.).**

Xiphilinus of Trapezus was a monk at Constantinople and, at the command of the emperor Michael VII Ducas, he made an epitome of Dion Cassius’ (q.v.) Books 36–80. Xiphilinus took liberties with the text, redistributing the work into sections and omitting the names of consuls. Leonhard Schmitz (Smith, Vol. III, p 1308) writes “The work is executed with the usual carelessness which characterises most epitomes and is only of value as preserving the main facts of the original, the greater part of which is lost”. The epitome of books 60–80 was first printed by Leunclavius (Frankfurt, 1592). Xiphilinus is referred to on p 9 and p 13 for his epitome.

**Zasius, Udalricus (1461–1535).**

Zasius was born at Constance in 1461, studied at Tübingen and later became professor of law at Freiburg im Breisgau. He was a friend of Erasmus, although his first legal writing did not reflect the humanistic influence, his later publications attempted to use the new classical scholarship to illuminate the law texts He is bracketed with Alciatus and Viglius on p 39.
# Appendices to Part II

## II INDEX OF PROPER NOUNS IN THE 1684 AND 1688 EDITIONS

This Index of Proper Nouns is limited to those mentioned in the 1684 and 1688 editions of the *Dialogus*. As the 1688 edition is, for reasons stated above, the edition used in this translation, the 1688 pages are listed first. The 1684 page numbers are listed in the second column.

<table>
<thead>
<tr>
<th>Name</th>
<th>1688 edition</th>
<th>1684 edition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accursius, Franciscus and the Accursians</td>
<td>31, 38</td>
<td>52, 67</td>
</tr>
<tr>
<td>Alciatus, Andreas</td>
<td>39</td>
<td>69</td>
</tr>
<tr>
<td>Alcibiades</td>
<td>40</td>
<td>70</td>
</tr>
<tr>
<td>Amerpoel, Johannes</td>
<td>58, 60</td>
<td>104, 106</td>
</tr>
<tr>
<td>Annaeus Florus</td>
<td>13</td>
<td>22</td>
</tr>
<tr>
<td>Aristotle</td>
<td>12</td>
<td>21</td>
</tr>
<tr>
<td>Attaliota, Michael</td>
<td>36</td>
<td>63</td>
</tr>
<tr>
<td>Augustinus, Antonius</td>
<td>39</td>
<td>69</td>
</tr>
<tr>
<td>Authenticae</td>
<td>38</td>
<td>60</td>
</tr>
<tr>
<td>Authenticum</td>
<td>31</td>
<td>52</td>
</tr>
<tr>
<td>Azo</td>
<td>38</td>
<td>66</td>
</tr>
<tr>
<td>Bachovius Echtius</td>
<td>41</td>
<td>71</td>
</tr>
<tr>
<td>Baldus de Ubaldis</td>
<td>39</td>
<td>67</td>
</tr>
<tr>
<td>Balsamon, Theodorus</td>
<td>20, 36</td>
<td>63</td>
</tr>
<tr>
<td>Bartolus de Saxoferrato</td>
<td>39</td>
<td>67</td>
</tr>
<tr>
<td>Basilica</td>
<td>30, 36, 57</td>
<td>51, 64, 99</td>
</tr>
<tr>
<td>Baudius, Dominicus</td>
<td>40, 42, 43</td>
<td>70, —, 75</td>
</tr>
<tr>
<td>Blastares, Matthaeus</td>
<td>—</td>
<td>100</td>
</tr>
<tr>
<td>Brutus, Marcus Junius</td>
<td>16</td>
<td>23</td>
</tr>
<tr>
<td>Budaecus, Guilielmus</td>
<td>21, 39</td>
<td>69</td>
</tr>
<tr>
<td>Catones</td>
<td>—</td>
<td>28</td>
</tr>
<tr>
<td>Cebes of Thebes</td>
<td>17</td>
<td>24</td>
</tr>
<tr>
<td>Cedrenus, Georgius</td>
<td>—</td>
<td>100</td>
</tr>
<tr>
<td>Centaurs and Lapiths</td>
<td>44</td>
<td>78</td>
</tr>
<tr>
<td>Cicero, Marcus Tullius</td>
<td>1, 12</td>
<td>1, 21</td>
</tr>
<tr>
<td>Collatio</td>
<td>10, 57</td>
<td>17, 99</td>
</tr>
<tr>
<td>Constantine VII Porphyrogenitus</td>
<td>36</td>
<td>63</td>
</tr>
<tr>
<td>Cujacius, Jacobus</td>
<td>20, 21, 39</td>
<td>—, —, 69</td>
</tr>
<tr>
<td>Cyrus</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>Da Costa, Janus Baptista</td>
<td>20</td>
<td>—</td>
</tr>
<tr>
<td>Dio Cassius</td>
<td>9</td>
<td>16</td>
</tr>
<tr>
<td>Diodorus Siculus</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>Donellus, Hugo</td>
<td>15, 39</td>
<td>69</td>
</tr>
<tr>
<td>Duarenus, Franciscus</td>
<td>39</td>
<td>69</td>
</tr>
<tr>
<td>Durandus, Guilielmus</td>
<td>38</td>
<td>67</td>
</tr>
<tr>
<td>Ennius, Quintus</td>
<td>7</td>
<td>13</td>
</tr>
<tr>
<td>Faber, Antonius</td>
<td>41, 44</td>
<td>71, 77</td>
</tr>
<tr>
<td>Fabius — see Quintilian</td>
<td>59</td>
<td>106</td>
</tr>
<tr>
<td>Fabrotus, Carolus Annibal</td>
<td>20</td>
<td>—</td>
</tr>
<tr>
<td>Florentina</td>
<td>40, 41</td>
<td>69</td>
</tr>
<tr>
<td>Gaius</td>
<td>57</td>
<td>17, 99</td>
</tr>
<tr>
<td>Galen, Claudius</td>
<td>12</td>
<td>21</td>
</tr>
</tbody>
</table>
### A Dialogue on the Method of Teaching and Learning Law

<table>
<thead>
<tr>
<th>Name</th>
<th>Page 1</th>
<th>Page 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gronovius, Jacobus</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grotius, Hugo</td>
<td>46</td>
<td>80</td>
</tr>
<tr>
<td>Harmenopulus, Constantine</td>
<td>36</td>
<td>—</td>
</tr>
<tr>
<td>Hermogenianus</td>
<td>63</td>
<td>100</td>
</tr>
<tr>
<td>Hilliger, Owald</td>
<td>14</td>
<td>—</td>
</tr>
<tr>
<td>Hippocrates of Cos</td>
<td>12</td>
<td>—</td>
</tr>
<tr>
<td>Homer</td>
<td>21</td>
<td>—</td>
</tr>
<tr>
<td>Horace, Quintus Horatius Flaccus</td>
<td>14</td>
<td>—</td>
</tr>
<tr>
<td>Irnerius</td>
<td>38</td>
<td>66</td>
</tr>
<tr>
<td>Javolenus, Octavius Priscus</td>
<td>14</td>
<td>15</td>
</tr>
<tr>
<td>Julius Caesar, Gaius</td>
<td>15</td>
<td>23</td>
</tr>
<tr>
<td>Julius (Julianus)</td>
<td>36</td>
<td>63</td>
</tr>
<tr>
<td>Jupiter</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Justinian, Flavius Petrus Sabbatius</td>
<td>Passim</td>
<td>Passim</td>
</tr>
<tr>
<td>Justinus, Marcus</td>
<td>13</td>
<td>22</td>
</tr>
<tr>
<td>Labo, Marcus Antistius</td>
<td>14</td>
<td>15</td>
</tr>
<tr>
<td>Lacones</td>
<td>14</td>
<td>—</td>
</tr>
<tr>
<td>Lapiths</td>
<td>44</td>
<td>78</td>
</tr>
<tr>
<td>Leo the Philosopher, Leo VI Flavius</td>
<td>36</td>
<td>57</td>
</tr>
<tr>
<td>Leunclavius, Johannes</td>
<td>63</td>
<td>99</td>
</tr>
<tr>
<td>Lex Cornelia</td>
<td>45</td>
<td>78</td>
</tr>
<tr>
<td>Lex Julia</td>
<td>45</td>
<td>78</td>
</tr>
<tr>
<td>Livy, Titus</td>
<td>13</td>
<td>22</td>
</tr>
<tr>
<td>Lothar the Saxon</td>
<td>38</td>
<td>65</td>
</tr>
<tr>
<td>Maecenas, Gaius</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Matthaeus, Antonius I</td>
<td>46</td>
<td>47</td>
</tr>
<tr>
<td>Menagius, Aegidius</td>
<td>61</td>
<td>—</td>
</tr>
<tr>
<td>Mezerayus, Francois-Eudes</td>
<td>10</td>
<td>57</td>
</tr>
<tr>
<td>Mornacius, Antonius</td>
<td>43</td>
<td>75</td>
</tr>
<tr>
<td>Munkerus, Thomas</td>
<td>30</td>
<td>51</td>
</tr>
<tr>
<td>Nestor</td>
<td>14</td>
<td>—</td>
</tr>
<tr>
<td>Orosius, Paulus</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>Papinianus, Aemilius</td>
<td>9</td>
<td>17</td>
</tr>
<tr>
<td>Paulus, Julius</td>
<td>9</td>
<td>14, 15, 57</td>
</tr>
<tr>
<td>Phaedrus</td>
<td>46</td>
<td>79</td>
</tr>
<tr>
<td>Placentinus</td>
<td>38</td>
<td>66</td>
</tr>
<tr>
<td>Plato</td>
<td>12</td>
<td>21</td>
</tr>
<tr>
<td>Plutarch</td>
<td>40</td>
<td>70</td>
</tr>
<tr>
<td>Polybius</td>
<td>9</td>
<td>16</td>
</tr>
<tr>
<td>Psellus, Michael Constantine</td>
<td>36</td>
<td>63</td>
</tr>
<tr>
<td>Quintilian, Marcus Fabius</td>
<td>59</td>
<td>106</td>
</tr>
<tr>
<td>Raevardus, Jacobus</td>
<td>39</td>
<td>69</td>
</tr>
<tr>
<td>Rufinus, Licinius</td>
<td>10</td>
<td>57</td>
</tr>
<tr>
<td>Rusius, Albertus Ketwich</td>
<td>—</td>
<td>45, 47, 57</td>
</tr>
<tr>
<td>Salmiasi, Claude</td>
<td>44</td>
<td>46</td>
</tr>
<tr>
<td>Scylla and Charybdis</td>
<td>17</td>
<td>24</td>
</tr>
<tr>
<td>Salvius see Swalve</td>
<td>60</td>
<td>106</td>
</tr>
<tr>
<td>Suarez, Josephus Maria</td>
<td>36</td>
<td>63</td>
</tr>
</tbody>
</table>
### Appendices to Part II

<table>
<thead>
<tr>
<th>Name</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suetonius, Gaius Tranquillus</td>
<td>51, 91</td>
</tr>
<tr>
<td>Swalve, Bernard</td>
<td>58, 59, 60, 104, 106</td>
</tr>
<tr>
<td>Terence, Publius Terentius Afer</td>
<td>51, 90</td>
</tr>
<tr>
<td>Themis</td>
<td>27, 28, 40, 44, 45, 48, 70, 85</td>
</tr>
<tr>
<td>Theodosius II</td>
<td>57, 17, 99</td>
</tr>
<tr>
<td>Thuanus, Jacques Auguste</td>
<td>15, —</td>
</tr>
<tr>
<td>Trebatius, Gaius</td>
<td>16, 23</td>
</tr>
<tr>
<td>Tribonian</td>
<td>16, 47, 23, 81</td>
</tr>
<tr>
<td>Trogus, Pompeius</td>
<td>9, 12, 13, 16, 22</td>
</tr>
<tr>
<td>Ulpianus, Domitianus</td>
<td>9, 10, 57, 17, 99</td>
</tr>
<tr>
<td>Varus, Alphenus</td>
<td>14, 15, —, —</td>
</tr>
<tr>
<td>Viglius, Ulrich</td>
<td>39, 69</td>
</tr>
<tr>
<td>Vinnius, Arnold</td>
<td>15, 46, —, 80</td>
</tr>
<tr>
<td>Vossius, Gerardus Johannes</td>
<td>12, 21</td>
</tr>
<tr>
<td>Wissenbach, Johannes Jacobus</td>
<td>47, 81, 91</td>
</tr>
<tr>
<td>Xiphilinus of Trapezus</td>
<td>9, 13, —, 22</td>
</tr>
<tr>
<td>Zasius Udalricus</td>
<td>39, 69</td>
</tr>
</tbody>
</table>
Appendices
to the
Commentary
APPENDIX A

Latin passages in the 1684 edition which were removed from the 1688 edition

A1 1684, pp 28–30 (33 lines)

(Böckelmann is speaking)
Nec tamen dissimulo, ejusmodi aliquid nonnullis juvenibus à me dictum fuisse, neque pudet fateri; nec tu credo, quem scio, minime de rigidiioribus & fronte caperata Catonibus [29] esse gaudere, reprehendendum putabis; ubi intelleveris, quales fuerint, qui tam strenuâ admonitione digni à me sint judicati scilicet, ex eorum numero dissoluti adolescentes, qui ad stâdià missi à Parentibus, & Curatoribus nobisque meliore modo commendati dies in conviviis, & symposiis, noctes in stupris, in alea ebriosisque graffationibus agerent; incolae sordentium ganearum potius quam Museiorum suorum. His ego non diffiteor, cum nactus aliquando eos dignis modis excepissem, nec tamen acrimoniâ quicquam proficerem, hoc commento gustum bonae mentis indere conatum esse, uti persuaderem, quo hanc sibi legem figerent, Collegio semper interesse, ad hoc se praeparare, saltem ut exiguam partem pravis ludicris subducerent; ita fieri posse, ut ad tolerabilem doctrinae perfectum sine magno labore pervenirent; Quod in aliquibus ita successit, ut hanc non modo, sicut vulgo aestimatur, eruditionem mediocrer adequemen, sed nulli etiam hac via penitus ad [30] bonam frugem diremirent brevique inter diligentissimos eminerent.

A2 1684, p 31 (5 lines)

(Crusius is speaking)
Nonne per hanc distinctionem, ne me putes harum expertem esse, vim tui argumenti & autoritatis Imperatoriae contra me intentae fregisse tibi videor?

A3 1684, p 32 (6 lines)

(Crusius is speaking)
Nam hac gratiâ narrat ipse Iustinianus in constitutione, quà libellos Institutionum confirmavit, se mandasse Triboniano cum sociis, ut auctoritate Principali prima legum cunabula in Libros Institutionum redugerent.
APPENDIX A TO PART II

English translation of the Latin passages from the 1694 edition

A1 1684, pp 28-30 (33 lines)

*Nec tamen dissimulo — eminerent* (cf. 1688, p 19; Böckelmann is speaking)

However, I do not deny that I have said something along these lines to some young men; and I am not ashamed to admit it. Nor, I believe, will you, whom I know well, think that it is reprehensible not to indulge in the strictness and gloom of a Cato [29], when you understand the sort of students who were judged by me to be deserving of such vigorous advice. In short, they were some of those loose-living youths who, when sent to the universities by their parents and entrusted to the care of the Curators and to us for a better purpose, spent their days in eating and drinking, their nights in fornicating, gaming and drunken rioting, the habitués of sleazy taverns rather than of their seats of learning. I do not deny that, on occasions, when I met up with these students and had tried to entice them with worthwhile methods but without making any headway by sharply urging them on, I tried to whet their appetites for good learning with the following stratagem, and persuade them how they might apply this rule for themselves, — always to attend the Collegium and to prepare for it. My purpose was that they might take off at least a small part of the day from their depraved and vicious αμβολεργία (distractions from work). Thus it could be possible to achieve acceptable progress with their studies without making a great effort. This method of instruction succeeded so well in some cases that the students not only achieved what is commonly reckoned an acceptable level of learning, but some even, by this route reached thorough [30] excellence and in a short time shone forth among the most diligent.

A2 1684, p 31 (5 lines)

*Nonne per hanc — videor?* (cf. 1688, p 20; Crusius is speaking)

By virtue of this distinction, lest you think I am neglectful of these (definitions and divisions), do I not seem to you to have broken the force of your argument and of the Imperial authority alleged against me?

A3 1684, p 32 (6 lines)

*Nam hac gratia — redigerent.* (cf. 1688, p 22; Crusius is speaking)

For it was for this express reason as Justinian himself says, in the Constitution by which he authorised the books of the Institutes, that he had commissioned Tribonian and his colleagues to collect, on imperial authority, the basic principles of the law into the books of the Institutes.

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1 For *perfectum* reading *profectum* (in accordance with Huber’s list of errata on p 112).
2 This passage from ‘For it was for this express reason’ to ‘collect’ (Nam hac gratia — redigerent) was taken almost verbatim from Oratio IV, p 90.
**(Crusius is speaking)**

Praeterea, cum nihil ad solidam juris cognitionem sit efficacius, quam ipsos veteres & totos legere Iurisconsultos; siquidem aliter verae atque integrae illorum sententiae satis apertè percipliant; qui hoc genus compendia [35] amant, eo fructu non potiuntur, sed juxta regulas systematicas, identidem peculiares textus qui modo hinc, modo illinc citantur, inspiciunt, & qualitercunque singulis praeceptis applicant. Quin hoc tantum faciunt, qui diligenteres habentur, plerique verba compendiorum memoriae mandare contentis, (sic) cum illa recitare possunt, egregios se Iurisconsultos evasisse opinantur.

**(Böckelmann is speaking)**

Nec est, quod eorum aemulos id egisse per insidias arbitrere, Crusi, quasi sophisticis argumentationibus argutissimis & scholastici simplicissimis, sed rectam eorum doctrinam aggressi fuissent. Te ipsum appello testem, quam ne definitiones quidem divisionesque per Institutiones & Digesta sparsas soleam illis objicere ignoratas, modo ipsa rerum momenta titulorumque juridicorum sententias intelligere videantur. Nam ego, ne à systematibus doctrinam Iuris suspendere me velle pu[41]tes, pro gravi doctoque Iurisconsulto habere non gravabor, qui materias Artis ab Antiquis traditas & expositas novit atque perspexit; eti nullas terminorum formulas, nec quidem definitiones partitionesque Iuris recitare possit, modò ex omnibus Iuris locis eductas quaestiones usum in humanâ societate habentes solvere & interpretari queat: hoc enim est officium, nisi fallor, Iurisconsulti, de jure consultum respondere posse, secundum regulas Artis quasibuslibet verbis indutas. Sed Tu, Crusi & hic Huberus non ignoratis quando evenerit, ut qui in hoc genere candidatorum, à quibus compendia atque systemata ridentur, excellebant, & jam studiis aliorum regendis publice erant admirati, cum examini sese offerebant, nesciverint, quid esset Collatio, putarent, eam habere locum, ubi Ascendentibus succederetur, deque alis certi iuris capitibus, at minus obviis, ita responderent, quasi à facie nunquam ea cognovissent. Enimvero non potest aliter fieri, quin talia quandoque systematum contemptoribus ev[42]niant, dum inde ab initio sententiis veterum obscurioribus indagandis, legum emendationibus excogitandis,

(continuing on p 172)
Moreover, since nothing is more effective in building a firm knowledge of the law than reading the ancient jurists in their entirety and since their true and complete opinions cannot be sufficiently clearly understood in any other way, those who love this kind of compendium are not achieving that goal but together with studying the systematic rules, they only periodically consider particular texts which are cited now here and now there and they apply them in an indiscriminate way to individual precepts. But it is only those who are regarded as the more diligent who do this; most students, being content with committing the words of the compendium to memory, suppose that, when they can recite them by heart, they have become outstanding jurists.

It is not for you, Crusius, to think that their rivals set this up as a trap, as if they had attacked their very simple, but straightforward, learning with sophistical argumentation and scholastically subtle disputes. I call you to witness that I am not accustomed to reproach such candidates for their ignorance of the definitions and divisions scattered through the Institutes and the Digest, provided they patently understand the actual importance of the topic and the opinions in the juridical titles. For, lest you think that I wish to hang the teaching of law from my systems, I shall not be unwilling to regard as a serious and learned jurist, one who has become acquainted with and has looked closely at the subjects of our law as handed down and expounded by antiquity even if such a one cannot indeed cite the formulae of actions, the definitions and subsections of the law, provided that he is able to identify and explain the issues drawn from all the legal texts which are applied in everyday society. For, unless I am mistaken, it is the task of a jurist to be able, when consulted, to give legal opinions, in accordance with the rules of law, irrespective of the words they are expressed in. But you, Crusius, and our colleague Huber here, are not unaware that it sometimes turns out that some of this type of candidate who laughed at compendia and systems, distinguished themselves and were officially promoted to controlling the studies of others, but when they presented themselves for examination, they did not know what collatio was, thinking it came into operation when ascendants succeeded, and regarding other chapters of established but less common law, they gave legal opinions as if they had never encountered them directly. For it cannot but be that sometimes things turn out well for those students who despise systems when right from the beginning, passing over the basics of the subject, they devote themselves with all their energy to investigating the more obscure statements of the ancients, to thinking

(cont on p 172)

3 This passage from ‘Moreover’ to ‘suppose that they have become outstanding jurists’ (Praeterea opinantur) and the preceding passage which was not excised from the 1688 edition (see p 23, ft 60) was taken almost verbatim from Oratio IV, p 90.
4 For contentis reading contents.
5 The section of this passage from ‘I shall not be unwilling’ . . . to ‘words they are expressed in . . .’ (pro gravi . . . gravabor verbis indutas) is taken with minor adaptations from Oratio IV, p 98.
6 For terminorum formulas reading actionem formulas.
7 From 1675-1811, there was only one examination in the Dutch law faculties. A student who passed this exam was declared candidatus iuris and had to present, within a short time, a dissertation or theses for disputation. After a successful defence of this dissertation or these theses the candidatus was declared iuris utriusque doctor (doctor of both laws). It was not unusual, especially in Franeker, that the candidatus became doctor sine disputatione or remissa disputatione as did Jacobus Voorda in 1718.
8 Collatio bonorum (see D.3.7.6) was a contribution to the estate of the paterfamilias, made by emancipated children or those who had already received from his patrimonies e.g. collatio donationis.
ritibus atque formulis veteribus explicandis, omissis disciplinae fundamentis, omni conatu seae dedunt; similis hisce, qui omnium primò Quaestiones illustres, intricatasque legum enantiophanias aliaque inusitata & auditu speciosa adolescentibus proponunt. Qui alterutrià vià ducuntur & incidunt, vel nunquam, vel difficillime rarissimeque ad veram eruditionis frugem emituntur.

A6  1684, p 45  (5 lines)
(Böckelmann is speaking)
. . . tametsi Tu Crusi tertiusque Collega Rusius Noster eo nomine, plerosque recentiores Juris Interpretæ immodicà libertate soliti esti insectari, quamquam . . .

A7  1684, pp 46–47  (29 lines)
Quis logicam, (liceat hoc repetere) quis Physicam aut moralem scientiam alter hodic tradendam putaret, quis Medicinam tyrones artis, sine compendio vel systemate aliquo novitià methodo conscripto docet? Nec sacrarum literarum ejusdem instituti auxilio carere potuerunt, quo fluctuantem discretionem memoriam judiciumque systematis alicuius aut summario locorum communium instrumento regerent ac praemunirent. Scio, non deesse, qui satius existiment, procul habere scriptores Institutionum hodiernos tanquam lamas & lacunas, ipsos scripturæ sacrae fontes adeundos puriusque salutares aquas inde hauriendas. Sed aut me omnia fallunt, [47] aut cìs breve videbimus eos ipsos, qui systemata magnificenter contemnunt, Suis etiam in illa re sacrà Auditoribus, antequam eos ad altiora producant, ejsmodi Compendia vel quoconque libeat ea nuncupare nomine praescribentes; & Tu, mi Crusi nosterque Rusius, si diu, quod opto, vivetis, aliquando vos ad idem institutum vel ad poenitentiam improvidae festinationis redactos sentietis. Ego vero ad rationes tuas iterum productas, quod satis mihi videtur, respondi.

A8  1684, p 58  (19 lines)
(Böckelmann is speaking)
Quo pertinet, quod haec ratio & ordo ille noster exercitium disputandi publice privatimque sibi junctum habere solet. A quo vos, Crusi, juvenes tantum non dehortamini, saltum ipsi nunquam aliter quam inviti hac parte desideris eorum obsequium. Namque, dum in hoc toti estis, ut sensa consecutiones locorum, quae in corpore Juris extant, solicite expeditatis, indagetis, legumque nodos amendandis conjecturas solvatis, atque in eo studiosis praeciatis; idemque illos inde ab initio facere doceatis, opertum alienissimos esse vos & illos à reciprocatione cognizitione sermonumque, sicuti fit in commissionibus illis disputatoris. Nostra vià promptitudinem eruditionemque adipiscuntur, quae Jurisconsulti arguà atque demonstratur.
out emendations of texts, to unravelling ancient procedures and formulae. Similar to these are those who, as absolutely the first step, put before the young well-known \textit{quaestiones} (questions), complicated textual controversies and other unfamiliar or high-sounding topics. Those who start on one or other of these routes and proceed along it, either never or with great difficulty and very seldom ascend to the true excellence of learning.

\textit{A6} 1684, p 45 (5 lines)
\textit{tametsi} — \textit{quanquam}; (cf. 1688, p 28; Böckelmann is speaking)
. . . even if you, Crusius, and our third colleague, Rusius, are, on that ground, accustomed to censure a considerable number of the more recent interpreters of the law for their excessive freedom. However, (you cannot be unaware . . .)

\textit{A7} 1684, pp 46-47 (29 lines)
\textit{Quis logicam} — \textit{respondi}; (cf. 1688, p 28; Böckelmann is speaking)
Today, who thinks that logic (may I mention this again) should be taught by any other method? Today, who thinks that physics and ethics should be taught otherwise? Who teaches medicine to beginners in the subject without a compendium or some outline written in the new way? Nor can those who expound the holy scriptures do without the same sort of teaching aid by means of which they may guide and strengthen the wavering memory and judgement of their students by means of someone’s system or summary of paragraphs of axioms (\textit{loci communes}). I know there is no lack of those who think that it is preferable to keep at a distance the present-day writers of \textit{Institutiones} as if they were bogs and sloughs, and that the actual sources of sacred writing must be approached and the salvation-giving waters drunk from there undefiled. But either I am completely wrong [47] or we shall shortly see that those very persons who most roundly condemn systems are, before introducing more serious material to their students, prescribing for them, even for theology students, that kind of compendium (or by whatever name you are pleased to call them). And, friend Crusius and our colleague Rusius, if you live long, as I sincerely hope, you will at some time realise that you are reduced to the same practice or to regret for your ill-considered haste. Thus I have replied to your concerns, which you have reiterated, and that quite satisfactorily, it seems to me.

\textit{A8} 1684, p 58 (19 lines)
\textit{Quo pertinet} — \textit{demonstrat}; (cf. 1688, p 34; Böckelmann is speaking)
Furthermore, there is the fact that this method and that system of mine usually includes practice in disputing publicly and privately. Crusius, you (and your friends) do not actually discourage your students from disputing, but at any rate you only ever grudgingly comply with their desires in this regard. For you are completely involved with carefully considering and investigating the meaning and connection of texts which appear in the \textit{Corpus Iuris} and with solving knotty points in the texts by conjectural emendations and you are leading your students through this work and teaching them, right from the beginning to do the same. Thus it is necessary that you and they are very far from that exchange of thoughts and words such as takes place in those competitive disputations. By my method the students acquire readiness of reply together with legal knowledge. This is the test and hallmark of jurists.

\footnote{This passage which has been excised from the 1684 edition from who . . . logic (\textit{Quis logicam} to \textit{inde Hanriendas}) was originally taken, almost verbatim from \textit{Oratio IV}, p 95–96.}
Latin passages in the 1684 edition which were removed from the 1688 edition

A9 1684, pp 62–63 (5 lines) (Huber is speaking)

. . . prohibito autem ne commentariis [63] ullo modo ad eos conscribere liceret, poena falsi constituata in eos, qui id ausi invenirentur, addita sanctione corrumpendi abolendique scriptas ejusmodi comminationes.

A10 1684, p 70 (6 lines)

(Huber is speaking)

Grotium in universa florum sparsione ad omnes Justiniani libros, ullam lectionis ab omnibus receptae mutationem, adstruxisse; cum eam doctrinae partem merito inter gravissima Iurisconsulti officia reputaret.

A11 1684, pp 74–75 (10 lines)

(Huber is speaking)

Alterum, quod male me habet, est, quod cum vos manuscriptis libris, quorum variae lectiones superiores seculi Censoribus argumenta præcipua corrugendi praebuere, careatis, tamen hanc viam ininit, ut emendandi institutum proram & puppim studiorum vestrorum occupet, nec aliiud [75] quicquam, nisi quod urit & secat oculos hominum famaeque experimento dignum judicetis.

A12 1684, p 75 (12 lines)

(Huber is speaking)

Res enim ipsa loquebatur, Edictum unde vi, quod dejecto datur, dari non posse ei, qui possidet, hoc est, non dejecto. Incidit Baudio, possedit. Non potest aiter; nec est qui obloqui possit. Si quid simile vobis haeserit, agite, applaudemus & gratulabimur, eurhkaV

Sed hoc operam dare, leges hac gratia scrutari, ut latentia & ignorata vitia indagentur, ubi nulla codicum antiquorum suppetit collatio, non videtur habere dignum vro sapiente fructum eruditionis.

A13 1684, p 100 (20 lines)

(Huber is speaking)

Non tempero mihi, quin iterum Leonis illius philosophi institutum referam; illud unice ad usum spectasse judiciorum. Hac causa dicitur παν έναντιον κατ χρησιν ου παρεχομενον εν τοις πρακτικαις, οποκριναι, τε και υπεξελειν αλλα τε ας εικος πολλα των άρχων νομοθετηματων παραδοκιμαζηναι τοις ύστερον, ut Cedrenus, Harmenopulus and Blastares auctores sunt & res ipsa demonstrat. Ajunt, inquam, Leonem omnia in legibus Instinianaeis contraria nec usum in foro habentia inde secessisse & abstulisse; propterea quod vetustarum legum multae a recentioribus abrogata fuerant, suisque Graecis utilia tantum & consonantia propusuisse: Reliquum jus Latinum indagatoribus antiquitatis relinquebat. Hanc rationem acque multoque magis esse nostri temporis nihil attinet denuo adfirmare.
English translation of the Latin passages from the 1684 edition

A9 1684, pp 62-63  (5 lines)
prohibito — commentationes; (cf. 1688, p 36; Huber is speaking)
. . . but with the prohibition that it was not permitted to write in any form commentaries on these books, the penalty of falsity being laid down for those found to have ventured to do so, with the additional sanction of spoiling or destroying written commentaries of that kind.

A10 1684, p 70  (6 lines)
In universe — reputaret; (cf 1688, p 40; Huber is speaking)
(Besides this instance I do not recollect) that Grottius in his whole book Flumum Sparsio on all the books of Justinian made and change to a reading accepted by everyone, even although he considered that part of our learning rightly among the most important duties of a jurist.

A11 1684, pp 74-75  (10 lines)
Alterum — judicetis; (cf. 1688, p 42; Huber is speaking)
A10 Secondly what displeases me is the fact that although you lack the manuscript copies, where the variant readings provided the critics of the last century with conspicuous evidence for emendation, nevertheless you embark on such a course that the practice of emendations occupies the beginning and the end of your studies and you judge that only that which stings and hurts the eyes of men and of your reputations is worthy of being undertaken.

A12 1684, p 75  (12 lines)
Res enim — eruditionis; (cf. 1688, p 43; Huber is speaking)
For there, the correction spoke for itself. The interdict unde vi\(^{10}\) which is given to one who has been forcibly deprived of possession, cannot be given to one who possidet\(^{11}\) (possesses) i.e. who has not been deprived of possession. And so Baudius hit on possedit (has possessed). It cannot be otherwise, nor is there anyone who could gainsay it. (But if anything similar were to happen to you) come (we will applaud and congratulate you) ευρηκας (you have found it)! But to concentrate on this, to scrutinise texts in order to track down hidden and unknown flaws where not suggested by a comparison of early texts, this does not seem to have the academic results worthy of a learned scholar.

A13 1684, p 100  (20 lines)
Non tempero — denuo adfirmare; (cf. 1688, p 57; Huber is speaking)
I am not refraining from again referring to the plan of the great Leo the Philosopher. It looks solely to the practice of the courts. For this reason, it is said παν ἐναντίον κατ’ ἱστιανόν υἱάν, καὶ ἱστιανὸν ἐν τοῖς ἱστιανοῖς, ἀποκρίνοντας τα καὶ ἀπεξελέχθην τίλλα τοίς εἰκος πολλα τῶν ἱστιανοίς νομῳδεμάτων παραδοκέηθηνα τοις τῆστεροι, as Cedrenus, Harmenopulus and Blastares say and as is self-evident. They say, and I translate, that Leo separated off and removed everything in Justinian’s legislation which was contradictory or not of use in the courts, because many sections of the old law had been abrogated by more recent legislation, and he set down only things which were useful to and suitable for his Greeks. The rest of Roman law he left to those who research antiquities. To reassert this reasoning applies as much, in fact much more, to our times.

\(^{10}\) The interdict unde vi was one of several concerned with retaining possession of immovable property. On those who had been deprived of possession by physical forces, see **Inst. 4.15.6; C.8.4**; D.43.16; D.43.2.1 pr.

\(^{11}\) In the 1688 edition, p 40, Huber writes ’pro possidente [literal for possidet] legendum esse possidet’. This emendation has been resolved in various ways e.g. Spruit (D.43.16.1.45) for qui possidet conjectures qui possiderem desisset. JAC. Thomas and Watson (D.43.16.1.45) translates qui possidet as ‘the possessor’.
Latin passages in the 1684 edition which were removed from the 1688 edition

Me quod attinet, nolo doctior videri quam praestare me queam, ideoque libenter
fateor, me nihil adhuc asum esse proferre in lucem quo hanc difficiliorem viam
ingredientes adjuvarem regeremque, nisi forte in *Digressionibus*. Reliqui conatus mei[
103] adhuc in priore decursu substiterunt, quod quidem ad partem studii
theoreticam pertineat; pragmaticum & forense non facit partem hujus dissertationis.
Quid autem posthac in illa doctiore theoria sim praestiturus ultra domesticas operas,
malo ab eventu expectari, quam pollicitationibus meis praesumi.

(Huber is speaking)
. . . generosa pocula commutata mutuasque amicitiae contestationes hilariter factum.
As far as I myself am concerned, I do not wish to appear more erudite than I am able to prove myself to be and so I readily admit that I have not yet dared to publish anything by which I may help or guide those entering on this most difficult course, except perhaps in my *Digressiones*. My other attempts to date came to a standstill at an early stage and these indeed belong to the theoretical part of study. The procedural law and the practice of courts do not make part of that work. However, what I am going to publish hereafter on that more learned theory, except for material for my private lessons, is to be expected at its delayed arrival, rather than presumed from my promises.

A15 1684, p 111 (2 lines)
*generosa pocula — factum*; (cf. the last sentence of 1688, p 63)
A14  This was also happily done by us after having exchanged some noble draughts and mutual protestations of friendship.

---

12 It has been suggested to me personally by Veen that perhaps this passage was deleted from the 1688 edition, as by that time the *Praelectiones* were all but complete. I 1678 (Feenstra, BGNR Franeker, no 180); revised edition 1687 (Feenstra, BGNR Franeker, no 181); II 1689 (Feenstra, BGNR Franeker, no 246); III 1690 (Feenstra, BGNR Franeker, no 247; cf 248 f).
APPENDIX B — THE DIETERICH SHEETS

II The Cancellandum sheet containing p 80 on sheet E5. See Chapter II.1 ft 8.
III The Cancellans, replacement, of p 79 on leaf 4, showing part of the Praefatio. See Chapter II.1 ft 8.
IV The Cancellans, replacement, of p 80 on leaf 4, showing part of the Praefatio. See Chapter II.1 ft 8.
Appendices to the Commentary

66 De Ratione doctrinæ et diversâ
tia conciliari, posteriorque cum priori-
bus conjungere; cuius rei specimen Inre-
stus in Excerptis Authenticis perf., odicem
frangendis audax & nobile dict. Se-
cundum hæc principia progresí sunt
hominum studiosi ad proponendas Au-
ditoribus suis Summas, ut loquebantur
haud absurdè, libröm juris, qua nihil
aliud fuere, quam parasitius, quæ la-
stansus appellat Graeco vocabulo, id-
que potissimum ad Institutiones atque
Codicem, ut Placentinus & Azo pre-
verant. Ira enim existimabant, Codici-
em potius quam Panderæs iis, qui Insti-
tutiones perceperant, esse prælegendum,
quia recentius in illo judicio uisque in
foro certioris & frequentioris, quæ gra-
tia Novellam argumenta singulis in Co-
dice Rubricis Inrestris ille subjecerat,
quod illum in institutionum ad formandos
judicem caufrumque Patronos, id est,
validos uariisconfutuo, non erat, ut
magis prore intromovere, uenerque ali-
ter deintepar vifum fuerit poteris. Luxta
summas pro tyranni judicis, in uifum
providentium faciebant glossæ, quæ
funt

79 legibus inferri potest. Tu vero, excipere
Crescens, oblivisci videò, mi Hubere, nos
in dialogo veritari; adeo prope à
declamatudi vehementia aube tes video.
Si veligia tua sequeretur, omnibusque col-
elleis respondendum putarem, Sol nos
defeceret & impingeremus in id, quod
tu à principio stipulatus nobis praescrip-
sit. In promptu aliquem effet offendere,
Te nobis aut affingere quod vix qvæ
verti quest, aut nihil nos facere,
quod non magnis institutionibus melior
ibus rationibus defendi posset,
quodque non Alciatus, Cuiaci, Au-
gustinus, Duarenus, Fabri alique sine
numero uininerant. Tu verò quicquid
de laude Creces juridice criticoquæ
superioris feculi commiseris, haud-
quæ quam obscures es odii aversionisque
ab eâ parte eruditionis, quam nos in
genere incidis, faveritmus Muæ, dum
Spiritus hos regat artus, alacritate ex-
ercibus, neque deterrebitur, si
liveb ubi etiam carum uoluerit, donec
secum crimina sui pudet. Colligamus
igitur vela regredam propinquo portu,
neque
A Dialogue on the Method of Teaching and Learning Law

80 De Raisinês decendi & descendi
neque libert mihi reciprocare terram, à qua Tu manum hunc apēne amovisti.

Unum hoc addam, me gaudere scio
sectam hominum egregiorum, à quibus
terem meam doctus fum, Vignii, Mat-
shai, Willenbachii, qui varia eruditio-
nis liquore non tincti leviter sed imberi,
ramen in correctionibus legum vendi-
tandis auditoribus fuis non praeverunt;
moti, fatigio, rationibus à me pridem
expolitis, tum vero hae inprimis; quod
satis copertum habebant, eos, quibus
hac præcipua Riscos professo aridet,
ab omni systematicâ doērīnā, denique
ab omnibus, quæ civitatem prudentiam
tradunt disciplinis alienos avertosque
esse; cujus speciem habuimus Salma-
arius, quem satis constat, cum alia hujus
generis, tum divinum Grotii de jure pacis
& belli opus inflenter apernari & ad
omnem politicam civilisque doērīnā
tantum non naufragie confuērī; quod
& alia, si non omnibus ejusdem instituti
rigida, et cultoribus eventus notabiliter
annimadvertimus; ejusque contemptus
Salmario fidimus in faccella defensionis
Regia

180

Juris, Dialogus: 65
prudentiam ad usu sui temporis accom-
modare, ineptissique scire crediderunt,
fi compendia & manualia tua, quibus
adolescentibus summas Juris positiones
tradebant, perinde componuissent, ac
fi iustissimus adhuc vivert pihilque ab
ejus ætate suifere innovatum. Nos vero
polet alios excertos & quod excludat an-
nos, extingdo iustissimi Imperio, qui
jus Eius haec aliter, quam ad supple-
das leges domesticas cujuque populi re-
ceptum, non audebimus juventuti no-
stra manu salutem praebere, in quibus eos
admoneramus, quid de jure vertilio mo-
ribus hodiernis observaverunt aut fecus?
Sed pergamus. Dum ita Graeci Juris
scientiam sui moribus & institutis apta-
ram excolabant, interea in Occidente
cum Imperio leges Romane exulabant &
ignorabantur; donum Lothario Saxone
Imperatore, quem poletimio fidum ejus
inauguraretur. In his initis, prima quia-
dem ingeniorum occupatio fut eaque
fola, libros Justiniain evolvere, dare
operam, ut intelligerentur, diversius
libros legiique inter se confiter, diffi
 Appendices to the Commentary

PRÆFATIO.

que criticis, quam vocant, in. Jurisprudentiâ demonstraverim, Postremo, togante Hadrianum Wijngaarden Icto, qui nobis aderat, atque tum, scholas domesticas Lugduni habere instituebat, tum studii judici cursum, situm ego illum studiosis praeceduntum cenfeo, simplici orationis filo dimensionem. Donec Eökelmannus prolato ephemeredum literarum libello, has disceptaciones abrupit, eaque occasione de instituto illorum diarium sine novellarum paucis inter nos adiun. Legite sultis, & valete.

UL.
A Dialogue on the Method of Teaching and Learning Law

Bo De Ratione docendi et discendi

Tu neque libet mihi reciprocere ferram, 
à qua tu manum generoso contempus 
amovisti. Unum addam, me flegurum 
ecum in adolescence tuae hominum, qui 
variae eruditionis liquore non inar
dixerit sed imbuti, tamen in cre
cendentibus legum vendirandis auditoribus 
ues non praeventur. Finiamus, Matthao, 
Wissenbchier, moti, fat facio, rationibus 
ae praedem expolitis; tum vero 
hac imprimi; quod fatis comperturn 
habeant, eos, quibus hac praecipua 
Crito profexio artdivit, ab omni sy)
stemaricae doctrinâ, denique ab omni 
bis, quae civilem prudentiam tradunt 
disciplinis alienos aperfoique esse; cu
jus speciem habuimus, cum Salamanca, 
quem fatis confrat, cum alia huic gene
ris, tum divinum Grotii de jure pacis & 
belli opus inolenter adfluerat, atque ad 
omnum politicanm civilemque doctrinær 
tantum non nauterae confusivile; quod 
& alio, si non omnibus essudem institut 
rigidis cultorum evenire notabiliter 
animadvertimus, eiusque contemptus 
Salmant fructus in succedentia 
defensionis.
APPENDIX C — BÖCKELMANN DOCUMENTS

I Letter from the Curators and Burgemeesters of Leiden concerning Böckelmann’s appointment. In the University Library Leiden, BPL 885, no 336.


A Dialogue on the Method of Teaching and Learning Law

C I

184

Noelifsimus atque, imas simus
Domino Curatoribus Academae
Consilibus Urbis Lugdunensis
Tuis meis observandis.

Ludw. x

1670.
Appendices to the Commentary
A Dialogue on the Method of Teaching and Learning Law

[Text in Latin]

Per H. W. von Heusinger

[Signatures]
C II
Rechterlijk Archief Hazerswoude
Inv. nr. 35, fol. 56v – 57v

Fol. 56v

Opgeschreven

Ick. Peter van Heijningen. Secretaris ter desen ge-
substitueert van Pieter Coornsvinder, Bailliuw
ende Schout der vrije Heerlikeijt van Haserswoude,
oirconde dat voor mij ende voor Michiel Ewoutsz.

5

Groenendijck ende Isaacs Arijensz. Elsthout,
scheopen derselver heerlikeijt als getuigen
hiertoe versocht gecom'en ende personelijck gecom-
pareert is Jacob Wolbrantsz. Verhagen wo-
nende aenden Hooge Rhijndijck inden ambage

10

van Soeterwoude de welcke bêkende mitsdesen
voor hem. sijnen erven ende nakomelingen versocht
ende zulcx wel ende wettelijk opgedragen ende
overgegeven te hebben aan ende ten behoeve vande
heer Jan Fredrick Beuckelman, professor

15

inde regten binnen der Stadt Leijden ofte

ijemant

het regt van zijn Ed. vercrrijgende seker perthije

houtlandt groot vijf hondert vier roeden

dogh bij den hooop ende sonder met als stootende
de mate mette voet gelegen in dese heerlic-

20

heijt Haserswoude streckende voor uijtten

Rhijn tot achter aende Hoogen Rhijndijck belendt

Fol. 57r

ten noortwesten Cornelis Jacobsz. van Eijck ende
ten suijtoosten de erfenamen van Za. de heer

Hendrik Bugge van Ringh ende Jan Jacobssz. Koel, ende
dit met soodanige ongelden ende baenwercken

5

alst voorsz. perthije subject soude mogen zijn,
ende voorts mette belastinge van een

erfpacht van dertien Carolus guldens s' jaers

daer op t' voorsz. houtlant bij de voorsz. Hendrik Bugge
A Dialogue on the Method of Teaching and Learning Law

van Ringh ende Jacob Buijck als procuratie
hevende van de heer Justus Buijck, zijn
vader inden name ende als testamentair bevestigde voogder
over de verbonden goederen van Haesgen Ouwelant,
nagelaten dochter van Cornelis Willemsz. Ouwelantd
die haer aenbestorven waren door doode ende
overlijden van Za. Maritgen Willemsd. Ouwelant
in haer leven wedue van Za. Floris Reijerssz.
van Swieten aende voorsz. Verhagen in erfpacht
ende op erfpachts recht is uijtgegeven. nader
blijkende bij de originele erfpachtbriefe.
daervan sijnnde, gepasseert voor mij gesubstitue-
eert schout voorsz. ende twee scheppen deser heer-
licheijt in dato des 26. en Martij 1666, daer op dese
gegenwoordige is doorsteken ende getransfixeert
omme bij den heere Cooper, daer mede gewonnen,
verloren, ende algedaen te werden of hij Comparant
t’ selfs waer ende waer naer d’ heer Cooper
hem sal moeten reguleren. Wesende wijders
vrij als buijerlant, gelijck hij Comparant beloofde
mitsdesen t’ voorsz. vercochte te vrijen ende te waren
van alle lasten ende beswaerenissen die daer op tijde sijne
possessie eenigsints gebracht ofte geconstituert
souden mogen sijn, ondert vertant van zijn persoon
derde generale goederen egene exempt ter
executie van allen regten ende regteren ende
verte

fol. 57

d specialijck den Ed. Hove van Hollant. Entelijck
bekende hij Comparant ter sake deser opdragte alwel
voldaan vergenoegt ende betaelt te wesen den
lesten penning metten eersten ende dat

boven de belastinge der voorsz. erfpachte met
een somme van vijf hondert Carolus guldens te xl
grooten t’ stuk in gereden gelde, sonder
fraude. In oirconda der waerheiit soo hebbe
ick, gesubstitueert schout voorsz. desen ten

verlijke van de voorn. Comparant mettet zegel ter sake
vant schoutampt van Haserswoude verordent
uijthangende bevestigt ende mette voorsz. sche-
penen onder de plijcque als mede ten registre
geteijckent opten xxv\textsuperscript{en} April XVI\textsuperscript{C} ende
sesentseventigh.

xl\textsuperscript{en} penning mette belastingen 20 : 12 : 8 Michiel Ewouts Groenendijck
C III
Rechterlijk Archief Hazerswoude

Inv. nr. 36, fol. 77r-v

fol. 77r
Opgeschreven

Ie Pieter Coornwinder, bailliuw ende schout der vrije
heerlijkheyt van Haserswoude oorconde dat voor mij ende voor
Dirck Claesz Hijselendoorn ende Isaac Arijensz. Elsthout,
scheopen der selver heerlijkheyt als getuigen hier toe versoogn gecomen
ende persoonlijk gecompareert is d’heer ende Mr. Cornelis Bugge
van Ringh, advocaat, naergelaten soon ende mede erfgenaam van
Za. d’heer Hendrick Bugge van Ringh soo voor hem selve
ende noch als speciale procuratie hebbende van Mejinsge Cornelis,
dr. wedue, item Simon Petersz. van Velsen getroun hebbende Maertge
Jans, Jan Eiwouts getroun hebbende Geertge Jans ende
Cornelis Petersz. getroun hebbende Aeigen Jans, soo voor hen
selven ende hen sternmakende voor de ses minderjarige kinderen van Jacob Jansz. Koel ende noch voor de
twee nagelaten weeskinderen van Za. jonge Maertge Jans
10 gewonnen bij Cornelis Jacobsz. van Eijck kinderen ende sulcx erfgenamen van Za. Jan
Jacobsz. Koel volgens d’selve procuratie bij hen voorden
notaris Lambertus van Swieten ende sekere getuigen ge-
passeert op den 20 ende 25 Junij respectieue deses jaers bij ons schout
ende schepenen
ten verfijne deses vertoont ende laten lesen, de welcke inde voorsz.
qualite verclaerde versoogn te hebben ende dien folgenden op-
te dragen bij desen aen ende ten behoeve van de Ed. heer ende
Mr. Jan Fredrick Bugge Beuckelman. Professor inde
reghten vande Universiteit der Stat Leijden de verbeteringe
25 van seckere parthie houtlant ende erve groot ontrent
hondert drie en vijffig roeden gelegen tusschen den
Rijn ende Hoogenrijndijck in dese heerlijkheyt van Haserswoude
belent aan d’ een zijde ten noortwesten de genoemde
heer Coper en aan d’ander sijde ten zuijtoosten Mr. Johan
van Leeusvelt advocaat bij de genoemde Hendrick Bugge
van Ringh ende Jan Jacobsz. Koel in haer leven t’ samen
om de navolgende erfpacht aengestaen mette huijsinge-
gende getimmerde daer op staende, het welcke de genoemde
van Ringh alleen was toebehoorende. Ende dat mette
35 belastingen vande selve erfpacht sijnde twaelf gulden s’jaers aecomende
Haesgen Ouwelants dr. verschillijnde jaerlicx den 1er Februarij

fol. 77v
waervan t’loopende jaer ten lasten vanden heer Cooper
komen sal, voorts vrij als buijergoet landen ende huijsen
behoudens den heer zijn recht. Wijders volgens de erfpagt-brief daervan zijnde in date den sesentwintigste Martij 1667, belovende hij Comparant t’voorsz. vercopte te vrijen ende waren van alle kommer ende lasten die daer op sedert de wtgifte vande voorsz. erfpaght soude mogen sijn gebragt onder generaal verbant van des verkopers ende de voorsz. erfgenamen haer goederen egene exemt ter executie van allen regten ende regtien ende speciaalijck den Ed. Hove van Hollant. Entelijck bekende hij Comparant van de voorsz. vercooping ende opdragtien ten vollen vergеноogt ende voldae te we- sen den eersten penningh metten laetsten ende dat (boven de belastingen van de voorsz. erfpaght
dewelcke den heer Cooper mede voor ons schout ende schepenen comparerende verclaerde bij dezen t’sijnen laste genomen te hebben) met een somme van vijff hondert gulden te xl grooten t’stuck in gereeden gelde, son- der fraude. In oirconde der waerheijt soo hebbe ick, bailliuyw ende schout voorsz. desen ten verlije vande voorn. comparanten mettet zegel tersake vant schout- ampt van Haserswoude verordent uijtgangende bevestigten ende mette voorsz. schepenen onder de plijckque als mede ten registre geteijcket opten xxvij\textsuperscript{en} Junij xvi\textsuperscript{C}, ende sesenteventigh. Pieter Coornwinder Dirck Claes Hijselendoorn Isaeck Arijensen Elshoudt 1676
xl\textsuperscript{en} penning soo vrij van de coop als belastingen 20: 0: 0
A Dialogue on the Method of Teaching and Learning Law

Rechterlijk Archief Hazerswoude
inv nr 36 fol. 207r-v

fol. 207r

Opgeschreven

Ick Pieter Coornwinder, Bailliuw ende Schoudt der vrije heerlicheeit van Haserswoude orionde. dat voor mij ende voor Maerten Reijnouts Verdell ende Cornelis Vredricks Reus schepenen der selver heerlicheeit als getuijen hier toe versocht gecomen ende personelijk gecompareert zijn de heer Theodorus Kraeune, professor ine medecine in de universiteij binnen Leijden ende Johannes Mullerus, predicant in de Hoogduijtsche Gemeente binnen der selver stede. beijde gestelde executeurs ende uitvoerders over den boedel ende goederen mitsgaders voogden over de minderjarigen en uijtlandige erfgenamen van Sa. de heer Johannis Fredericus Bockelman in zijn leven professor inde rechte in de Universiteij der voorn. stadt. alsmede specialijck van den Hove van Hollandt, tot het vereopen van dien geauthoriseert sijnde, de welcke bekenden mitsdesen in dier quality ende-aehft int openbaer ende achtervolgens sekere beschreven voorwaarden versocht ende sulcx nu wel ende wettelijk op te dragen ende over te geven mitsdesen aan ende ten behoeve van de heer Nicolaes Clignet woonende inde gemitelle stadt Leijden ofte iemandt syns rechts ten desen vererigende een vermaeckelijcke ende welgelegen hoftede, bestaende in een een huysinge versien met verscheijden vertrecken, stallinge. koeshuijse, mitsgaders een wel bebeopete ende plaisante speeltuin ende boomgardt. Item een groote ende twee kleijne visch-rijcke vijvers, noen een aparte bewoonhuysinge ende stallinge daer aen behorende, groot int geheel ontrent een morgen en sevenenvijftich roeden, staende ende gelegen inde heerlicheeit van Haserswoude voorsz. aendel Hoogenrijndijck aldair belent ten suid’t oosten de erfgenamen van Mr. Johan van Leeuwsvelt ende ten noordwesten Cornelis Jacobs van Eijck, streckende voor vanden Rhijn-dijck aff tot achter in den Rhijn, doch bij den hoop ende sonder maet als de maet met de voet stootende bij desen, ende sulcx soo groot ende klein, als de voorn. huysinge, speeltuin, boomgardt ende een aparte bewoonhuysinge, tusschen sijne voorsz. belendingen gelegen sijn, ende t’gene voorts aert ende nagelvast is, sijnde belast met twee erfachten, d’eene verte
Appendices to the Commentary

van dertien Carolus guldens ende d’andere twaelft Carolus
guldens sjaaers, beijde verschenende jaerlincx den
eersten Februarij, aencomende Haesgen Ouwelants-

5 
dr. daer van het lopende jaer, mitsgaders het recht van
verboeckinge komen sal tot lasten vanden voorn.
kooper, bijders met zodanige andere conditien servi-
tuitjten, vrijdommen ende waringen, als begrepen staen
inde oude waerbrieven ende andere beschijden, daer-
van sijnde de jongste vandien, sijnde twee opdrachts-

10 
en brieven in date respectieueve den xvii april ende den
xxvij Junij 1676, die den kooper mettet passeren
deser sijn overgeleverd, daer naer hij hem sal moeten
reguleren ende voorts vrij als buijergoet, behoudens den
heer sijn recht. In welcker voegen sij Comparan-
ten qua beloofden mitsdelen t’voorsz. vercochte
te vrien ende te waren als recht is onder verban van de
voorsz. erfgenamen haer generale goederen egene exempt
ter executie van allen rechten ende rechteren ende specialijck
den Ed. Hove van Hollandt. Entelijk bekenden sij Com-
paranten in haer gemelte qualiteit sij sache deser
vercopingen ende opdrachte alwel voldaan vergenoecht ende
betaelt te wesen den laetsten penningh metten eersten
dat met een somme van twee’ enveertig hondert
Carolus guldens te xl grooten t’stuck in gereeden gelde,

15 
sonder fraude. In oirconde der waerheijt soo hebbe
ick Bailiuyw ende schoudt voorsz. desen ten verije vande
voorn. Comparanten mettet segel ter sache vant
schoudtampt van Haserswoude verordent uiijhangende
bevesticht ende mette voorsz. schepenen onder de plijke-

20 
que alsmede ten registre getiejccket opeten negenden
Januarij sestien hondert drie’ entachtich.

25 
-
-
-
st. soo van coop als ........ gelden (gulden?)

...

30 vant ... ende belastingen

125: 13 : 13 Pieter Coornwinder

1683
APPENDIX D — THE JOURNAL DES SÇAVANS OR THE EPHEMERIDES ERUDITORUM

I Title page of first issue of the edition of Monday, 5 January 1665 (Paris).
V Le Journal des Sçavans of 1685, pp 555, 568-569, showing the list of books received for comment, including Huber’s Positiones.
Appendices to the Commentary

LE JOURNAL DES SCAVANS

Du Lundi V. Janvier M. DC. LXV.
Par le Sieur DE HEDOVILLE.

A PARIS.
Chez Jean Cuysson, rue S. Jacques, à l’Image de S. Jean Baptiste.

M. DC. LXV.
AVEC PRIVILEGE DU ROY.
A Dialogue on the Method of Teaching and Learning Law

DES SCAVANS.

37

vne partie de la Lune aussi grande qu'un grand bâtiment, on seroit encore bien éloigné de voir des objets aussi petits que les animaux qui sont sur la terre.

VENTRICULI QUERELAE ET OPPROBRIA,


Cet Auteur se propose de parler du ventricule, & de tout ce qui le regarde. Mais il traite ce sujet d'une manière extraordinaire, faisant une continuelle Prolopopée du ventricule, qui explique sa structure & ses fonctions, montrant quels sont les alimens qui lui sont agréables ou contraires, & se plaint de ses symptômes & de ses maladies. Cet Auteur pretend qu'une personne qui se porte bien, doit manger indifferemment de toutes fortes de viandes ; il dit qu'entre vne infinité de biens que la Medecine fait aux hommes, elle a cela de mal qu'elle rend inutiles la pluspart des alimens que la nature produit pour leur viage ; & il s'oublie qu'il n'importe pas quelles choses on mange au commencement ou à la fin du repas, parce que tous les alimens se meillent dans l'estome. Mais il ne veut pas qu'aucune alimens on mette les medicamens purgatifs, non pas mesure les pilules, d'autant que les purgatifs corrompent les alimens, & les alimens empechent les purgatifs d'agir. Et quoy que l'on croie communément que la nourriture que l'on prend, faisse beaucoup d'impression sur le corps, il dit que cela ne peut arriver
LE JOURNAL
qu'après un long-temps, & qu'il est presqu'aussi difficile que les alimens changent le tempéra-
ment du corps, que la qualité des cheveux & de la barbe. C'est pourquoi il croit qu'il est inutile
d'apporter tant de difficultez au choix des Nour-
rices, puisque leur lait ne peut pas alterer la con-
stitution des enfans.

HISTOIRE DES COMTES DE HOLLANDE,
auc l'état & gouvernement des Provinces Vnies des Pays-bas.
In 12. A la Haye. Et se trouve à Paris chez Piget.

Le principal dessein de ce liure est de représen-
ter l'état & le gouvernement des Provinces Vnies. Mais afin d'en donner une connoissance plus
parfaite, on a jugé nécessaire d'y adjoindre l'Histoire
des Comtes de Hollande, dans laquelle on peut
voir l'état de cette Province avant qu'elle eût été co-
té le ioung de la domination d'Espagne, & se fust
vue avec les autres Provinces qui composent au-
jourd'hui le corps des États Généraux.

Cette Histoire a été premièrement composée en
Flaman par Scrierius, & depuis traduite en Fran-
çais par une personne qui n'a pas voulu être con-
nue. Elle est fort courte, mais elle ne laisse pas d'ex-
pliquer toutes les choses, qui doivent préparer
l'esprit à l'intelligence du discours qui suit.

La seconde piece a été faite pour montrer quel est le Gouvernement des Provinces Vnies. On
y voit d'abord ce qui a donné lieu à leur Union, les
conditions sous lesquelles elles se sont vues, le
rang qu'elles tiennent entre elles, la forme des
A Dialogue on the Method of Teaching and Learning Law

petit Lac diamétralement large d’un jet de pierre rempli d’arbustes dont les racines sont tellement entrelacées les unes dans les autres qu’on peut en Esté y marcher dessus, deux grandes & fort profondes Fontaines, qui sont peu éloignées l’une de l’autre, Il sort de ces Fontaines une eau fort claire, qui coulait au dessous de ces Arbustes par deux differens chemins vers l’Est & un peu au delà vers le Nord, formée à une demi-lieue de ces Fontaines un Fleuve mediocre, qui recevant dans son cours plusieurs autres Fleuves, devient enfin ce grand & ce fameux Nil qui fait encore tant de bruit.

Les Crocodiles qui y naissent, avec les Pyramides, les Puits des Mommies, la Sphinx, les Talismands & toutes les autres curiosités dont ce pays est rempli méritent bien qu’on leur donne place dans quelque autre Journal séparé, puis qu’on ne cèderait pas de tout cela dans celui-ci.

**BIBLIOTHECA SACRA ET PROFANA; sive Observationes, correctiones, conjectura, & variae lectiones in sacros & profanos Scriptores. In fol. Romæ 1677.**

Et Ouvrage a été imprimé sur un Manuscrit qu’on a trouvé dans la Bibliotheque du feu Cardinal Brancaccio. Le seul titre fait connaître ce qu’il contient.

**CARTESIVS MOSAISANS. AVT. IOANNE Amerpoel. In 12. Leuwardia.**

Il semble que cet Auteur n’a fait dans cet ouvrage que suivre la pensée de M. Descartes, qui dit
DES SCAVANS.

dit dans quelques-unes de ses Lettres que relisant le 1. chapitre de la Genèse il avait trouvé qu'il pouvoit expliquer parfaitement suivant les Principes, tout ce que Moïse y dit de la création du monde ; du moins il pretend que la doctrine de ce Philosophe n'a rien de contraire à cette histoire, de la manière que Moïse l'a décrite dans ce 1. chapitre. Ainsi son ouvrage n'est proprement qu'un parallèle de ce Chapitre & des Principes de Descartes, où il tâche de montrer

1. Que Moïse & Descartes n'ont connu dans les choses corporelles qu'une matière homogène & uniforme divisée & diversifiée par le mouvement que Dieu a imprimé & conservé dans cette matière dès la création du monde.

2. Que l'un & l'autre commence la Philosophie par la considération de la lumière, comme le premier effet de la distinction des choses.

3. Qu'ils attribuent tous deux la fluidité aux Cieux, avec cette différence, que Descartes s'étend au long sur la disposition particulière des parties qui composent ce corps ; ce que Moïse ne touche pas.

4. Que la Doctrine de Descartes de la distinction de la Terre, de l'Eau, de l'Air, & de leur propre constitution s'accorde fort-bien avec ce que Moïse en dit.

5. Que les raisons que Descartes donne de l'accroissement & de la variété des Végétaux ne sont pas contraires à l'Histoire Sainte.

6. Que ce que Descartes dit touchant la con-

E e e
A Dialogue on the Method of Teaching and Learning Law

JOURNAL

Relation & l’usage du Soleil, de la Lune, des Étoiles fixes, de leurs différences d’avec les Planetes, ou d’avec les Cometes, du mouvement de la Terre autour du Soleil & autour de son axe, &c. est fort raisonnable, & par consequent nullement contraire à la doctrine de Moïse.

7. Enfin il pretend montrer qu’il y a une grande conformité entre Moïse & Descartes dans la maniere dont l’un & l’autre se sert pour établir la difference entre la vie des Bestes, & l’ame de l’Homme; en ce qu’ils enseignent tous deux que l’ame de l’Homme consiste à penser & à comprendre, par où il se rend semblable à son Createur à l’image duquel il a été formé, & que la vie des Bestes consiste dans le sang. Descartes expliquant plus au long ce dernier sentiment dit que le sang étant échauffé & subtilisé dans le cœur se reduit en esprits, qui passans du cœur & des artères dans le cerveau, & du cerveau dans les nerfs & les muscles par un continu elécoulement, donnent le mouvement à toute la machine du corps & à toutes ses parties, suivant les diverses impressions que les objets causent sur ces Esprits. Cet Auteur examine fort exactement la difference que ce sentiment établit sur ces deux vies, & il la confirme par ce que dit Moïse, Que Dieu commanda à la terre de produire les Bestes & les Plantes, au lieu qu’ayant formé luy-même l’Homme de la terre, il luy inspira un souffle de vie qui le fit devenir non seulement une ame vivante, mais encore une ame connoissante & intelligente.
LE JOURNAL

cet fait déchoir les Princes & les grands Seigneurs du rang qu’ils tiennent, ils se donnent bien de garde d’en prendre qui ne responde à la grandeur de leurs maisons. Cela estant ceux qui travaillent aux genealogies d’Allemagne n’ont qu’à dire la verité, & ne sont pas obligez d’inuentier des fables, & de forger mille menlonges, comme sont contraints de faire ceux qui dans les autres pays veulent donner de l’éclat & de l’ancienneté à des maisons obscures & naissantes.

Mais ce qui foulage le plus ceux qui entreprenent de faire la genealogie des grandes maisons d’Allemagne, c’est qu’il n’y a pas en ce pays vn seul Gentilhomme qui ne prenne soin de faire dresser sa genealogie, & qui n’ait toute preste la preuve de sa nobleste par les trente-deux quartiers. C’est pourquoi Bucelin qui nous en a donné vn volume tout entier, n’a eu aussi bien que Rittershusius, qu’à ramasser des memoires qui estoient tout dressées.

Pource ce qui est des autres genealogies que celles d’Allemagne, il les faut lire dans ce livre avec precaution, parce qu’elles n’y sont pas toujours fort exactes.

TRACTATVS DE LEGIBVS ABROGATIS 
oster in Hollandia. Authore Simone à Groene. 

wegen Noniomagi. In. 4. Et se trouve à Paris chez 
Piget.

Out ce qu’il y a de bon dans ce livre a esté 
tiré des ouvrages de deux jurisconsultes 
Francois, Buygnon & Mornac, dont le premier a 
fait vn livre des loix Romaines abrogées en France,
DES SCAVANS.

& l'autre a composé plusieurs volumes pour faire voir celles qui sont encore en usage, & qui se trouvent conformes à nos Ordonnances & à nos Coutumes. Il est vray que cet Authure a fait l'application des loix Romaines au droit qui s'observe en Hollande : Mais ce travail est peu considérable ; car il ne touche les plus grandes questions que fort légèrement, & s'arrête à des bagatelles. Par exemple, il s'amuse à montrer que la Nouelle 8. de l'Empereur Leon par laquelle il est defendu de manger du boudin, ne s'obserue plus en Hollande où ce mets est fort estimé ; & il passe par des plus vne infinité de belles questions, qui meritoient d'etre approfondies.

JOHAN. FERNELII PATHOLOGIAE LIBER

quartus de febris, cum earum prognos & curatione


Il est constant que la Pathologie de Fernel est vne de les plus excellentes pieces, & qu'entre les Authurs modernes il n'y en a point qui ait mieux escrit de la nature & de la cause des maladies. Mais plusieurs personnes croient qu'il manque quelque chose à la perfection de ce traité, parce qu'il ne contient que la speculatique entierement destachée de la pratique, & que montrant seulement à connaître les maladies, il n'enseigne pas le moyen de les guerir. M. Loenius a entrepris de suppléer à ce défaut, en adoucissant ce traité de Pathologie vne Therapeutique tirée de divers endroits de Fernel meme, & des liures de quelques autres Autheurs.
Appendices to the Commentary

JOURNAL DES SAVANTS

POUR L'Année M. D.C. LXXXV.

TOME TREISIEME.

A AMSTERDAM,

Dans l'Imprimerie de G.P. & J. Blaeu,

M. D.C. LXXXVI.

Aux depens de la Compagnie.
A Dialogue on the Method of Teaching and Learning Law

BIBLIOGRAPHIA
SIVE
CATALOGUS LIBRORUM

Qui hoc anno 1684: vatus in locis typis mandari vel plus adiportari ad nos pertinereat.

Biblia Sacra & Interpretes.

Biblia Sacra vulgata Editionis. Col. A.

grap. & le trouve à Paris, chez Seb. 
Malv. Gramoys.

Verus Textumum Gracum ex versione
Sepraginta Interpretrium. In 8. 
Amiel. & à 

La Concorde des Epitres de St. Paul & des
autres Apoîtres. In 12. à Paris, chez A. Pra-
lard. Journal 8.

Novorum Bibliorum Polyglottorum Sy-
nopsis, Ultrajecti, & le trouve à Paris, chez 
la V. Bietkam. In 8.

Observations sur la nouvelle édifice de 

Quéstions Curiuseuf sur la Graec expli-
quéée par les Pf. & par les plus doctes Inter-
pretes. In 12. à Paris, chez P. de Bats. Jour-
nal 14.

SS. PP. Theologi & Morale.

& VII. comitens Moralia & lib. 22. de Civit.
À a 5.

Dei.
Appendices to the Commentary

162  J O U R N A L

Urecchi (Joseph). Consolationes Forencis
return practicabilium & judicatarum. In fort.
Geneva.

Tractatus de Transfectionibus in quinque

Cancellotti (Robertus). Tractatus de Attentatia

Leuven (Simonius). Cenura Forensis Theore-
teticus-Practica, edito terza altera auctore.
In fol. Amstel.

Sabbati (Martii Anno). Summa diversiarum

Berthelot (Mathias). Decisions auctae. In 4,
Francof. & Lipphi.

Cleneni (Daniele). Commentarius in cons-
stitutiones criminales Caroli V. Imperatoris.
In 4. Lipphi.

Cock Joach. (Christian). Praxis furti Ger-

Nicolaui (Joh. Georg.). Tractatus de regi-
dis & divorciis ex jure Divino, Canonico,

Struvi (Georg. Adam). Synagoga juris

Bardini (Burchard). Disputationum Juristi-
carum, in vol. Tubing.

Grotius (Laurenti. Theod.) Emendatio-
nes Pandectarum jure Florinorunm Exem-

Huberti (Urbica). positiones, sex electiones

Mycerus (Nicola). De Principibus & Statibus

Schul-

Des Scavani. 569

Bluherti (Joh.). Institutiones juris ex Princi-
piis juris naturae: Gentium & Civilis, tum
Romanum tum Germanicum d utrum Forti

Capponi & Philipp. examen juridicum de
Sigulardisorum Fennarum Juribus, non min-
us ex jure Saxonicum quam Civilium. In 8.
Lipphi & Francof.

Schuyleri (Gabrieli). Introductio in juss
publicum Imp. Romanorum-Germanicorum
novissimum. In 8. Tubing.

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jurisprudentiam Romanam. In 8. Rotte-
rdami.

Jettensis de Graibus, Honoribub Academi-
cubatur. &c. Francof.

Manuduction ad universum jure Civile &
Canonicum Tyrnibum usus & neceditia.
In 12. Francof. & Lipphi.

Sanct. Maria (Martini a) varii juris Cano-
nicum Historian abbreviata et parasitilla.

Requelle au Roy touchant la Religion Re-
forme. In 4.

Prejoge legitime contre le Papisme divis.
In 4. a Amsterdam.

La vie de la Venerabile Mere Marguerite
d'Arboule Abbelle & Reformatrice de Lab-
bye Royalle du val de Grace, par Mr. Claude

Panegyrigque de plusieurs Saintes par le
3. Père Dom Bernard Flanchette. In 8. a
Paris.

Sca-
CHRONOLOGIES

CHRONOLOGY I

The ages of the dialogi personarum in 1671 and 1684

<table>
<thead>
<tr>
<th>Name</th>
<th>Birth</th>
<th>Death</th>
<th>Age in 1671</th>
<th>Age in 1684</th>
</tr>
</thead>
<tbody>
<tr>
<td>HUBER</td>
<td>13/23 May 1636</td>
<td>9 Nov. 1694 (aet.58)</td>
<td>35</td>
<td>48</td>
</tr>
<tr>
<td>CRUSIUS</td>
<td>14 May 1644</td>
<td>31 March 1676 (aet.31)</td>
<td>27</td>
<td>obiit</td>
</tr>
<tr>
<td>RUSIUS</td>
<td>14 Nov. 1614</td>
<td>19 Dec. 1678 (aet.64)</td>
<td>56</td>
<td>obiit</td>
</tr>
<tr>
<td>BÖCKELMANN</td>
<td>18 April 1633</td>
<td>23 Oct. 1681 (aet. 49)</td>
<td>38</td>
<td>obiit</td>
</tr>
<tr>
<td>WYNGAERDEN</td>
<td>22 April 1648 (baptised)</td>
<td>?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NOODT</td>
<td>4/14 Sept. 1647</td>
<td>15 Aug. 1725 (aet.77)</td>
<td>24</td>
<td>37</td>
</tr>
</tbody>
</table>

CHRONOLOGY II

Summary of key dates relevant to the rôles of the persons in the Dialogus

HUBER 1636-1694
Professor of Rhetoric and History at Franeker 1657-1667
Oratio inauguralis — De nexu humaniorum litterarum cum jurisprudentia 1665
Digressiones, First edition 1670
Lectiones juris contractae, First anonymous edition 1678
Praelectiones juris civilis pars prima 1678
Hof van Friesland 1679-1682
Oratio II April 1682
Oratio IV May/June 1682
DIALOGUS DE RATIONE DOCENDI ET DISCENDI JURIS 1684
Heedensdaegse Rechtsgeleertheyt 1686
DIALOGUS in Digressiones 1688

BÖCKELMANN 1633-1691
Appointed Professor of Law at Leiden 1670
Bought property at Hazerswoude April/June 1676
Oratio funebris on G.C. Crusius 27 July 1676
Vis maaltyd 14 July 1676
Oratio funebris on A. Rusius 7 March 1679
Compendium Institutionum August 1679

CRUSIUS 1644-1676
Appointed lector at Leiden 1669
Appointed Professor at Leiden 1670

RUSIUS 1614-1678
Appointed Professor at Amsterdam 1646
Appointed Professor at Leiden 1659
Oratio inauguralis — De barbara juris compendiaria 16 Sept. 1659

NOODT 1647-1725
Probabilia Vol. I 1674
Professor at Franeker 1679-1684
Professor at Utrecht 1684-1686
Oratio Inauguralis — De causis corruptae jurisprudentiae 12 Feb. 1684
Professor at Leiden 1686-1725
CHRONOLOGY III

1614 Birth of A. Rusius
1633 Birth of J.F. Böckelmann
1637 A. Matthaeus I's Dispute De ratione docendi . . .
1636 13/23 March. Birth of U. Huber
1644 14 May. Birth of G.C. Crusius
1657 A. Matthaeus I's Notae et Animaversiones
1659 16 September. A. Rusius' Oratio inauguralis — De jejunia quorundam et barbara iuris compendiariā.
1662 29 August. G.C. Crusius registers at Franeker (I).
1664 G.C. Crusius registers at Franeker (II) Disputation De Pactis
1665 J.J. Wissenbach dies and Huber moves to Law. Oratio inauguralis
1669 Huber refuses position at Leiden; Crusius appointed lector at Leiden (aet. 26).
1670 Huber publishes his Digressiones; Crusius appointed Professor at Leiden; J.F. Böckelmann appointed Professor at Leiden.
1671/2 POSTULATED DATE FOR DIALOGUS.
1672 RAMPJAAR
30 August. Journal des Sçavans. Cartesius Mosaiæn auctore N. Amerspeel
1674 Noodt's Probabilia Vol. I containing references to Crusius and Böckelmann.
1676 8 February Böckelmann terminates rectorate with oratio De foelici statu academicae Leidensis
31 March. Crusius dies
25 April and 27 July. Böckelmann buys property at Hazerswoude
27 July. Böckelmann delivers the Oratio funebris for Crusius
1678 19 December. Rusius dies
Böckelmann's Commentarius in Digesta Justiniani
1679 27 March. Böckelmann delivers the Oratio funebris for Rusius
Böckelmann's Compendium Institutionum Justiniani
14 July. Vismaaltyd buiten de stad at Hazerswoude
24 February. Huber appointed as Raadsheer to the Hof van Franeker
4 September. Noodt succeeds to Huber's position
1681 23 October. Böckelmann dies
1682 22 January. A. Matthaeus III delivers the Oratio funebris for Böckelmann
24 February. Huber leaves the Hof van Friesland and is appointed ex-Senator
27 April. Huber delivers Oratio II
May/June Huber delivers Oratio IV
1683 13 October. Noodt accepts offer from Utrecht
1684 12 February. Noodt's Utrecht Oratio Inauguralis — De causis corruptae jurisprudentiae
Summer of 1684. Huber writes DE RATIONE JURIS DOCENDI ET DISCENDI DIALOGUS
1686 Noodt leaves Utrecht for Leiden.
1687 Van Muijden's Compendium Institutionum published anonymously in Utrecht.
1688 The DIALOGUS DE RATIONE JURIS DOCENDI ET DISCENDI (2nd edition, revised) appears in Digressiones.
1689 Van Eck's Principia juris civilis secundum ordinem Digestorum (Compendium Pandectarum)
1693 11 November. Van Eck's Utrecht Oratio inauguralis — De ratione studii juris recte instituendi.
1694 9 November. Huber dies
1725 15 August. Noodt dies
BIBLIOGRAPHIES

1. BIBLIOGRAPHICAL NOTES

In compiling this bibliography I have been selective to the extent that I have not listed general works like dictionaries or encyclopaedias. I trust that my readers will have these available should they require them. Further, over many years I have read widely on this period, both in contemporary works in both Latin and Dutch and in secondary sources, with the qualification that I do not read German, Italian or Spanish with any degree of ease and hence my secondary sources have been almost entirely in English or Dutch (Nowadays, regrettably, no secondary material is available in Latin.). Such works as were not relevant to the subject of this book have not been included.

Where possible, and that is almost without exception, I have identified Huber’s references to both classical and contemporary literature and verified the citations by physically examining an edition of the original work. Huber is often somewhat cavalier in his use of citations. Often he does not mention the author and almost never the text cited. Sometimes his citations, especially of verse, are precise, sometimes more a paraphrase. In the great majority of cases, the relevant legal texts are to be found in the Van Zyl Collection of Antiquarian Legal Material at the University of Cape Town. The classical texts were almost all present in my own library and comparatively easily verifiable, usually in the Loeb Classical Library or the Teubner series.

1.1 Standard Legal Texts

Huber’s *Dialogus de ratione docendi et discendi juris* is not in the true sense a legal text. However, firmly behind the dialogue there stands the *Corpus Juris Civilis*. Occasionally, reference is made obliquely to the Florentine, most particularly when the friends are discussing textual criticism and possible emendations to the *Corpus Juris*. Further, Huber, when stating his teaching programme and the question of compendia or paratitla, frequently refers to the *Institutes* and also to the introductory *Constitutiones Imperatoriam, Deo Auctore, Omnem and Tanta* (*Δέος Αυτην*). As explained above, Huber does not quote precisely but paraphrases, and consequently the reference, when identified, is listed in the footnote. For the above texts I have, for practical reasons, used the Krueger-Mommsen *editio stereotypa* or the *editio maior* as presented in the modern Dutch translation by Spruit, and his collaborators (1993 +), although these are not the editions used by Huber. Regarding sources, such as the *Basilica* or the *Hexabiblos* of Harmenopoulus, I have checked references against editions listed in Bibliography I.

1.2 BIBLIOGRAPHY I — Primary sources mentioned in the *Dialogus* and in the Commentary

For a comprehensive bibliography of Huber’s own works, and for those of other Frisian writers, I can best refer the reader to Feenstra *Bibliografie van hoogleraren in de rechten aan de Franeker Universiteit tot 1811* [*Geschiedenis der Nederlandsche Rechtswetenschap*, Vol. 7, no. 3]. Those discussed in the Commentary are listed in Bibliography I. Likewise, for Böckelmann, Crusius, Noordt and Rusius the standard reference work is Ahsmann and Feenstra, *Bibliografie van hoogleraren in de rechten aan de Leidse Universiteit tot 1811* [*Geschiedenis der Nederlandsche Rechtswetenschap*, Vol. 7, no. 1] and Ahsmann *Bibliografie van hoogleraren in de rechten aan de Utrechtse Universiteit tot 1811* [*Geschiedenis der Nederlandsche Rechtswetenschap*, Vol. 7, no. 2].

Also included in Bibliography I are primary texts referred to in the Commentary. The date given is the date of the edition available to me, not necessarily the date of first publication or one which Huber can be presumed to have used. Occasionally when the date of the first edition is of significance, it is noted as well as the date of the edition used.

1.3 BIBLIOGRAPHY II — Classical authors cited in the Text
True to Huber’s claim that the *Dialogus* is a *Digressio*, he includes references to classical writers. In listing these authors (in Bibliography II) the following information is given. In the first column there appears the generally accepted name by which the author is known in English, eg Horace, otherwise the Latin version, eg Diogenes Laertius. In the second column is the writer’s full name in Latin and the dates of his life, where known, or the approximate date when he flourished. The third column contains the name by which the work cited is commonly known. In the case of Greek works, I have used the standard Latin name.

1.4. Bibliography III — Secondary sources used for the Prolegomena
Bibliography III contains a list of those secondary sources to which I am most indebted. It makes no attempt to be a comprehensive list of modern literature which has, or could have, a bearing on the material discussed. In fact, I have generally preferred to derive my investigations from those sources listed in Bibliography I; a major exception being the writings of the late Prof Theo Veen, the acknowledged authority on Huber and his works. In the body of the text or in footnote references, I have indicated the sources used by a short title — author and a pointer to the work. This bibliography lists the authors alphabetically in column I and in column II provides detailed bibliographical information of the edition consulted.
BIBLIOGRAPHY I

PRIMARY SOURCES MENTIONED IN THE DIALOGUS AND IN THE COMMENTARY

The abbreviated form of citation used in the English text appears in the first column. The second column gives the author's full name, an extended version of the title and the date of the edition consulted.

Alciatus
Dispunctiones
Andreas Alciatus, Dispunctionum lib IV. Lyons, 1545.

Bachovius
In Rationalia Fabri
Reinhardus Bachovius Echtius [Bachov von Echt], Commentarii in primam partem Pandectarum quibus tum singularum materiarum principia et fundamenta tum textus universi et singuli qui sub singulis titulis continentur plene et accurate sub certa methodo explicantur, adiectis obique cartigationibus in Rationalia Antonii Fahn. Frankfurt, 1630.

Basilica
Heimbach, G.E. et al. (eds), Basilicorum libri LX. Leipzig, 1833-1897.

Böckelmann
De Actionibus
Johannes Friedrich Böckelmann, Exercitationes de actionibus in quibus specialium de domino, servitute, hereditate, possessione . . . agitur. Leiden, 1687.

Böckelmann
Compendium

Böckelmann
O.F. Crusii

Böckelmann
Differentiae

Böckelmann
In Digesta
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212

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<td><em>Pro Caelinum</em></td>
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SUMMARY

DE RATIONE JURIS
docendi & discendi diatribe

per modum
DIALOGI

with a Translation and Commentary

Ulric Huber (1635-1694), the author of this Dialogue De ratione discendi atque docendi juris diatribe, was one of the leading legal luminaries in Friesland during the last half of the 17th century. He was born at Dokkum on the 13 March 1636 (OS) and died in Franeker on 8 November 1694 (OS). In July 1651 he registered as a student at the University of Franeker, where in the first year he concentrated on the propaedeutic subjects, Greek, Philosophy, History and Rhetoric. In his second year he began to study law under Johannes Jacobus Wissenbach (1607-1665) but continued simultaneously with his history and language studies. This combination of law and the humanities underlay much of his future thinking about educating law students as is discussed in later chapters. In 1657 Huber defended his thesis De iure acescendi at the University of Heidelberg and was promoted Iuris Urbiisque Doctor. Four months thereafter he returned to his patria to take up a chair in eloquentia, historia and politica at Franeker. This appointment to the Faculty of Arts was only a stepping stone to his preferred position in the Law Faculty. In 1665 when he became Professor Primarius with the responsibility of teaching the Digest, he delivered his inaugural lecture on the links between classical literature and jurisprudence, an oration discussed more fully in Chapter IV. In 1670 he extended his teaching programme to include the Ius publicum universale, breaking new ground and resulting in much of Huber’s most significant contribution to the legal thinking of his day. This aspect of his work is, however, not included in this dissertation which focuses on Huber’s didactic statements as expressed in the Dialogus of 1684 and 1688, in his inaugural lecture of 1665 and in Orationes II and IV of 1682, from the Auspicia Domestica.

By the time Huber published the first edition of the Dialogus (1684) he had a substantial body of publications to his credit. With the exception of three years between 1679 and 1682, when he was Raadsheer at the Hof van Friesland, his academic life was spent at the University Franeker, where after 1682, he held a privileged position. As Oudt Raetsheer, he took precedence over all but the Rector Magnificus, he was not required to give public lectures but was free to teach students at his home, concentrating on Roman Law, on General Public Law and on Frisian Law. He was encouraged to publish on all these topics as indeed he did, the works here considered being among the most significant of this period.

The central focus of this study is the 1688 edition of the dialogue, as printed (pp 1-63) in Huber’s Digressiones of that year (see Feenstra BGNR Franeker pp 51-53, numbers 140-144). The Latin text is provided, together with a parallel English translation and basic footnotes explanatory of the text. Developing from the text and its translation is a commentary, running to IX chapters which attempts to set the work in its context and to provide an evaluation thereof. The Dialogus was first published as a small octavo volume by Joh. Gyselaar of Franeker in 1684. The print run was presumably short and today copies are rare. It is the second edition, significantly altered and expanded to appear as a separetly paginated addition to Huber’s revised Digressiones of 1688 which is the text chosen for this work. Here the
summary notes in Feenstra’s BGFR Franeker (pp 72, 52-52, 95-96, nos. 208, 143-144, 285) are expanded to include the last-minute, pre-publication alterations to the 1684 edition, and an extensive analysis of the substantial differences between the 1684 and the 1688 edition, indicating the reasons why the latter edition was chosen. The greater or lesser significance of the changes is picked up as the commentary develops.

Prima facie the Dialogus appears to be a record of a relaxed discussion between four friends, Huber himself, JF Böckelmann, CG Crusius and a minor character, A Wijngaerden. The dialogue form, as used here by Huber, is reminiscent of the Ciceroan dialogue and lends itself to an informal debate on the reasons for corrupta jurisprudentia (the decline of jurisprudence).

This conversation is supposed to have taken place in 1670 or 1671 in a country estate owned by Böckelmann, beside the Oude Rijn and under the traditional plane tree. This sounds convincing and there are many homely touches to round out the picture. However, certain inconsistencies appear, one of the chief being the facts, proved by the documents, included in Appendix C, which show that Böckelmann only bought the plots at Hazerswoude in April and June of 1676. Chapter VII discusses the evidence in detail and concludes that the final version of the 1688 dialogue undoubtedly dates from the summer of 1684 and that in all probability Huber was indulging in a phase of creative writing to adorn his didactic philosophy.

To set the speakers’ arguments against their contemporary academic background a brief historic resumé of the didactic issues concerned is provided in Chapter III. The emphasis here is on legal education in the late 17th century, especially as practised at the University of Leiden (established 1585) and University of Franeker (established??????). A brief sketch is given of the propraedeutic subjects and their relationship to the senior faculties of Theology, Law and Medicine. Attention then moves to the teaching of law lectures, privatissima and collegia domestica (see Ahsmann Collegia, en Colleges pp 274-323). The rôle of disputations is briefly examined — both its function in teaching and its contribution as a framework for future publications by the professor. One of the key issues in the Dialogue is the use or abuse of compendia and in Chapter II this question is briefly introduced, as is the issue of Humanism and its offspring, Textual Criticism. However both are left for fuller debate by the speakers.

A major concern of law teachers were the various reasons given for the decline of legal education — over-indulgent parents, premature promotion from the Latin schools to university courses, the students’ inadequacies in Latin. Further, in their haste to qualify and leap into the world of careers and salaries, the young men skipped the propraedeutic courses in the humanities — still regarded by many as a necessary foundation for a knowledge of law. Finally students favoured professors who promised speed at the cost of true understanding. It was suggested that the Latin schools should be forbidden to pass students who were unable to communicate in Latin and were ignorant of Greek. If it were the students who were to blame, the authorities, supported by the Reformed Church, always saw a solution in greater control over those whose riotous and dissolute behaviour often defeated the purpose of their studies and brought the universities into disrepute.

As I worked on the Dialogue it became clear that it was necessary to probe the identity of the speakers, especially Huber, Böckelmann and Crusius and to verify the views attributed to them. Huber’s rendering of himself is not distorted. His views, as expressed, present a fair reflection of his considered didactic policy as at 1684-1688. To assess this question it was necessary to read other of his orations and didactic writings especially the prefaces and letters to the reader (see Bibliography I under Huber for a list of his most important works consulted). The impression he gives of
himself here is of a professor seriously concerned with preparing young men for a career in law. He considers that knowledge of the classical background to the Corpus Iuris is desirable but love of Antiquity should not obtrude on the central business of Law. As a young professor he had attempted to include Classical references and illusions in his lectures but soon found that this was inappropriate and relegated them, together with more contemporary citations, to a separate publication — his Digressiones of 1670.

Böckelmann (1632–1681) is represented as the father of the compendiary method as introduced by himself into the University of Leiden. He not only voices his own opinions, drawn largely from the Praefatio to his Compendium but not infrequently Huber’s own words are put into his mouth. (This is indicated in the English text.) However, when we come to Crusius the position is very different. The Crusius of the Dialogue bears little resemblance to the Crusius of real life. According to Böckelmann’s funeral oration on Crusius, he was a conscientious and comparatively innocuous individual, at most a promising scholar and reasonably moderate in his views. In the Dialogue, however, “Crusius” comes across as argumentative and dogmatic, and especially hostile to Böckelmann’s Compendium, declaring it to be a Dispendium (waste of time). As is shown in detail in chapter VII the opinions accredited to him are not his own but clearly he is being used as a vehicle for the ideas of the unnamed professor Gerard Noodt (1647–1725) with whom Huber had an ongoing polemic. Noodt was a far greater scholar than Crusius, a man of decided opinions, opposed to compendia and favouring the humanistic practice of textual criticism when teaching university students, but he was not inclined to be aggressive. In fact of the four speakers it was Huber who was known to be somewhat cantankerous. Further, the impression given by the Dialogue is that Crusius and Böckelmann were not on good terms. Is this a twisting of the truth? Nothing in Böckelmann’s funeral oration for Crusius suggests any deep-seated hostility to the younger man.

This use of Noodt’s opinions leads naturally to an attempt to probe Huber’s reasons for attacking Noodt and further for attacking him in the person of the by now deceased Crusius. Some suggestions are made. These are drawn partly from an analysis of the real life relationships of Huber and his “friends” and partly from speculation.

The final section of the Dialogue displays a change in direction. Böckelmann introduces a topic which appears extraneous to the main theme of the debate — namely the quality and purpose of the Ephemerides Eruditorum, a comparatively new French-based journal more commonly known as the Journal des Sçavans. Each of the speakers, Böckelmann, Crusius and Huber have comments — mostly of a hostile nature — albeit somewhat patronising.

The conclusion attempts to summarize the value of Huber’s Dialogue in the development of law teaching in the 18th century. The use of compendia, including Huber’s Positiones, continued. Böckelmann’s Compendium and Cornelis van Eck’s Principia Juris Civilis seem to have been used most generally. In Huber’s didactic writings, especially the Dialogue, his inaugural lecture, and Orationes II and IV we have a clear picture of the 17th century issues facing those teaching the elements of law to future practitioners.
SAMENVATTING

DE RATIONE JURIS
docendi & discendi diatribe
per modum
DIALOGI

met een vertaling en commentaar

Ulric Huber (1636-1694), de auteur van de dialoog De ratione discendi atque docendi iuris diatribe, was één van de toonaangevende, grote juristen uit het Friesland van de tweede helft van de zeventiende eeuw. Hij werd geboren te Dokkum op 13 maart 1636 (O.S.) en overleed te Franeker op 8 november 1694 (O.S.). In juli 1651 schreef hij zich in als student aan de Universiteit van Franeker (gesticht in 1585), waar hij zich het eerste jaar toelegde op inleidende vakken als Grieks, filosofie, geschiedenis en retorica. In het tweede jaar begon hij met de rechtenstudie bij Johannes Jacobus Wissenbach (1607-1665). Tegelijkertijd zette hij zijn studie van de geschiedenis en talen voort. Deze combinatie van rechten en letteren was sterk bepalend voor zijn latere opvatting over het opleiden van rechtenstudenten, zoals besproken in de nog volgende hoofdstukken. In 1657 verdedigde Huber aan de Universiteit van Heidelberg zijn proefschrift, getiteld De iure acrescendi, waarmee hij de graad behaalde van Iuris Utriusque Doctor. Vier maanden daarna keerde hij naar zijn vaderland terug om in Franeker een leerstoel te aanvaarden in de eloquentia, historia en politica. Deze benoeming in de letterenfaculteit was slechts een springplank naar een plaats in de rechtenfaculteit, waaraan hij de voorkeur gaf. In 1665, toen hij Professor Primarius werd met de Digesten als leeropdracht, wijdde hij zijn inaugurele rede aan het verband tussen klassieke literatuur en rechtsgeleerdheid, welke toespraak vrij uitvoerig wordt besproken in hoofdstuk IV. In 1670 breidde hij zijn leerprogramma uit naar het Ius publicum universale. Dit was een baanbrekende onderneming die leidde tot Hubers belangrijkste bijdragen aan het juridische denken van zijn dagen. Dit aspect van zijn werk komt echter niet aan bod in dit proefschrift, dat zich concentreert op opvattingen van Huber betreffende het juridische onderwijs, zoals die onder woorden zijn gebracht in de Dialogus van 1684 en 1688, in zijn inaugurele rede van 1665 en in de Orationes II en IV uit de Auspicia Domestica van 1682.

Tegen de tijd dat Huber de eerste druk van zijn Dialogus publiceerde (1684), had hij al een behoorlijk aantal publicaties op zijn naam staan. Met uitzondering van de drie jaar dat hij raadsheer was aan het Hof van Friesland (1679-1682), bracht hij zijn gehele arbeidzame leven door aan de Universiteit van Franeker, waar hij vanaf 1682 over een geprivilegierde positie beschikte. Als Out-Raetsheer genoot hij voorrechten boven alle anderen met uitzondering van de Rector Magnificus. Van hem werd niet geëist dat hij openbare colleges gaf en het stond hem vrij om studenten thuis onderwijs te geven, waarbij hij zich vooral toelegde op het Romeins recht, het algemeen publiekrecht en het Fries recht. Hij werd aangemoedigd om op al deze vakgebieden te publiceren, wat hij inderdaad ook deed, en deze geschriften behoren tot de meest belangwekkende van zijn tijd.

Centraal in deze studie staat de uitgave van de dialoog uit 1688, zoals afgedrukt (pp 1-63) in de Digestiones van Huber uit datzelfde jaar. De Latijnse tekst gaat vergezeld van een parallelvertaling in het Engels en is voorzien van een elementair notenapparaat ter verduidelijking van de tekst. Uitgaande van deze tekst en vertaling is er een negen hoofdstukken tellend commentaar, waarin wordt geprobeerd het werk in zijn context te plaatsen en vanuit die context op waarde te schatten. In 1684
werd de *Dialogus* voor het eerst uitgegeven in klein octavo door Johannes Gyselaar te Franeker. De oplage was waarschijnlijk beperkt en exemplaren van deze eerste druk zijn tegenwoordig zeldzaam. In 1688 verscheen de tweede druk, aanzienlijk gewijzigd en uitgebreid, als een afzonderlijk gepagineerde toevoeging aan de herziene *Digressiones* van Huber. Het is deze tweede druk die is gekozen als uitgangspunt voor deze studie. De beknopte aantekeningen in Feenstra’s *Bibliografie van hoogleraren in de rechten aan de Franeker Universiteit* (nrs. 208, 143-144 en 285) konden worden aangevuld met gegevens betreffende de wijzigingen die op het laatste moment werden aangebracht in de editie van 1684 en met een grondige analyse van de inhoudelijke verschillen tussen de uitgave van 1684 en die van 1688, waaruit duidelijk wordt waarom de keuze juist op deze laatste versie is gevallen. Hoeveel betekenis precies kan worden toegeschreven aan deze wijzigingen, zal blijken naarmate het commentaar vordert.

Op het eerste gezicht lijkt de dialoog een verslag te zijn van een ontspannen gesprek tussen vier vrienden, namelijk Huber zelf, de Leidse hoogleraren Johann Friedrich Böckelmann (1632-1681) en Georgius Conradus Crusius (1644-1676), en een wat minder bekend personage, Adrianus Wijngaerden (1648-?). De door Huber gebruikte dialoogvorm doet denken aan die van Cicero. Zij leent zich voor een gesprek over de oorzaken van het verval van de rechtsgeleerdheid (*corrupta jurisprudentia*).

Dit gesprek moet hebben plaatsgevonden onder de traditionele plataan in het jaar 1670 of 1671 op het buitengoed van Böckelmann, gelegen aan de Oude Rijn. Dat klinkt overtuigend en er zijn ook veel alledaagse details die het beeld volledig maken. Echter, dit beeld blijkt niet te rijmen met een aantal feiten, waarvan het belangrijkste is dat, zoals aangetoond door de documenten opgenomen in Appendix C, Böckelmann de landgoederen in Hazerswoude pas heeft gekocht in april en juni van het jaar 1676. In hoofdstuk VII worden de genoemde documenten gedetailleerd besproken en wordt geconcludeerd dat de uiteindelijke versie van de dialoog zonder twijfel dateert uit de zomer van 1684 en dat Huber zich naar alle waarschijnlijkheid heeft overgegeven aan een “creatieve” schrijfwijze om zijn didactische filosofie verder aan te kleden en vorm te geven.

Om de argumenten van de sprekers te kunnen plaatsen tegen de academische achtergrond van hun tijd, wordt in hoofdstuk III een beknopt overzicht gegeven van de didactische vragen waar het in de dialoog om draait. De nadruk ligt hier op het rechtenonderwijs aan het einde van de zeventiende eeuw, in het bijzonder zoals dat werd gegeven aan de Universiteit van Leiden (gesticht in 1585). Er wordt een korte beschrijving gegeven van de inleidende vakken en hun samenhang met de vervolgstudies in theologie, rechten en medicijnen. Vervolgens richt de aandacht zich op het juridisch onderwijs, namelijk de colleges, *de privatissima* en de *collegia domestica*. Op de rol van disputaties wordt slechts kort ingegaan, zowel wat betreft de functie ervan in het onderwijs als de betekenis ervan als een eerste opzet voor toekomstige publicaties van de verantwoordelijke hoogleraar. Een van de centrale thema’s in de dialoog is het gebruik of misbruik van compendia. In hoofdstuk II wordt deze vraag kort ingeleid, net zoals de vraag van het juridisch Humanisme en de voortbrengselen ervan: de tekstkritiek. Een uitvoeriger bespreking van beide onderwerpen wordt echter overgelaten aan de sprekers van de dialoog.

Voor de hoogleraren in de rechten vormden de verschillende redenen waarom de juridische opleiding zo achteruitging een punt van grote zorg; de veel te toegeeflijke ouders, de te vroege overgang van de Latijnse school naar het universitaire onderwijs en de onteoereikende kennis bij de studenten van het Latijn. Bovendien sloegen de studenten, in hun haast om het diploma te behalen en geld te gaan verdienen in een maatschappelijke carrière, de inleidende cursussen in de letterenvakken over, die
volgens velen nog altijd een noodzakelijk fundament vormden voor kennis van het rechtrecht. De studenten gaven ook de voorkeur aan professoren die snelheid beloofden, wat ten koste ging van een grondig begrip van de collegestof. Men suggereerde dat het de Latijnse scholen zou moeten worden verboden om studenten af te leveren die niet van gedachten konden wisselen in het Latijn en geen Grieks kenden. Als het de studenten zelf waren die iets te verwijten viel, zagen de autoriteiten, gesteund door de Gereformeerde Kerk, altijd een oplossing in een sterkere controle van hen die door hun losbandig gedrag dikwijls het doel van hun studie teniet deden en de universiteiten in diskrediet brachten.

Tijdens de bestudering van de dialoog werd duidelijk dat het noodzakelijk was de identiteit van de sprekers nader te onderzoeken, vooral die van de personen die in de dialoog werden opgevoerd als Huber, Böckelmann en Crusius en om de denkbeelden die aan hen worden toegeschreven te verifiëren. Wat Huber over zichzelf betoogt, lijkt niet vervormd te zijn. Zijn denkbeelden, zoals onder woorden gebracht in de dialoog, geven vrij goed weer wat hij in de jaren 1684-1688 beschouwde als de juiste didactische aanpak. Om dit te kunnen beoordelen was het nodig om zijn andere publicaties en didactische geschriften (zie Bibliography I onder Huber) te lezen, met name de inleidingen en toelichtingen daarin. Huber wekt de indruk een docent te zijn die zich oprecht interesseert voor de opleiding van jonge mensen voor een juridische loopbaan. Hij vindt het wenselijk dat men kennis heeft van de klassieke achtergrond van het Corpus Iuris, maar de liefde voor de klassieke Oudheid moet zich niet opdringen alsof het in de rechtenstudie helemaal daarom draait. Als jonge docent had hij geprobeerd om verwijzingen naar en interessante wetenswaardigheden uit de klassieke Oudheid in zijn colleges te incorporeren, maar al snel kwam hij er achter dat ze voor dit doel ongeschikt waren en daarom bracht hij ze over, samen met meer eigentijdse citaten, naar een afzonderlijke publicatie, de Digressiones van 1670.

Böckelmann wordt in de dialoog voorgesteld als de vader van de compendia-methode, die door hem was ingevoerd aan de Leidse Universiteit. Hij vertolkt niet enkel zijn eigen opvattingen, grotendeels ontleend aan de Praefatio op zijn Compendium, maar hem worden regelmatig ook de woorden van Huber zelf in de mond gelegd (in de tekst wordt dit aangegeven). De rol van Crusius in de dialoog is echter totaal anders. De Crusius van de dialoog lijkt maar weinig op de Crusius van het echte leven. Volgens Böckelmanns lijkrede op Crusius, was hij een scrupuleus en verhoudingsgewijs onschadelijk persoon, niet meer dan een veelbelovende wetenschapper met redelijk gematigde opvattingen. In de dialoog echter komt “Crusius” over als iemand die snel in debat gaat, zich star opstelt en vooral tegenover het Compendium van Böckelmann een vijandige houding aannemt door het te kwalificeren als een Dispensium (verspilling van tijd). Zoals gedetailleerd beschreven in hoofdstuk VII, zijn de opvattingen die hem worden toegeschreven echter niet van hemzelf, maar wordt hij duidelijk gebruikt als spreekbuis voor de ideeën van de niet nader genoemde professor Gerard Noodt (1647-1725), met wie Huber in een voortdurende polemiek was gewikkeld. Noodt was een veel groter geleerde dan Crusius, iemand met uitgesproken denkbeelden (sterk gekant tegen compendia) en een voorstander van humanistische tekstkritiek in het academische rechtenonderwijs, maar hij was niet geneigd om in de aanval te gaan. In wezen stond van de vier sprekers alleen Huber bekend als iemand die zich enigszins kon opwinden. Voor het overige geeft de dialoog de indruk dat Crusius niet op goede voet stond met Böckelmann. Wordt hier de waarheid verdraaid? Niets in Böckelmanns lijkrede op Crusius wijst op een diepgewortelde vijandschap jegens zijn jongere collega.

Dit gebruik dat Huber maakt van de opvattingen van Noodt leidt vanzelf tot pogingen om nader te onderzoeken welke redenen Huber had om Noodt aan te
vallen en om hem aan te vallen in de persoon van de inmiddels overleden Crusius. Enige suggesties worden hier gepresenteerd. Deze zijn deels gebaseerd op een analyse van de betrekkingen die daadwerkelijk moeten hebben bestaan tussen Huber en zijn “vrienden”, maar blijven voor een deel enigszins speculatief.

In het laatste gedeelte verandert de *Dialogus* van richting. Böckelmann brengt een onderwerp ter sprake dat geen verband lijkt te houden met het centrale thema van het gesprek, namelijk de kwaliteit en de opzet van de *Ephemerides Eruditorum*, een betrekkelijk nieuw tijdschrift dat in Frankrijk was ontstaan en gewoonlijk bekend stond als *Journal des Sçavans*. Iedere spreker, Böckelmann, Crusius en Huber, levert commentaar, dat veelal nogal stekelig is, en zij doen dat op een enigszins neerbuigende toon.

De conclusie probeert samen te vatten wat de betekenis is geweest van Hubers dialoog voor de ontwikkeling van het rechtenonderwijs in de achttiende eeuw. Het gebruik van compendia, inclusief de *Positiones* van Huber, zette zich voort. Het *Compendium* van Böckelmann en de *Principia Juris Civilis* van Cornelis van Eck lijken op grote schaal te zijn gebruikt. Hubers didactische geschriften, met name de *Dialogus*, zijn inaugurele rede en de *Orationes* II en IV, laten duidelijk zien met welke vragen zij die de verschillende onderdelen van het recht moesten doceren aan toekomstige praktijkjuristen, in de zeventiende eeuw werden geconfronteerd.
The Frisian Academy in Franeker
from Winsemius *Chronique van Vrieslant*, Franeker 1622
Entry recording the intended marriage between Ulric Huber’s father, Zacharias, and his mother, Siouck Jensma, 3/13 June 1626 (Tresoar, collection DTBL, register of intended marriages, court of Dokkum, inv. Nr. 171), see Chapter III.1
Entry recording the birth and baptism of Ulrick Huber on 13/23 March 1636 (Tresoar, collection Fries Genootschap, [toegang 344], v. Family archives, manuscripts, inv. Nr. 594), see Chapter iv.1
Egregium sane apud quosqui Venetiis ad virtutes sectandas invitatem.
Huber's house in the Breepleats, Franeker (photograph J.J.D. Hewett)
Plaque fixed to the wall of the Huber house in the Breedeplaats, Franeker (photograph H. de Jong)
Johannes Fredericus Böckelmann (1632-1681)
Collection Academisch Historisch Museum, Leiden
Title page of Böckelmann’s *Compendium Institutionum Justiniani* 1679
The frontispiece of Böckelmann’s *Compendium Institutionum Justiniani* 1679
Albertus Rusius (1614-1678)
Collection Academisch Historisch Museum, Leiden
Gerard Noodt (1647-1725)
Collection Academisch Historisch Museum, Leiden
Letter to Huber from Johannes Voet, thanking him for his copy of the *Dialogus de ratione iuris docendi et discendi* (Tresoar, collection Fries Genootschap, [toegang 344], ff. Family archives, Ulrick Huber, inv. Nr. 453)
ABRIDGED INDEX OF NAMES OF PERSONS AND INSTITUTES

In this index are listed the names of persons and institutions which cannot be traced through the Contents pages. Thus Huber, Böckelmann and Crusius do not appear here. Their lives and works can be most easily accessed through the Contents pages.

Accursius, F xxv, 94, 127
Africanus 88
Agricola, R 67
Alciatus, A xxvi, 111, 115
Amama, A — see under Publishers
Amerpoel, N 136, 139
Apel — see under von Apel
Apuleius 96
Aristotle 9, 96-97, 140
Athenaeae — Illustrious Schools
Amsterdam 68, 76, 117, 119
Nijmegen Kwartierlijke Academie 120-121, 127
Augustinus, A xxv, xxvi, 115
Augustus Emperor 126

Bachovius Echtius, R 90, 104
Baldis de Ubaldis 114
Banck, L 81
Barbeyrac, J 125, 142-143
Barlaeus, C 68
Bartolus de Saxoferrato 94, 114
Baudius, D 115
Beeckerts van Thienen, A — see Van Thienen, A
Böckler, JH 81
Budaeus, JF 115
Buder, Chr xix, xxii, xxxi, xxxii, 86, 94, 142

Cabeliau, J 117
Christenius, J 76-77
Cicero 73, 84, 87, 89, 92-93, 96-97, 126
Clerk, J jun. 71-72
Clerk, J sen. 71-72
Constantine the Great, Emperor 87
Contius, A 111, 127
Cujaci, J xxv, xxvi, 93, 106, 111, 115, 127
Cuneus xxvii
Cup, W 70, 81, 87
Cyprianus — see Regneri ab Oosterga, C

Demosthenes 84, 126
Descartes, R 136
Diogenes Laertius 95
Dion Cassius 93
Donellus, H 70, 106, 115

229
230  A Dialogue on the Method of Teaching and Learning Law

Duarenus, F  xxv, xxvi, 70, 115

Eck van — see Van Eck, C

Erasmus, D  67

Faber, A  xxv, xxvi, 107, 115

Gaius  75, 88, 144

Galen  91

Gane, P  93

Gentilis, A  96, 97

Gkins van — see Van Gkins, T

Gothofredus, J  127

Groenewegen  134

Gronovius, J (Jacobus)  69

Gronovius, JF (Johannes Fredericus)  69

Groot, H de — see Grotius, H

Grotius, H  93, 137, 143

Gyselaar J — see under Publishers

Hippocrates  91

Homer  93, 117, 126

Horace  92

Hotman, Fr  70

Huber, Z — father of U Huber  xxviii, 79

Huber, Z — son of U Huber  xxix, xxxi, 81, 142

Julius Caesar  xxx, 74-75, 77, 88, 91, 104-105, 114, 123, 130, 144

Justinian, Emperor  xxx, 74-75, 78, 88, 91, 104-105, 114, 123, 130, 144

Karl Ludwig, Count Palatine  100

Keessel, van der, DG — see Van der Keessel, DG

Leeuwen, van S — see Van Leeuwen, D

Libraries

Advocates’ Library — Scotland  xxiv, xxv

Gerike Library, University of Stellenbosch  127

High Court Library, Cape Town  127

Koninklijke Bibliotheek, The Hague  xxv

London School of Economics (Library)  xxv

National Library of Scotland, Edinburgh  xxiv

Lipsius, J  68

Livy  xx, 84, 111

Lopez, F — see under Publishers

Lucian of Samosato  96

Macrobius  96

Maestertius, J  70, 143

Marullius  137

Matthaeus I, A  70-71, 76

Matthaeus II, A  xxv, xxvi, 80

Matthaeus III, A  72, 101-102, 113, 120
Abridged Index of Names of Persons and Institutes

Matthaeus, Ph. sen.  84
Menagius, A  xxx
Mijnsingerus (Mijnsinger von Frundeck), J  104
Modestinus  111
Mommerius, A  76
Muijden, J van — see Van Muijden, J

Noodt, G xxii, xxvi, xxviii, 72, 77-78, 82, 94, 99-100, 107-112, 116-118, 120-121, 123-129, 141-142, 144

Papinian, A  88
Paulus, J  88
Perizonius, J  82, 95, 125, 129, 141
Petronius, P  96, 111
Plato  96-98
Plautus, TM  126
Pliny the Younger, C  71
Plutarch  96
Poll van de, L — see Van de Poll, L

Publishers

Amama, H, Franeker xxiii, xxiv
Elsevier D, Leiden 135
Gijselaar, J, Franeker xix, xxiii, xxiv
Horreus, J, Franeker xxiii
Le Grand  135
Lopez, F, Leiden 131
Officina Hartungiana xxiii, xxxi
Taedama, Z, Franeker xxiii, xxiv
Wellens, J, Franeker xxiv, 86

Quintilian  87, 92, 126

Raevardus, J  115
Regnerus ab Oosterga, C xxvii, 80
Roëll, HA  83
Rusius, AK xix, xxix, 78-78, 99, 102, 107-108, 113, 116-121, 128-129

Salmasius, C xxvii, 69
Sande van den — see Van den Sande
Scaevola  88, 98, 124
Scalinger, JJ  69
Schilter, J  143
Schulting, A  143
Seneca  96
Socrates  96, 97-98, 104
Struvius, GA  90, 138
Suetonius  87-88, 111
Swalve, A xxii, 134, 136, 139

Tacitus  84, 87, 96
Taedama, Z — see under Publishers
Thomasius, Chr  92, 138
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A Dialogue on the Method of Teaching and Learning Law</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Tresoar-Frysk Historysk en Letterkundich Sintrum</em> 79</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Treutler, H  90</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tribonian  88, 126</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ulpius  88, 126</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Universities**

- Amsterdam  68
- Edinburgh  xxiv
- Franeker  xix, 67, 71, 77, 80-86, 94-95, 110, 120-121, 140
- Groningen  67, 70, 117, 143
- Harderwijk  67, 120
- Heidelberg  68, 80, 83, 100-101, 105
- Jena  xxiii, xxxi
- Marburg  76
- Utrecht  67, 71, 77, 120-121, 124, 129

**Valentinianus, Valens, Gratian Roman Emperors**  74

- Valentinianus, Valens, Gratian Roman Emperors  74
- Van de Poll, L  107, 120, 122-123, 128
- Van den Sande, F  93
- Van der Keessel, DG  69, 76, 143
- Van der Linden, J  143
- Van Eck, C  76-78, 82, 95, 125, 141-144
- Van Glins, T  110, 120-121, 128
- Van Leeuwen, S  127, 138
- Van Muijden, J  78, 105, 107, 122-123, 143
- Van Thienen, A, Beeckerts  101
- Van Zyl Library of Antiquarian Legal Material — see under Libraries

**Vigilus (Zuichemus)**  115

- Vigilus (Zuichemus)  115
- Vinnius, A  xxv, xxvi, 94, 117
- Virgil  92, 126
- Vitriarius, PR  72
- Vitringa, C sen  83-84
- Voet, J  72, 74, 76, 94, 127, 141-142, 144
- Von Apel  96
- Voorda, J  76
- Vossius, GJ  68, 117, 144

- Wächtlr, C  128
- Wäelen, J — see under Publishers
- Westenberg, JO  143-144
- Wieling, A  86
- Wijngaerden, A sen.  101, 112
- Wijngaerden, A jun.  xix, 68, 98, 100, 111-114, 131
- Wissenbach, JJ  xxv, xxvi, xxvii, 70, 80, 81, 87, 110

- Zasius, U  115
- Zoesius, H  90