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 PROEFSCHRIFT
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
ten overstaan van een door het college voor promoties ingestelde
commissie, in het openbaar te verdedigen in de Agnietenkapel
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Margaret Louise Hewett
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Faculteit   rechtsgeleerdheid

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*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.  

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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 Conraudus 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 disputations, 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 — 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 Dialogue, 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. 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

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, and in that regard also Dr Douglas Osler, with his deep well 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 Ewijk 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

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>BGNR</td>
<td>Bibliografie Nederlandse Rechtswetenschap tot 1811.</td>
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<tr>
<td>C.</td>
<td>Codex.</td>
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<tr>
<td>CJC</td>
<td>Corpus Juris Civilis.</td>
</tr>
<tr>
<td>C.Th.</td>
<td>Codex Theodosianus.</td>
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<tr>
<td>ca.</td>
<td>circa.</td>
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<td>cf.</td>
<td>compare.</td>
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<td>D.</td>
<td>Digest.</td>
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<tr>
<td>e.g.</td>
<td>exempli gratia, for example.</td>
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<td>ed.</td>
<td>Editor.</td>
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<td>edd.</td>
<td>Editors.</td>
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<tr>
<td>et al.</td>
<td>et alii, and others.</td>
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<tr>
<td>Inst.</td>
<td>Institutes.</td>
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<tr>
<td>J.U.D.</td>
<td>Juris Utriusque Doctor</td>
</tr>
<tr>
<td>jun.</td>
<td>junior.</td>
</tr>
<tr>
<td>LIAS.</td>
<td>Sources and Documents relating to the Early Modern History of Ideas.</td>
</tr>
<tr>
<td>ms.</td>
<td>manuscript.</td>
</tr>
<tr>
<td>NNBW.</td>
<td>Nieuw Nederlandsch Biographisch Woordenboek. 10 vols. (1911-1937)</td>
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<tr>
<td>no.</td>
<td>number.</td>
</tr>
<tr>
<td>N.S.</td>
<td>New Style.</td>
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<tr>
<td>OED</td>
<td>Oxford English Dictionary.</td>
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<tr>
<td>O.F.</td>
<td>oratio funebris. Funeral oration.</td>
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<tr>
<td>O.S.</td>
<td>Old Style.</td>
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<tr>
<td>p, pp</td>
<td>page, pages.</td>
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<tr>
<td>q.v.</td>
<td>quem, quid vide.</td>
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<tr>
<td>R.A.</td>
<td>Rechterlijk Archief.</td>
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<tr>
<td>Rep./REP.</td>
<td>reprint.</td>
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<tr>
<td>S.A.R.M.</td>
<td>Streekarchief Rijnlands Midden.</td>
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<td>sen.</td>
<td>senior.</td>
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<td>trs.</td>
<td>translator.</td>
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<tr>
<td>UCT</td>
<td>University of Cape Town.</td>
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<tr>
<td>US</td>
<td>University of Stellenbosch.</td>
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<tr>
<td>VOC.</td>
<td>Verenigde Oostindische Companie.</td>
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<td>vol.</td>
<td>volume.</td>
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INTRODUCTION

The principal focus of this treatise is on Ulric Huber’s *De ratione discendi atque docendi juris diatribe per modum dialogi,*\(^8\) to give the work its full title as in Huber’s *Digressiones of 1688.*\(^9\) (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.\(^10\) 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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\(^8\) A diatribe in the form of a dialogue on the method of learning and teaching law.

\(^9\) The first edition of 1684 is entitled *De Ratione Juris Docendi et Discendi Dialogus.*

\(^10\) For a detailed bibliography of Huber’s works and of the editions of the *De ratione juris docendi et discendi dialogus* see Feenstra *BGNR Fianeke,* pp 47-98 and especially nos 208, 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. Gyselaar of Franeker. Four years later it was reprinted, in a modified form, with an extended title and included in Huber’s Digressiones Justinianae of 1688. This 1688 edition of the Digressiones 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 Digressiones 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.

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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 Digressiones 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 Burgermeesters.
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 jurists and 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 paratitlia, 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, quidam summas, plerique methodos, alii communes locos, omnes veram juris arte tradere scripserunt; quos si quis omnes ordine evolverit, ensque invicem contulerit, discordiam reperturus est implacabilern. (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
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*. 

*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 Auspicio 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.

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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.
A Dialogue on the Method of Teaching and Learning Law

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. 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*. These sheets are presently held in the National Library of Scotland and are part of the Dieterichs’ Collection 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 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, instead of wastefully resetting the entire sheet, 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.

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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. 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. 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 geke is dat dit een halflos blad lijkt te zijn, dat er in ons exemplaar een beetje slap bij hangt. 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 79 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 pages.

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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

If envy wishes to carp at our careful work
Until our age is ashamed of its accusations.

[Huber speaks.] Let us therefore furl our sails (I said) in the nearest port [80] for it does not please me to continue the thrust and parry of this argument from which you have withdrawn with such scorn but let me add this one point, I am glad that I followed the school of outstanding men from whom I learned my “trade”, the school of Vinnius, Matthaeus II, and Wissenbach, who were ...”.
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 ποταμὸν (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 *obbare* for *obbari* 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, Cujaci, 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’ boy\(^ {15}\) 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, Mattaeus 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, Mattaeus 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.

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\(^{14}\) 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 παραλέγομαι = 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 διαλέγομαι = 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 δι = 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 straightforward. 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 Salmiasius20 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. Salmiasius’ *Diatriba de mutuo non esse alienationem adversus Coprianum quemdam iuris doctorem, auctore Alexio a Massalia, Domino de Sancto Lupu* (1640) was correctly entitled a *Diatribe* and its answer by Cyprianus Regnerus — *Petr Cunaei 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 Salmiasius (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 διατριβή, 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 quorundam eruditorum huius seculi virorum nostras quoque in diversum opinions alicubi protulerimus. (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 Iurisconsultos, non erit, ut magnopere impugnaretur, utunque aliter deinceps visum fuerit posteri; 1688 p 38 ad formandos . . . validos Iurisconsultos, non erit ut magnopere impugnaretur, utunque deinceps aliter visum fuerit posteri.
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 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).38 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 παρανομιά (an illegal insult). These two inserts are clearly linked and were probably introduced to stress Noodt’s use of *damnum* in his inaugural oration.39 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 Singuliris.40 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 1665.41

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’42 *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 Digressiones differs somewhat from its predecessors. In fact, the 1696 Digressiones 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 Frisonum 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 Qis 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 abhorret . . .. 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 conquisit vulgus praefatione adjecto 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, ngeretan becomes 1688, p 46, ngeret Huberus; 1684, p 107, “Ego vero dissensi” inquam”, . . . 1688, p 60, reads “Ego vero dissensi” ille” . . ..

44 Omittendae sunt enim omnes volubates, reliequenda 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) sequ Textuales esse prae dicentes, systematica contemnentes
ii) sine quibus certe nemo potest agere juriscursum.
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.\footnote{See Buder Opuscula, p [2].} 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.\footnote{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}?} 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.\footnote{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.}

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 Heidensdage Rechtsgeleerdhert. 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 \textit{παραλοπομένα}, 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.
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
PRAEFATIO

Summa Diatribæ exhibens.

ULRICUS HUBER

Auditoribus suis S. D.

Unc dialogum initio fieri varum calamorum effusum vobisque promissum serios exhibeo, quia rursus cum, mutato consilio, adieram; ut fit, ea que cum voluptate scripsisses, absoluta minus placere. Sed quia præpöstitum ejus illâ præviā policitatione numis innotuerat, alienique a meo consilio sermones de eo cædēbantur, sensi non esse integrum mihi, supprimere editiōnem: nihilque potius esse credidi, quam ostendere, nihil in eo à nobis aūtum esse, nisi ut sentiam, de re ad utilitatem vestram pertinentem, juxta alios inoccuā libertate diceorem. Si argumentum præsumere vultis; est heic Colloquium in horto Clarissimi Bökelmanni apud Lugdunum Batavæ ante complures annos habitum, cui occasio nematic dedit ejus Col lega Cruius vir egregius, qui latissimoniā tacitum in privatis scholis adhiberi solita inelabatur, eorumque loco studiōsos, inde statim ab ingressu auditorii, legere totum jus antiquum obscurasque difficultates ansignāt conferendo, conciliando, emendando, interpungendo, omnique alio criticæ artis instrumentum solvere volebat. Quas res Bökelmannus nominis an illis, qui prius universum jus paratilibri methodo prompte valideque didietissent, tentari suadebat. Ratioes eorum diversis vicibus commutatas agitatasque, non sine functionibus 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 ago¹, in the garden² of Professor Böckelmann³ 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 lessons⁴. 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 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 Leidse Universiteit III, p 342), it was decided to hold a convivium piscatorum 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 Wijngaard see the Chapters V and VI.

PRÆFATIO.

jocisque, sicut erant homines liberi oris animique, salva tamen dignitate, videbitis, & de meritis singularum extimabitis. Me quoque tandem vocaverunt in partes, nec aliquid à me dictum, nisi quod rationes docendi discendique juris varias, inde à Juttiniani ævo recensuerim, atque exinde, que mihi præstantissima videretur, collegerim; denuque usum absursumque criticæ, quam vocant, in jurisprudentiâ demonstraverim. Postremo, rogante Hadriano Wijngardenio, qui nobis aderat, atque tum scholas domesticas Lugduni habère instituebat, totum studii juridici cursum, sicut ego illum studiis præcendentibus censeo, simplici orationis filio dimensum fum. Donoc Böckelmannus prolati ephemeridum literarum libello, has disceptationes abruptit, ex quo occasione in instituto illorum diariorum sive novellarum paucis inter nos actum. Non ignoro quam exigua laudis redhibitionum à patrocinio Compendiiorum sit expectandum, et si nemo paulo prudentior usi illorum absineat, imo qui reprehendunt, sepe contentius utantur, nihil tamen proficiet, si maxime cum illo vitia, quique in illis summam studiorum collocant, fremue vituperes, tam en non decreant, qui dignationem necio quam, sic illic, in compendia derivabunt. At vos legitrite infatis, & nostrum sequimini, quod hic dabitur, constituam. Si nullum sèveriori legi vobis prescribent, qui methodum dicsendi hoc pretex tum pervertunt, nullum satis fecio, præfabant, quodcum bujas gravitate veroque fructu conterri possit videatur.
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. Until length Böckelmann, producing a booklet 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, 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, 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 actum i.e. after the reference to the news-sheets, implying read the news-sheets “if you want to”. The 1684 text concludes with ‘et valete’, ‘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 facultatibusque doctrinæ opus est Anteceffloribus in scholis illustribus atque in Academias, adeo pauci ad eam rem administrandam idonei reperiantur, quique reperti sunt tam raro auditorum Mæcenatumque expectationi satisfaciant; maximè, cum, ut hodiè res sunt, Academicæ functiones igitur paulo felicius tractata, nec honoribus suis neque commodis, quibus, ut ajunt, aluntur artes, carere videantur; adeoque parum ab sit, quin id praextent, quod olim Marco Tullio in summâ votorum sufficit legimus, ut in otio cum dignitate vitam sibi transfigere liceret. Verum hæ rationes non faciunt, ut difficile sit, re diligentius expensis, causas reddere, quæ Professores Academicæ tam paucos habeant sibi pares, à quibus cum aliquo gloriae publiceque approbationis fructu exercantur. Nam primo omnium, ex immensâ multitudine adolescentium, qui ad capiendum ingenii cultum mittuntur in Academias, fatis confat, quæ paucissimos, quos æquus eò usque Jupiter amaverit, ut ingenio memoriatique valeant ad ejusmodi apparatum eruditionis acquirendum, quem ad docendas artes literarum sicimus esse necessarium. Quorum autem ingenia quandoque suffecerint, horum voluntatem fere ab ea studiâ intentione, fine qua excellens doctrina haberi nequit, remotam essè videmus. Ut autem sint, quibus & naturæ vis & patientia laboris adeat, his plerumque fortunæ rationes, sive angusta sive hilarioris, negant tam longam difcendi 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 praestantissimum maximeque optabile omnibus sunt 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

...
A Dialogue on the Method of Teaching and Learning Law

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 students⁴. 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 Heidelberg⁵, 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 doctor⁶. 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 sincere 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 Glins. See Postma and van Sluis Auditorium Academiae Franekerensis, p 441.
3

Juris, Dialogus.

terrumpens Bökelmannus; sunt, inquit, amici aliquot sva-
viores, vestriique, ni fallor, moribus egregie convenien-
tes, qui prandium mihi apud puìcinam meam condicterunt;
Rogo, comites vos & convivas, & si libet, confabulones
præbeatis. Annuentibus nobis, rhedam ejus penilemi,
quam habebat more beatorum hominum, contendimus,
brevique itineres villam ejus urbanam ad antiquum Rheni-
tus ingressi, convivas illic, sçaphà recens adveçtos offendi-
mus. Inter quos, præter Wyngardenium Auditorum olim
meum, neminem mihi notum reperiebam. De apparatu &
tralatitii epularum fœlennibus fabulique nihil referam; fœd
menis sublatis, animifique a fendoarià fatigatione, per hor-
tum ambulando, recreatis, accidit, ut nobis quatuor; nam
Wyngardeniæ se ad junxerat; sub platano qudam confidenti-
bus, fermo per ambages ad inquisitionem de flatu Academi-
rum studiique juridici modo methodique deducetur. De
flatu Academie frequentiâque fidenter illi & magnifice loqui,
nee obscura mirari ëe meas rationes, que fecissent, ut tam
illuiftri theatro me subduxfiïem, tạireri, ut erat homi-
num candor & liberalitas, videri volebant, eò factum cifè,
ut iïpis locus tanti honoris & emolumenti patuifèt. Inde
Crujius de meis Digressionibus, quas superiori anno de
Praëceptionibus Ad Institutiones Justinianeas exerçïfiem
incipere; probabat earum institutum, et si nonnulla viñum
mihi effèt in illis collocare, que ab iïpis fententià judicio-
que abhorrente; de quibus indicabat, fœ per literas mecum
agere conflituisse, nifi nunc faciendum mihi videtur, ut
coram de illis familiaer diœciptaremus. Ego non recùre;
fœd Bökelmannus & Wyngardenius intercedebant, eo quod
iïfe locus, & congrœfìs ad disputationes de opinionibus
jurìs, fententiìque diœcrepantibus parum idoneus neque fa-
cìtus & institutus videtur. Atqui, regerebat Crujius,
L112 non
BÖCKELMANN 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 Wijngaerden, 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 Wijngaerden 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 Wijngaerden 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,

non erat, quod scholasticas argumentationes de magistralibus controversiis aut profundis legum sensibus ac antinomis, expectaretis. Neque meum, nec Huberi ingenium animique voluntas ad ejusmodi contentiones, hoc præsertim tempore convivalis jucunditatis inclinabat. Sed agite, quando ita vi
detur, discrepantis nostris, eti humanioribus atque ad lite
ras politiores spectantibus abstineamus; de communibus ta
men studiis colloqui nihil vetat; quid enim potius sit, quod 
ubi hac platano, quæ mihi ad dialogos literatos confecerat
videtur, agamus, non venit in mentem. Nihil abnuere cæteri.

Quare Crufius, Haud facile dixerim, mi Hubere, perg
it; quam mihi volupe fuerit, animadvertere et tuis Di
gressionibus, te non effe ex corum numero, qui systemata
nobis & compendia Jurisprudentiæ, quæ nihil quam totidem
dispensia hanc illiæque artis sunt, omni die obtrudunt & fe
cundum ea juvenitiæ inibi commissam instituunt an currum
punt. Verum id mihi præter expectationem accidisse fateror,
quod in omnibus quatuor libris observationum illarum hu
manorum, non incidi in ulla fœstigem emandandi text
rus vitiosæs Juris nostræ, cum tu ignorare non possis, dari
adnue plurima loca, quæ in turpibus scripturae mendis hæreant;
& videmur jure quodam nostro expectare, dum Tu illud
studium cricos juridicæ jam pene fitu & quam obsitum
& obliteratum, inter paucos alios excolas, atque in ufum
honoremque præstitum reducas. Cuju instituti propheticæ
nulla me vestigia in hilce tuis Digressionibus, quæ nihil
alid fere, quam Observationes Juris Humaniores, utipè
quidem eas appetitis, continent, reperisse, non potui quin
âgere ferrem. Nescio enim quid taciti argumenti hocce tuum
de criticis filentium, in tali opere, praèferre videatur,
nob est tibi consilium, hanc docendi juris viam infiltere,
quæ per examen omnium veteris Jurisprudentiæ 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 integritate restituit. Nam si hoc in iis meditationibus, quae pertinent ad polition- res litteras cum Iurisprudentia conjungendas, faciendum non putaifi, quando & ubi fas sit hoc à te præfetolari, mihi quidem sperare difficile est. Eaque res tanto minus expe- çtata mihi contigit, quod jam olim, cum adhuc in genere Historico verfarere, criticis emendando conatibus non abiti- nueris; quidem recordor, te in dissertationibus, quas edidi- ëli de Temporibus ante Cyrum observavisse, nec non corre- xisse vitia in locis quibusdam Diodori Siculi atque Orosii, quæ nec cum ipsis nec cum aliis incorruptis rerum gestarum monumentis convenire judicabas. Deinde vero cunctis bonus:

mentis amoribus optimæ spei signum extulissem videbaris, in oratione, quam habuisti, cum ex Eloquentia & Historiarum Cathédra folemner in Iuridicam transire. Id enim unice in univerfa Oratone illæ agere videris, ut conjunctio-
em politioris criticaeque litteraturae cum Juris prudentiæ, stu-
diosis inculcataes. Prœinde gaudeo, hanc occasionem mihi ob-
latae effic, quà confili huius occasionem de te ipso cognof-
cercem, sperans futurum, ut quidvis potius quam inuitori adeò præclari mutationem in caufa tibi fuiffe intelligam.

Dux res sunt, ita regregabam, Clarissime Cruï, ad quas reponsum debeo; Prima quod tibi mihiq[u]e gratularis, me potus edidisse Digressiones à Prælectionibus Iustianicis, quam systematicum Inftituzione Imperatoris, Compen-
dium; Alterum, quod in Digressionibus meis ipse tuam de criticis observationibus, quæ huic operi in primis con-
venire viderentur, fefellerim. Quamquam autem conten-
tus effic poteram eá laude, quam mihi in invidiam systema-
tum & compendiorum adçripfíti, habeo tamen rationes, quae nec hac in parte tibi penitus adfertiri possem vel de-

beam.
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 Temporibus ante Cyrum* (On the times before Cyrus)\(^{16}\), 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.\(^{17}\) 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 Justiniani* 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.”

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\(^{16}\) The *Tractatus de Temporibus ante Cyrum* first appeared in Huber’s *De genuino 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.

\(^{17}\) 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, habitæ Franekeræae cum ex ordinaria Eloquentiae et Historiarum cathedra solemniter in Inudicum deducentur, ex historia iuris romanorum utriusque studii conjunctionem exhibebat*. 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, comprehensà leniter manu meà, Quin tu, mi Hubere, quod ad hoc capitatis net, inquit, huic homini cede tuas partes; nam id ego meliori jurè vindicare mihi debo, ad cujus invidiam vel contempsum, hoc orationis Cruifianæ pars, si quid inde contempsus invidiæque potest oriri, in primis redundat. Novinum nos inter nos Cruius & ego, atque libertatem oris animique ejus, utpo Zurfaniænüs ego vicinus Westphalus, & jam Colleggæ familiarique amicus tam bene perspectam habeo, ut nec ego caufam irascendi habeam, quod coram instituta mea vituperat, nec ille sit ægere latus; si pari libertate rationes ejus refellam; libentius id Te communi amico praefente & arbitro facturus, quam si cum foyo ipso vel seorlim apud ignotos aut minus intelligentes faciendum foret. Aequum Bokelmannus petere videbatur, ideoque & cum defiderio meo cessi respondendi Crufio transiendum putavi, donec illi de compendio & systematibus absolverent, id unum stipulatus, ut quam æquitatem animi praecelleret Bokelmannus, hanc utque in orationis progreffitud fideliter praefaret, Utroque blando cum risu annuente.

Si quid mihi, pergit Bokelmannus, fuccenfendum haec causà foret, non immerito queri possum, ëparos jam pridem nimis odiofios in vulgus rumores & pene jam in dicterium abiisse, compendium Bokelmanni nihil esse quam dispendium, forte an etiam conquereret, nisi eventus me compendiumque meum absolveret, omnemque dolendi caufam publici applicatus frequentiæque gloria praecideret; nam fas eft, opinor, magnifice loqui adversus contemnentes & columnias invidentium compellecre jactantia? nec fecio, an non brevi continuo auditorum 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\textsuperscript{18}, 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)”\textsuperscript{19}. Perhaps I would also have grounds for complaint if the outcome did not clear me and my compendium\textsuperscript{20}, 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.

\textsuperscript{18} See the Commentary Chapter V.2.3.

\textsuperscript{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].

\textsuperscript{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.
7

*Iuris*, *Dialogus.*


Quando res eo deduceta est, ajebat *Crusius*, age, non disiplicet conditio, quid enim jucundius, aut facilius mihi, quam agere cauam, quæ tantopere ad animum meum pertinent, & eloqui apud amiciissimos homines, quod jam olim me coquit & verat sub pectore fixum! Nihil enim minus agitur in hac discep[ratione], quam de causis corrupte jurisprudentiae, quorum ego principem maximeque in oculos incurrentem hanc compendiariam docendi rationem effe, non vereor profiteri. Credo, non vocabitis in controversiam, Artis nostræ gloriam à patrum nostrorum memoriam vehementer esse diminutam. Quis enim nostrum sine dolore animi potest comparare nominam studiaque eorum, qui superiores feculo jus illufrarunt, cum his qui hodiè familiar inter jurisconsultos ducere ceduntur? Vere dicere postum, *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 pleasander 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 me21. For in this debate nothing less is being discussed than the reasons for the decline of legal science22, 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?23 I can truly say that in these days the science of law appears as nothing other than empty hair-splitting, far removed

21 Cf. Ennius (BC 239-169):

O Titus! Si quid ego adiuro, curamve levavero,
Quae nunc te coquit, et versat in pectore fixo
Eiquid erit 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; Alsmann-Feenstra BGNR Leiden, p 178, no. 427.

23 Cf. Noodt’s inaugural oration p 616, . . . cur, ubi priora temporis nominibus tot excellentium jurisconsultorum inaeduntur, nostrum potissimum obscurum atque ignobile, vix paucorum lumine et gloria illustratur. (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 uffi preferre subtillitatem. Quam nobilissimae disciplinâe contumeliam non utique ipfius ineptiae, sed inicitia non adsequentium ego quidem imputandam cenfio. Quid enim eft, quod impediret nos ad candom Artis perfectionem eniti, modo eadem contentionis viaque procederemus? At nunc studiofi juris beatos fe valdeque eruditos credunt, fi brevia, quae venditantur, Artis compendia vix animo comprehenderint, & definitionum partitionumque summas & actionum solennia carminia memoria mandaverint, artemque omnium principem & late diffusam in angustas tabellas paulcasque & fepe ineptas quaestiones coarctaverint. Interim fi quis siglorum & notarum aenigmata, fi interpunctiones, fi Glossas, fi varias lectiones judicet atque discernat, fi lacinias librorum juris legumque suppletat, fi vitia, infecta, luxata deterat & reftituat, fi Leges, plebisceita, Senatus Consulta, formulafque actionum concinnet & fugitiva retrahat, id omne nimis anxiet: fluer<not:1>que diligentiez effe opinantur. Nec ita vulgus tantum imperita juventutis per inertiam aut ignorantiam, sed etiam Professores ipse mercedes aut ambitio-ne frequentis auditorii in traniverium aguntur, ut nihil pen-
fi habcant, animos juvenilis credulitate fluxos atque obnoxios corrupere, pulcherrimamque artem subvertere & parentum vota frustrari. Hi sunt, quia falsis esse jactant, fi velinbas quotidie horas studiofi libris incumbant; Id enim spatium temporis sufficere abolvendo penfo quotidiano, quod illis compendio preceptoris sui secundum ordinem lectionum privatarum injungitur. Quid denique frequentius auditur, quam viam illam veterem acregiam, asperram & praeruptam, etiam obfcuram & multis anfracibus detortam, coeque longam ac moleftam effe; illam à paucis, quamquam sedulis atque ingeniosus vix multa 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 triviality 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. 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 consultae and the formulae of actions, and recover the missing words, this is all considered to be excessively solicitous and stupid diligence.

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 fees 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.

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24 Cf. Noodt’s inaugural oration p 616 . . . videri supervacuam atque alienam ab omni non solum doctrina atque elegantia sed a communie 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; Attemque late porrectam, in angustas tabellas, pascasque et sape inuertas quaestiones coaneirent. (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 . . . venun multi aut inertia aut ignorantia aut spe mercedis et ambigues frequentis audientes adae transvertere apudurit, ut nihil penis habeant . . . animos juvenium etulitlate fluxos atque ohivos corruptere, in primiti parentum vota et republique subsidia frustrari. . . . (But many professors, either from laziness or ignorance or the hope of gain or the desire for well attended classes, are so pervers 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.)
Iuris, Dialogus.

vinci. Mane autem compendiariam, planam, simplicem, rectam, omnibus patere, ac ne segnibus quidem recolibusque inviam aut infuperabilem effete, eaque ad jurisprudentiam brevisissime certissimeque perveniri. Ego vero caneo, plures illa nostrae via praecogam scientiam obtinuisse, quam qui vulgarem & compendiariam inicere, qui etiam tum mihi, cum in Portum iuxum pervenerunt ac operata confecuti sunt, naufragium fecisse videntur. Sicilici, fallit ambiguitas vocabuli; ea fletintatio dicitur, ea mora est, & quod compendium vocatur, Sapientiae damnum est. Quod sitantopere Compendia exspectant, ea privatim legant & habeant Studiosi, Antecessores publice privatimque altius spirent; & positis his in Institutionum enarratione totius operis five ollibus five membris, poelf deinde apta & diligentiss & accuratæ Panderëtarum & Codices interpretatione, tanquam nervis ad thoris masculum illum prudentiam vigorem constringant pariter atque intendant. Verum quia plerisque penituit tam praefantis discipline, est re anguis indulta Jurisprudentia est; quæ quibus ipsi, quid tam extimia disciplinae deinceps futurum arbitramini? Atque utinam exempla deesse vetat hic tam quod metui? Quid Livium imminuit præter Annae Flori, quid Dionem Cassium, præter Xiphilini epitomen? Si Polybiun, si Trogam Pompeium, si alios non contraxilènt aut exceptis illos studiosi homines, fortissim integratis uteremur, neque in antiquarum rerum memoriam tans tus hiatus pateret. Eloquentiam videamus, quid eam perdiderit, nonne compendiaria, per quam eloquentiae laudem affectant, qui nec dum bene locuti didicerunt? Quod multis? ipsum Papianum, Paulum, Ulpiunum, quid absumit, aut accidit, nonne Compendiaria Justinianii? Quod si illa veterum extarent scripta, quantum ad rem literarum conferrent, quantum ad publicum, quis ignare potest; 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.28 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.29† But if it is the students who so greatly desire compendia, let them get them and read them privately.30 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.31 †

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

Scilicet... damnum est.

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.)

Quid positis... intendant.

But compare Noodt's inaugural p 621 quin positis exarratione Institutionum totius operis sive ossibus sive membris, post deinde Pandectarum et Codicis lectione apta, diligente, accurata, tamen jam nervis ac thoris, masculum illum prudensiae vigorem constringat panter 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 lectone of Noodt with interpretatione. The rest of Crusius' speech is an abridged version of Noodt p 621, Sed quid dissimulem 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.

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 exarratione Institutionum totius operis sive ossibus sive membris, post deinde Pandectarum et Codicis lectione apta, diligente, accurata, tamen jam nervis ac thoris, masculum illum prudensiae vigorem constringat panter 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 lectone of Noodt with interpretatione. The rest of Crusius' speech is an abridged version of Noodt p 621, Sed quid dissimulem 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.
De Ratione docendi & discendi

qui intelligit, quantum potuerint erudita praefare ingenia, postquam illa Theodosiani Codicis, illa Licini Rufini, Ulpiani, Pauli, & Caii fragmenta luci restituta sunt. Haec eo pertinent, Viri Clarissimi, ut veras corrupta jurisprudentiae causas, simul quibus viis ea constituta, his & florentem facile retineri & omni lumini restitui posse, intelligatis. Atque haec quidem summa fuit eorum, quae Crufius, majore copia verborum pro instituto suo, differebat.

Ad quae Bokelmannus: Satis fecisti, inquit, Candidissime Crus: postulatione nostræ neque mutatum controverstiae nostræ statum, ab eo, quod inde ab initio professus es, animadverto. Praeinde haec erst summa quæstiti nostræ, recte Te Tu corruptæ collapsaque jurisprudentiae causas assignaveris, hanc systematicam seu comprehensiæm institutionem, quæ nunc in Scholis Juridicis utimur, & cujus se sectatorem autoremque, denique, sic enim tibi placet, Reum ëlle profiteor, siquidem maleficium id opportet ëlle non tralatium, quod inertia, avaritia ac ambi- tio: macula deforme, corruptam jurisprudentiae causam praebuerit, ac etiamnum praestet. Denique, id animadver- tendum erit, an ëta faciendum sit, quemadmodum tu praæ- cepisti, ut si quis omnino sibi necelarium putet cjuìmodo compendium, quod definitiones partitionisque rerum, quæ sunt in Arte Juris, actionumque solennia tradat, illud ëibi privatim habeat ac legat; Antecessores autem publice privatimque ne sejus ad talia demittant; nihil forint, idque vix, in Institutionibus enarrandis. Ubi verò ad Pandectarum & Codicis interpretationem transierint, procul habitis id genus breviariis, ipsos veteres integros & illibatos argreditantur. Ego ëta exstimo tibiique contentio, Crus: non ëlle perfectum Jurisconsultum, qui se veteribus, hoc est, ipsis Pandectis & Principum Constitutionibus per se toti- que
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 dedat, sed nego id esse ten-
tandum, priusquam paratitliris notitia omnium librorum Ju-
ris antiqui, exprompta memoria judicioque comprehensa sit.
Nec arbitror ejus fententiae te fore, quale Pandectae Princi-
pumque Constitutiones, auditu primo ab adolescentibus & dis-
ciplinæ juridicae ignaris intelligi possint. Nimirum manife-
stit omnium qui jus didicerunt, quique medio in curia defece-
re, vel qui defunctoriæ id aliquando inspexerunt, experientia
te refutaret. Infinita rerum actionumque humanarum varietas
superans etiam Graecæ, nemum Latine Linguæ divitias, fe-
cit, ut antiqui Artis hujus conditores, aliarum more discipli-
narum, nativos plurium verborum usus ad diversas abstrat-
fique significaciones transfuserint. Quis fine eorum, ut vocan-
tur, Artis terminorum pravias notitiae, quibus refertur sunt ve-
terum nostrorum scripta, gravissimas & difficillimas eorum
commentationes intelligat, quis species factorum ab illis
subtiliter involuteque subducas, si verba necdum singula
perciptat, memoria judicioque subigere, nemum explicare &
applicare possit. Nonne id perinde foret, ac si declama-
rent (que te comparatio delectat) antequam Latine loqui
didiciïnt? Ne dicam eos, quibus summa rerum differenti-
æ, perfionarum necessitudines, obligationum vincula,
secucionem judiciorumque ordo non innotuerunt, eos in-
tricatissimas de his rebus disputationes veteribus occurren-
tes nihil magis intellecturos, quam quilibet nostrum ænig-
mata vel arcana mathematicum, quibus nunquam imbuti fuer-
imus, percipere. Necio, quæ fit illa tua Cruß, aliorum-
que paucorum intemperies, ut omnibus in universum com-
pendium adeo sitis infestis, quibus nullam aetatem, nullus
auctor erudiendi juventutem carere se posse credit. Ipsæ
Inflimianus, jura populi Romani haud alter à se tradi posse
judicavit, nisi primò levi ac simplici viæ, post deinde dili-
M m m 2 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 Omnem} 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.
12 De Ratione docendi & discendi
gentissimâ atque exactissimâ interpretatione singula comple-
eteretur. Quin cum prudentissimus Imperator commenta-
rios ad Pandectas Codicemque ubi falli pene ferebatur, Par-
atiila tamen, id est, singulorum titulorum summas &
compendia, quibus non posse carere dissectae intelligebat,
illis suppedatur permixit: Contra quâm vos, præciliis reje-
ctisque compendiis, tyrone veltrum ad ipfa, quæ vocat Cæ-
far, immensa volumina commentandâ productis. Porro
quid ego hic de Aristotele, Cicerone, Quintiliano aliis-
quæ hominibus doctissimis auctoris & testimonia profe-
ram, quid de hoc & superiore seculo narrem; cum nihil sit
manifestius, quam id egisse omnes à compendiosis ut inciperent
alterque in ulla studiorum disciplinâ facere solutum esse nem-
nem. Tu adoleascentes nullis, inquam, preparatos initiis
gravissima juris antiqui volumina vis aggregi? Sic Me-
dicinae admovendos doce confellim totos Hippocratem atque
Galenum evolvere; Philosophos Aristotelem atque Pla-
tonem edificerc, Rhetorices Historiæve studiofim immen-
veteris eloquentiae rerumque geflarum monumenta feraturi,
Sine dubio pari, quâ nos, infamiae dabis insignitos artifices
compendiorum Historiae universalis & Systematum Rheto-
ricorum. Nemo pejus de politiore literaturâ meritus erit,
quam Johannes Gerardus Vossius, qui de omnibus huma-
nioris doctrina partibus compendia atque systemata fecit,
etiam de Arte Historica, quam ante cum nemo in Artis
formam redigi posse praefumpserat. Tibi quoque Theologi
faec doctrine corruptores videbuntur, qui compendiis &
Systematibus rudium adolecentum animos ad diffusam re-
rum faciarum notitiam introduserunt atque etiamnum in co-
dem instituto perseverant. Quid mihi adverfus hanc neces-
fitatem de Livio, de Trogo, de Dione, de Polybio nar-
ras, quâ breviariis illi nobiles Auctores interitum adjìissent.

Quid
A Dialogue on the Method of Teaching and Learning Law

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, 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” (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.’

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, 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 producit.

33 See Constitutio Tanta § 21.
34 Latin: *immensa*; Constitutio Omnem § 1, *ex tam immensa legum multitudine* (from such a boundless multitude of laws).
35 Cf Oratio IV pp 95–96 *Quis logiam, quis physicam aut moralem scientiam ex ipso Aristotelis adolescentibus hodie tradendam putant, quis Medicinam docet in Academiis ex Hippocrates 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 . . .?"
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; eam iis, quibus antiqui Scriptores coaeréntati sunt? An nec Digesta Codicemve contrahas, ita ut Livius à Floro, Dion à Xipho, Trogus à Justino contraént fuerint. Adeone Tu dividere necis compendia Notionum & regulam, quibus perceptis, Ars quæque facillius intelligi potest; ab epitomis, quibus ipsi libri angustà formá describuntur & exhibentur? Quoquam ego ne quidem studium faciendo tales epitomas damnare suffineam, quibus sapientissimos Viros intelligo usus esse, multique etiamnum maximo cum fructu utuntur.

Etiam, me aut omnia fallunt, aut omnigene lectionis memoria desinit in compendiarium rerum dictorumque notabilium, quae legendo audiendique percurrimus, intelligentiam. Quæ si meditando ruminandoque subâcta, scripto comprehensa, verbisque suorum Auctorum expressa consignataque fuerint, quæ preflior efficaciorque proficiendi, animique res pulcherumas imprimisci methodus excogitari possit, ego qui dem non intelligo. Etiam vero judicium, quod in omni rerum humanarum doctrinaeque genere longe maximi scimus esse momenti, hoc modo accertino validillumque exercetur & confessibilium. Quin etiam qui à fœ lectœ perceptaque alius transdere & inculcère cupiunt, si, quæ memoria intellectuque complectuntur, ea in compendium dictonis redigere fuisque auditoribus succinātē ob oculos exhibere non possum, nique quoque discipuli audita secum ipsi colligere & contrahē recolare animoque recendere quam, neutri ứng quam res eadem latius explicare & ad usu applicare poterunt: Adeoque si qui in eo præceptores auditoresque gloriam ponunt, quod compendiarium non sunt, cædem operis licet, ad docendum diffendumque, pene dixeram, ineptos fataceantur. Ego quidem nihil prius studiosis, qui valido...
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.

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).

\*\† The following lengthy passage (marked \* to \†, Etenim me aut omnia fallunt, (p 13) to supprimendum 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 Liber Singularis* (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 utebatur and Minrum est equidem. See 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.
14

De Ratione docendi & discendi

peremptorieque, ut ita loquar, dicere volunt, autorum, quam compendia facere scriptorum, qui plenire manus ipsi se intus necessarias tractant. Horatius, si unquam aliter homo quidquam sapientis rationem putavit, idem moner, Quicquid, præcipues, est brevis, inquit, nec metuit doctrinæ, ferilitatem; Namque ubi cito dicta perceperint animi do- ciles, tunc omne supervacuum pleno de pectoro manat, ut idem adferret. Quin doctissimos homines, maximos esse compendiarios, neque maiores ullos, quam qui bibliothecam, ambulantes vocantur, oportet, argumentumque praefatianæ hujsus instituti vel maxime præbet, quod ab omni antiquitate, quanto quisque minus ineptus sapientiaque videtur esse coniunctioris, tanto majorem in dicendo scribendoque compendii habet rationem, ut olim Lacones & Homericus Neitor, qui παντί οὖδὲ άνα σάλπαν λυγος, compendio sed efficacissimo rationem utebatur. Quod autem, Optime Cuse, ab ejusmodi Epitomis, insignium aliquot scriptorum cladis lacunæque, summum cum orbis literati detrimento, causam acceptiss quæreris, an auguraris, Mirum est equidem, hanc rationem non modo non deterruissve veres à compendiis ejusmodi faciendis & publicandis, sed eo idem etiam, tot secularum experientiæ, talem inde pestem oriri non fuisses convictos. Nam ut aliarum artium historiarumque epitomatores antiquos silentio pratercæm, inter Jurisconsultos ipsosque gravissimæ sapientiae conditores non modo Hermogenianum epitomas scripsisse confat, verum etiam, Paulum inter autores Pandectarum antegignam Alfeni Varis quadraginta libros Digestorum in epistomen re degiisse, idemque Involenum facile de libris decem Laboe- nis posteriorum incriptiones excerptorum in Digestis loquentur; quæ tamen ipia opera principalia fortquam erant excerpta, nihilominus salva integraque ad atatem utque Ju- stiniani,
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\(^{38}\), (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 βιβλιοθηκαί ἐμφυζοι (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 παυρα μεν ἄλλα μᾶλλα λέγως (few words but spoke very clearly)\(^{39}\).

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 Pandects, is said to have reduced the 40 books of Alphenus Varus’ Digest to one epitome; and Javolenus did the same for the 10 books of Labeo’s Posteriores, as is evident from the inscriptions to the fragments in the Digest. And we see that these original works, after they were epitomised, nonetheless survived unharmed and intact, right until

58 Horace Ars Poetica 335 et seq.

Quicquid 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

Böckelmann cites these lines in his Compendium Institutionum Iustini, Amsterdam, 1710, at the end of his introductory Methodus Institutionum Imp. Iustini, [p 14]. Huber cited them in the Praefatio i.e. address to the students, in the Positiones Iuri 1682 and also in the Praefatio of the Institutionis Reipublicae Liber Singulans; see Feenstra BGNR Franeker p 67, nos 191-196.

39 See Homer, 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 Oratio II, p 68.
Iuris, Dialogus.

fliniiani, qui omnia supprestit, ut volunt, per annos quadringentes & amplius, ex iisdem titulis capitum in Pandetis, remansisse videmus. Quanquam si autenticis scriptoribus compendiorum instituto praejudicari poterat, id ab ejsimodi metuendum suis factum epistematoribus, qui doctrinam laudibilem universam opinionem veteres illos proluxioresque auctores, quos contrahebant, omnium hominum reputatione superabant. Ego vero nihil errare me putem, si Labeonis & Alfensi Vari scripta ab usu temporum Pauli & Iavoleni removitora, ex quo a tantis viris contracta in oculos hominum reducita sunt, frequentius libentiusque a studiosis, quam prius, lecta fuisse dixero. Vulgaria quidem ingeniis folis epitomis ut contenta fuerint, neminem tamen, qui studia ad animum pertineant, extitisse credo, qui non est lectione compendiorum ad ipsa veterum illorum majoraque scripta videnda & exploranda inflammaretur. Neque fane quod Hilligerus & Vinnius Donellum nostrum, alius Thuanum, feiplum Mezerayus, alisque multi alios hodieque contraxerunt, ullam adhuc periculum imaginari possint, quo ipsi Auctores illi er manibus hominum doctorum excutiantur minorique pretii, quam alias unquam, habebatur. Quin si quem id genus scriptorum compendia, dicendi voluptate afficiunt, aliter evenire non potest, quam ur, qui praefantiam operum illorum, quasi per transtennam viderint, in ipsa uñque penetralia intimisque receffus & latifundia progrederi & exspatiari velint. Ceterum, quod inter antiquos aliquot praecipui scriptores, quorum adhuc integra compendia extant, (Iuris heic alia ratio est) grave detrimentum passi sunt, id ipsis epitomis accepto ferendum esse credam, ubi quae causas populos omnes nationesque in Europae sedibus suis excivit, urbesque & regiones ita evertit ac immutavit, ut plerumque ne nomina quidem superfint, 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 Hedendaeger Rechtgeleerden (1686) in the Begriffen der Rechten (1684). See Veen Exercitia, p 142 ff; ibid Recht en Nut p 183 ff; Feenstra BGNR Franeker p 75, nos 219–221; p 76, nos 222–224; p 94, no 290; p 73, nos 209–210.
De Ratione docendi & discendi

hanc ad libros manuscriptos abolendos minuendosque apud gentes barbaricas, jure bellii in humana divinaque omnia graffantes, non suffecisse cognovero; aut si alii Autores, quorum nulla suae compendia, clementius habitos esse magisque integros, ad nos pervenisse, compertum est; sine eadem belli clade cuma fuerint involuta, sine Christianis veteres religiosae infestgentils sapientiae monumentis, quod belli incendium eauferat, id imprudenti zelo piace in- temperem supprimum unde perdendumque putaverint. Ne Justiniani quidem Caesaris propositum in Corpore Juris contrahendo tam mihi reprehensione dignum quam neceffarium fuisset videtur, si in modo contractionis rectam viam tenuisse. Nisi tu putes Iulii quoque Dicitatoris coniilium eadem notai cenuria prosequendum, quod ille Romanju- ris, fuat tum magnitudine laborantis, compendium publicare decreverat. Ego vero magis Hubero nostro adfenelli- rim, qui in oratione, quam modo laudabas, inaugurali, non putat esse nefas iracdi Marco Bruto, quod nimis crudo fer- viti odio & improsera fettinatone fahuberrimi conatus fru- etum humano generi studioque Juris intercessisse videatur. Est enim quanto cultius Justiniano Iulii Caesaris ingenium, quanto melior & doctior Triboniano fut Trebatius, quanto beatiora florentis Rome quam jaenensis & a Gothis oppressae tempora, tanto concinnius ac eruditius Iulianum pra- Justiniano compendium extitisse. Verum, te arbitro, Crusti, est quod gratulemur Iulii Caesaris manibus suis postea, omnibus infravimus fatum, quod clarissimi nominis memoriam comendii Juris titulo non dioneavat.

Progradiebatur in acriora Bokelmanni oratio, quando CRUSIUS, Necio, inquit, an vos orationis meae sententiam recte ab omni parte acceperitis, ego utique non omnem pr orbis ultimum compendiorum damnavi, duntaxat id
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
said to have 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
Trebatus 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, 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
41 See Suetonius Caesar § 44. Nam de ornanda instruendaque urbe, item de tueundo ampliandaque imperio planta
cum maior in dies destinabat . . . igitur ad certum modum religem etque ex immensa diffusaque legum copia
optima quaerere et necessaria in paucissimos conferre libros....
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 Auspicia 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.

Nec minus Jurisprudentia Legum multitudine et Interpretum copia non sine magno judicium dispendio et
omnium rerum confusione laborabat. Adeo quidem, ut Caesar Julius inter praecipuas ordinandae Republcae curas,
haec monita nonnisi magno et audacissimo remedio succurrendum judicaret. Quisque ex infinita Legum et disputationum
mole tollere superiusque, selegere et in paucos conferre liberos (sic) ut multis postea saeculis a Justiniano factum,
probatisima quoque decrevet. Quod nisi mori cum infusa et haec utique parte insigniata exsequisset, eo paucis
menses incredibili cum posterioribus fructus absolvisser. Per me quidem fruere consuetudem tui Brute, et quanum vivi,
imputa Idus Martia populo Romano. Consulasti tamen immortalitat suae potius quam orbi terrarum . . .
O quam praelocio Magni Dictatoris beneficio Jurisprudentia fruenterus! Quanto aultarius Justiniano (ignoscant
sacratissimi manes) Caji Caesaris ingenium, quanto melior et doctior Triboniano Sulpicius, quam disparus Donatianus
nescio cui, vel Thelphilo, Scaevola atque Trebatus, quanto beatiora florentis Romae quam jacenti et a Gothis
oppressae tempora, tanto elegantius, tanto conciusus et eruditius (confessionem vis eruditiae extinxerat) Julianum prae
Justinianae Compendium extant. (And legal science also suffered from the great number of laws and the
Iuris, Dialogus.

me nolle dixi, ut Anteceffores illis explicantis operam darent, Studioi vero quominus ea domi haberent legerentque, non intercessi.

Bene recordor: ait, Bökelmannus, cum tu modo, indignabundus. Quod si tantopere compendiiis deletantur, aequas, studioi, huaeant ea privatis ac utantur, ut libet. Non obselect significans, gratiorem tibi fore studiorum viam, quâ fine compendiis, tanquam alta mentis remoris, veteres iplos incontinenti aggregarentur. Et sic, noli defilquare, Cruüs, qui seiam tuam sequuntur, de nostra methodo fientiunt ac in vulgus opinantur; meum Compendium, dicit simpliciter, esse dispendium studiorum, quod tu sibi ingeniosum fugiens facielcit, damnam esse dicebas. Sedulo id agunt, ut studiofam juventutem ex auditore meo, tanquam et Scylla vel charybdis, ut in Cebetis tabulae fenex ille facit, qui pueris vitam ingredientibus recitam viam præmonstrat, quâ ad veram sapientiam pervenire queant. Sed bene habet, quod rationes veltræ à fœnisti communi abhorrent & prejudicio generis humani damnantur; nec minus primo intuitu, quam experientiâ docente, liquent in hoc esse comparatae, uti rudes & infirmos animos studiofœrum multiutudine ac varietate rerum onerent; duorumque alterum, aut desertores studiorum efficiant, aut cum magno labore sœrius ad id perducant, ad quod leviore viâ dučii, maturius perduci potuissent, ut sapientissimus Imperator de hac ipâ Institutionis discrepantiâ loquitur. Idque te ipsum Cruüs, non puto negaturum, quin tibi sìc eveniât; quando fatis confertat, te hanc ipsum ob causam, duntaxat in Institutionibus, eâdem viâ definitionum atque partitionum, velis nolis, procedere cogi, alioquin omnibus à primo limine deserturis auditorium tuum. Adeone vero facilis tibi videtur haec compendiorum doctrina, tam humilis, ut Professô-
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.’ 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 meum compendium esse dispendium studiorum (that my compendium is a waste of study time).* You, seeking to avoid παρονοµωσία (an unlawful insult) are in the habit of calling 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’ tale 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 lead sooner by a less arduous road’, as the most wise Emperor said about this very problem in basic legal education⁴⁶.

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 Institutes⁴⁷, 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 *† Quod tu... dicebas.
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 Trebutius, 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 Compendium have been by comparison with that of Justinian!⁴⁴


⁴⁵ On the use of dispendium and damnum in connection with learning from compendia see commentary, Chapter V.1.3.2. This clause from quod tu to 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 damnum in his inaugural oration Corrupta Jurisprudentia (p 621).

⁴⁶ Cf. Constitutio Tinta, § 11.

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

ræ vocis officio non indiga vel indigna sit? Mièret me conditionis tuae, qui, licet invitus ad tam humile scholare ministerium, ex parte saltem cæque infimæ te demittere vis coætus; quod tamen ante nos, quotquot Jurisprudentia claros & admirables posteritati fecit, gnaverer instituerunt. Denique, non possum fatis mirari, qui sit, ut in re tam obviæ, tam prostratæ viri undique docilissimi tam rarœ satisfacere postint expectationi desiderioque studiorum juventutis, cujus quidem judicium universæ conscripiantis, in hoc gene-ræ nullo modo spernendum esse, communis famæ experimentis iam pridem abunde compertum est. Sed mitians judicia studioforum, quamquam his arbitris parum abeant, quin sint fata fortunæque Praeforum; compendia ipsæ, si placet eorumque inolem consideremus, an ea tantam facilitatem vilitatemque præ facient, ut Praeforibus indignum sit, ea privatim adolescens interpretari. Nam de publicis prælectionibus concedo tibi, non esse facien-dum, ut in is compendia, vel fyttemata, vel quicquam, præter antiqua juris monumenta, celebretur. Verum no-itæ, ut olem vocabantur, summæ institutiones, quibus privatim excrcemus adolescentes, breviaria, ficit vox for-nar, esse debent, paucisque dictis universi juris fundament-um complecti regulatique tradere, quibus judicium in difficilioribus rerum argumentis controversi prevalent. Quod nec sine obüiritate aliqüae collocari, nec sine indutio usus & exemplorum intelligi, nec omnino fine Interpretis ope confilioque perfect potest, ut ego & Huberus & Wijn-gardinerus, & quicunque non gaudent insulas philautiæ ad commune viam recedere, fatebuntur; sefæ inquam, non modo tempore, continua laboris intentione, fundamentales Institutionum Pandectarumque regulas & notationes rerum, quibus instructi leges ipsæ cum fructu evolvere possent,
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, whose universal judgement in this matter is in no way to be scorned. It has already been abundantly ascertained by common experience and report.

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 *breviaria* (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, Wijngaarden 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.

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48 Cf. p 1 where those sentiments are voiced by Huber.
Juris, Dialogus.

bene valideque didicisse. Non quod ego, vel quisquam
sanus homo studiosus tum grandi temporis spatii ab ipsis
legibus liberisque veteres prudentia exclusus velimus. Po-
zioniones compendiorum vel imprimit ad hoc comparatae
fint oportet, ut indices legum praetent perpetuoque studiosos
ad fontes remittant, ne quisquam de principiis juris crede-
re in animos inducant, nisi quod est Textibus ipsis clare fo-
lideque probatum videant. Quis vero in id seduló incum-
bit, ut summariis positiones illas Artis universae, cum le-
gibus allegatis quotidian conserat eaque judicio distinguat me-
moreque infigat, hunc ego non unius alteriusve hora spatii
fed magnae parte diei nocefiisque viri possit defungi certus
& expertus sum. Quod velim, habeas, Crusti, ad fallum
fcomma tuum, quo me, felicet, insignitum voluisti; nec
enim me fugit, quid hac de re in invidia facilisatem meæ
sparsum sit, quasi auctores etiam studiosos, bene habere, si
vel binas ternasve singulis diebus horas studiis privatis mes-
que compendio imponderent. Hac, felicet, est mollis illa
Bökelmanni disciplina, quâ juvenitatis affectum fibi fre-
queniamque conciliat, ut invidia criminatur. Sic est ratio
mea, Crusti, res hominumque civili considerare & expendere
judicio, consilia machinalique adhibere, quibus exitum
cuique negotio convenientem sperare licet; non

N n n 2

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 (μετασφαίρειν); 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 & perfectiona scita legum
suffentare, ut iterum fanctissimus Cæsar.

Incendebatur Bökelnmannus, quando Crutius, natu,
inquit, in impulo, quod ajunt, fluidus excitat, & nefcio,
quousquaque, parum abst, quin Majestatis violatae reum apud
Cæsaris tribunal a cere vele videaris. Atque ego, magne
compendiorum. Patrone non magnorum, non omnii, quod
de syltematibus ventris in animo fuere, simul unoque spiritu ef-
fuitovi; nec omina, Tu, quæ modo in hanc rem am me dicta
sunt, respionibus suis consecfi. Concessi ego, si me-
ministi, Antecesores in Institutionibus explicandis non
male facturos, si prima Juris fundamenta per definitiones
divisionesque exequentur; in Panderetis non arbitraris
id expedire. Quod antequam latius prosequar, non po-
sum silentio praeire, quod Tu compendiariæ Institutioni
ventræ speculium Imperatoriae autoritatis lectum jam ter-
tum prætendis, quæ paratilia quæ secundum libros fuos
componi permissit Jutianianus, ventra forent Compendia.
Scito, quando fie in animum inducis, errare tevehemeter.
Erudire te potuit Johannes Leuclavius (in proloco de
prisco paratitlorum usiu ad Collectiionem Constitutionum:
Ecclesiasticarum Balsamonis) qui mention Jutianian de
ratione docendi Juris per paratitl, docet hanc effe, ut liceat,
quemvis ad titulum adnotare, quam aliis in Titulis ac locis
illum ad titulum pertinentia reperiatur. Hic priscus sici-
licest, germanusque paratitlorum usus. At vero quid ei
simile traditum a nostriis paratitlorum hoc exo scripitoribus?
aet Leuclavius, quorum tu videlicet errorem fequeris.
Idem Janus à Costa Vir sifo Cujacio minor (in summaris
ad ix. prior. tit. 1. lib. 1. decretal.) idem Carolus Annibal Fa-
brottus. (in not. ad d. Confit. Ecclesiast.) qui Cujacium,
quid paratitia sint, ignorant esse dubitat adfirmare; quod
Ægi-
students ‘so that they can undertake the weightier and more perfect knowledge of the law’, to cite the Emperor\textsuperscript{51} yet again.’’

Böckelmann was getting worked up when CRUSIUS said “Certainly, you are stirring up a storm in a teacup, as they say\textsuperscript{52} 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\textsuperscript{53} 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).

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

Ægidius Menagius Vir Cl. ad omnes qui Paratitla scripturunt, extendere non dubitat. Quare definis Imperatori præcepti auctoritate tam humile institutum, cujus te laudatorem profiteris, docendi jus è compendiis, extolle re præconioque non suo exornare. Bene habet, replicare Bokelmannus, quod me cum Budaio, cum Cujacio, cum tot eruditissimos etiam in ipso genere politioris literaturae, hominibus, comparare suffinet, in non pudenda inficiat, quid paratitla Juftiniano significat. Verum si me opponitis in hæcres non pateris auctoritatem, ego me tuis nihilis magis obligatum sentio, quominus ipse meus oculus, quid apud Juf tinianum paratitla sint, percipiam. Verba Cæsaris hæc sunt, Sùfficiat, per indices tantummodo & titulorum subtìlatatem, qua nuncupantur, quædam admonitoria ejus facere in praefat. Digest. Interdict Imperator commentarios fieri, permittit facere singulorum indices capitum, subtìlatatem titulorum, admonitoria quædam. Niili me omnia & sensus ipsi communis fallunt, Indices titulorum nihil sunt aliud, quam breves rerum declarationes, quæ singulis capitibus tractantur; neque simplices indicinæ, sed etiam admonitoria, quid res singulae sibi velint, idque per subtìlatatem verborum, hoc est, tenuem levemque expositionem, quam proprie subtìlatatem esse non ignoras. Quo pacto summaria nostra compendiosa melius & epressius decipherantur, expecto dum ratione vel auctoritate probes. Imo nec hoc velim obliviscaris, ut hæc verba tuis juris fugitivis, hoc est, è fède fuæ remotis, quorum annotationes paratitla vis esse, tam bene convenire docesc, quam nostris ea summariis sive Compendiis, exactè convenire probavi. Quod autem ad vocem adhibitus attinet, cæcum, sive notare velis, quod præter vel quod juxta titulos adjicitur, quod utrumque prepositionis 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 Budaeus, 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 *παρατίτλα* (*paratitla*).’ See the preface on the purpose and plan of the *Digest*55. 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 *παρατίτλα* (*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

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 summaria et commentarii*, 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 Tinta* § 21.
De Ratione docendi & descendendi

in non magno discrimine ponam. Ego vero, Crusi\us, nullo modo id agebam, ut de vocis hujus notatione litigarem: fed utrovis modo eam interpretari velis, mihi ad rem ipsam progredi fatius videtur. Nam is alte modò inaronbas, quan-do me contempti Cæsaris reum peragere velle videbaris. Quanquam ego Te Bökelmann meliore jure, si non hoc totum ineptum est, lexè dignatis Cæsare deferre possem. Nam si omnino libellus aliquid primæ institutionis ad in-choandam Juris disciplinam opus est, quæ vos agitat infania, ut aliquid compendium quaeratis, quam Cæsar ipse Ju-stini\anuus compo\uit & Juven\utrius fülicite commendavit? Qucis neget, hunc effe contemptum Cæsarei instituti, quis neget fieri non posse, quin detrimentum studia tyrnonum capiant, si alius descend\it principiis, quam ipsius Jurisprudenciae conditoris, imbuantur? Quid aliud neoterici compendio-rum Sua\ores & Autores agunt, quam ut pub\iem Academicam ipsior int\olit notabilis honore, quem Justini\anuus tam magnifice illis imputat, cum ait, Digni tanto honore tantaque reperti felicitate, ut & initium vobis & finis legum eruditionis, à voce principali procedat? Qua\t vero illud est, quod Studio\is hac perversa methodo eripitur, quod qui Justini\anum veteresque Juris Authores ad\uduo legunt, corum dicta fententiaque sibi familiares redditas, semper & ubique non modo in Scholis, sed etiam in foro laudare & allegare possunt, multò certè luculentius & efficacius quam regulas itor\orum compendiorum, quibus fæ vulgus Candidatorum, si dis placet, magnificare solent. Denique, certitudo fententiarum Juris non potest haberì ex hodierni\is systematis, cum autores eorum alii ab aliis ex multis differenti\nt, & quod ex uno didici\i, si ad alium te transeras, iterum fæpe dedisci\endum sit. Ex adverso, qui folos veteres fæ\citur, quicquid didicerunt, immutabilis a\utoritate ad extrem-
both meanings.”

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 law56, 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’57. 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 πασων) 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 ʃautenti sollicitie commendarit) and the following passage from ‘what are the modern . . . ? to ‘. . . they trust . . . ’ (Quid aliud neoterici to confidunt, p 23, are taken almost verbatim from Oratio IV p 90–91.

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

extremam usque senectam in doctrina scholaram usque fori perfeveraturn susce confidunt. Præterea, ex eo, quod Tu ipse confessus et professus es, illa compendia, stylos scribenda esse brevi atque conciso, fieri non potest, quin eorum, qui talibus adiuvant, ingenium atque oratio sterilitatem et nec-cio quam contrahant ariditatem, per quam adolefcentes, quos maxime decet ubertas et florida dicendi copia, dege-nerant et corruptur. Notum est etiam, qui Juris studi-um feliciter exercere volent, eos amnitates historicas humanioresque literas, cum eo conjungere debere, quem-admodum fieri oportere Te ipsum ficio et alios fempere effe rettaturam & modo mihi contendenti utro effe largitum. In-tuper, Ars ipsa juris eam methodo pervertitur aliumque in-duit habitum, quam a Juris conditoribus accepit et quam habere debet. Repletur novis Principiis terminisque, ut ajunt, semibarbaris atque fictitius definitionibus et parti-tionibus in systema scholasticum deformatur. Quare fit, ut studiósio inde ab initio novis immixi fundamentis, in progressu & in ipsa praxi rationes decidendi non tam ex limpidis antiqui juris fontibus, quam ex lamis et lucibus, e pra-ceptis regulisque systematicis petere confecerint. Quis non abominetur hos compendiorum fructus et speci-mina!

Respíranti Crusio, Mirari equidem liceat, Crus; responset Bokelmannus; quod cum ha rationes Tibigraves valideque videcantur, in primâ oratione tua nihil ejusmodi misceuris, sed abrupta severitate nihil quam nigrum theta compendinis inurendum putaveris; quod nihil omnium temporum hominumque eruditorum exemplo, judicioque magis adversum poterat fingi. Unum, fateor, adipecras, quod me fugirefellentem; Indignabundus, si quis omnino compendius delestaretur, ægre concefletas, ut ea priva-tim
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. 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, that is from the precepts and rules of the systematists. 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 [symbol]. Nothing more hostile could have been conceived as a precedent and a judgment 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;

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.
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 Omneem § 2, where it is written of the Institutes that they are ab omnibus turbidis fontibus in unum liquidum stagnum convivas (drawn together from all their muddy sources into one clear lake.) A similar idea, 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.
60 The passage from ‘. . . from the precepts and rules of the systematists’ (fieri non potest to consueverint) is taken almost verbatim from Onatio IV, p 90.
61 θ (theta) stands for θανατος — death, condemnation, mark of censure. It was used by the Greeks on their voting tablets as a sign of death.
De Ratione docendi et discendi

tim haberent legerentque studiose, ceterum juxta Pandecias atque in Codice nihil ejusmodi usurparet. Sic ut in omni hac disputatione, Crusz, pro tuo potius quam pro communi rationis captu différis, ita nihil imprudentius, nihil à discendi docendique juris ordine alienius adfirmasti potuisse, quam in Institutionum explicatione compendium Artis usui venire possě, in Pandecias & in Codice non esse serendum. Quis non contrà videt, si quis abhorrebat a notissis systematibus, eum quod ad Institutiones attinet, in promptu habere Iustiniani compendium, quod Imperator ad hunc ulum parati & præscriptiē juventutī, intelleximus. In Pandecias autem & in Codice, cum seiret aliquid esse necessarium, quod summam eorum librorum doctrinam exhiberet, industrice Professorum commissit, ut paratita, id est, singulorum titulorum summarias expositiones (hunc vocis senium, velis nolis, jam mihi concedere debes) in ulium discipulorum componerent. Quid autem Te moverit, Crusz, ut secundum Institutiones methodum finiendi partiendique tandem aliquomodo ferre queas? credo, quod intelligis, studiosos sine talibus adjumentis cum fructu in Juris oceano non possee verificari, nisi, inquam, notiones rerum necessefarias & summa doctrinae esse præsum-ferint. Si jam in Institutionum libello, quem Caesar publicavit, elementa omnium capitum, quæ in Jure tractantur, extant, nihil intercede, quominus utendum sit tuo consilio; atque itatim, ubi Institutiones percepere fuerint, integros Pandecarium Codicisque libros aggregati & ingenio memoriaisque subigere liceat. Quod si facile pars aequa totius Artis in Institutionibus Caesaris intracta maniferset, manife-stitum est, earum rerum initia nihiló magis ignorari posse, quam que in Institutionum libellis ab Imperatore collocata sunt. Non expectabis, opinor, ut tibi demontrem, 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 κριτήρια (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

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

nobilissima difficillimaque Juris capita sunt, de quibus altum in Institutionibus silentium; Nihil facilius erat, ni super-vacuum & apud homines, quibus hæc in numerato sunt, tædiosum foret. Nihil est igitur, quod instanter Te rursus audio; sufficere in usum preparatoriae doctrina Institutiones a Justinianis reliquias; non sufficiunt, inquam, Sed ad Pandectas intelligendas, eujamdiest libellus àque necessarius est. Prœterea, inanis columnæ impingitur meo ad Institutiones compendio, quæ si id ageretur, ut juventutem per illud ab ipso Justiniano abduceremus. Nam meum Compendium (non pudet hunc titulum præfere, licet aliud speciosius prætextere possèm) Auditoribus meis aliter ufuë esse non potest, quam si Institutiones Caesaræ juxta eas continuo legant cænedæque methodum premant; ideoque tantum abeit, uti contemplatus inde juventuti adversus Authores Artis subnagci quæs, potius ut augat eorum honorem venerationemque, dum à dictatis nostris ad eos, tanquam ad Principales auctoritates, continuo remittuntur. Ceterum, hoc mihi Sacratissimi Caesaris manæ largientur, id etiam vos mihi, ut dicam, largiæmini, non esse faciendum his diebus, ut methodo, quam ille quodam prescriptit, in omnibus adamum foecipeque inhæreamus. Nam quod Ille primò omnium voluit, ut ne studio ultra semel in Institutionibus datimuntur, quæ fo, quam hæc res hodie facultatem haberet. Fætor, Institutiones semel in spatio explicari possè; verum quis veltrum de ingenio memoriaque fua tantum fide dicæ conceperit, ut una dæambulatione, se argumenta Institutionum ita possidere sentiat, ut super illud fundamentum totum Digestorum molest adstruere possè confidat. Accedit, quod nemo negare potest, expedire studio fis, uti mutationes, quae universæ Europæ moribus indu-
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 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 solitis. (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).
26 De Ratione docendi & discendi

cliplinam Iuris inveniit sunt, Inscriptam regulis admiscendor
nullis aliqoin Artium studiois meliore jure fatoryri-
cum illud quam Jurisperitus applicari potest. Adolescentes
in scholis multiformis fueri, qui nihil eorum quæ in usu
habemus, audirent & discunt. Quæ ratio sola sufficit ad
probandum, quod Inscriptam compendium non respuat alius
manuale eodem operâ methodique legendum. Jam porro id
praesce teris in objectionibus tuis mirari me subiet, quod
hac docendi discendique methodus incertitudinis in ratione
studiorum argumentatur. Nam si, quod res est, dicere fas
sit, non uno mihi experimento comptum est, maxime
in Examinibus Candidatorum Iuris, eos, qui diversâ à no-
bis viâ præcipue fæ jaçabant, in Colloquis & dissertatio-
nibus Artis, adeo fluctuantem, ne dicam, ignorantia fun-
damentorum Iuris esse repertos, ut miseratione potius,
quem diversa sententia invidiâ convitioque dignit judi-
carentur. Enimvero si nihil aliud discendum tractan-
dumque uidere mus, quam hujusmodi compendia brevia
verbis in formam systematis, ordine tamen Caerato reda-
çta, metuemincm effet, ne non ficciores atque aridi, ficta
aliam, Cruis, objectio tua dictabant, fecerent studioí. sed quid tibi
vis, ergone credis, ita nos Compendium deleïtari, ut in bis
Inscriptaeos auditores omnes suis laboribus ordiri atque con-
sumere velimus? ut periculum sit, ne ad horum exemplum
orationem stylicque contrabant & exhaeriant? Ego vero,
antequam studioi, de juris scientia etwife compendio cogitent,
ita eos omnino animos inducere volo, ut lectione bonorum
auclorum eorundemque imitatione & assiduis styli exercitiis
amabilitatem ingenii ubertatemque orationis nam comparent,
ut in habitum illis abeat, atque deinceps, ubi jus studio-
& hac ipa compendia tractant, ne illa quidem amseniora
penitus illus omittere, sed laxamentum in ipsa studendi
va-
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’ 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 *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.

[A5] 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 Institutes, should we have to fear not only that the students would become dry and arid (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 law students (*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 completely but to seek in them a relaxation by way of variety in their actual studies.

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64 Petronius, *Satyricon*. 1. This same idea is also expressed by Tacitus and Quintilian. See also Huber *Oratio II*, pp 64–65. Van Eck in his *Praefatio* to Böckelmann’s *Differentiis*, p LVII, quotes the same extract.
65 Cf *Oratio IV* p 93.
66 Justinian wished the first-year students to be called New Justinians (*Justiniani novi*) instead of the silly and ridiculous name of *Dupondii* (two as pieces) which had been given to them previously. The ‘as’ was a valueless coin as was the two ‘as’ coin. See *Constitutio Omnem*, § 2. *Caucus audientes non volumus vetere tam friullo quam ridiculo cognominem 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 *dupondii* (tuppenny pieces), which is both silly and ridiculous, but they should be referred to as ‘New Justinians’). *Justiniani novi* may also be translated as ‘Justinian’s Freshmen’.
67 See Huber’s references in the *Praefationes* to other works e.g. the *Digestiones*. 
Juris, Dialogus.

varietate quærere fuadeo. Addit, quod & ante dixit, compendia illa systematum, sive tantum indices, secundum quos textus Juris, quibus nihil ubernus, nihil amœnius, inquiri & legi possunt atque etiam omnino debent. Qua ratio facit, ut in Pandectis, inquam, absolutè necessaria sit hæc preparatio paratilaris, eti nihil Justiniani Institutionibus addere velles; liquidem manifestum est, non modo universum methodum in illis esse difficilem & obscuram, verum etiam singulos titulos sine directione compendiī alicujus methodici, neque perdici neque doceri posse. Quamobrem Caesar ipse difértè voluit, ejus generis indices & summas capitum describi, quas utique breves atque concisae esse debere, negotii ipsius natura fatis indicat, nec metuit Imperator illud prætextum corruppende eruditionis & eloquentiae periculum. Ex his credo, jam præsumi posse, quid ad illam objecionem, quæ per hanc methodum praedicit volebas communicationem Juris cum literatura humana, sit respondendum. Non contineri in hoc genere compendiōrum observationes digressionesque Historicas & literarias fatemur, impediri prohiberique negamus; nec unquam effamus hortari studiosos ad hanc conjunctionem variae Eruditionis cum Arte Justiniana. Denique, nihil magis de eo laboramus, quod tu etiam, Crui, præcipue difficultatis loco ponerbas; sic elicit, his neotericis Institutionum imitamentis, non preferre Themidem suam faciem nativam, sed ejus formam cultu adicitio corrumpi. Profiteor equidem, si per hæc compendia fieret, ut Ars nostra terminis, quos vocant, exotici impleretur licentiâque finiendi partendi quæ scholaasticâ in aliam transierit speciem, me tam alienum ab illis futurum, quam cuiquam Themidos amantissimo esse conféntaneum sit. Ideoque curatiissime id operam dedi, ne quid tale meo quidem com-

O o o o 2 pendio
Add also what I said previously namely that these compendious 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 possit, adeò ut religio mihi fuerit, ullas in eo ponere definitiones aut divisiones, quae non aut ē verbis, aut ē mente fententūque legem evidentur colligi posse. Fuit, inquam, religio: nam superstitionis non debuit dicere, qualem fuisset futurum ego quidem arbitrator, similibus ejusmodi colocare voluissem, nisi quod totidem verba à Iustiniano veteribusque Iurisconsultis prescriptum esset; tamen ignari non potestis, literatiflimos superioris ævi Doctores, Cujacium, Duarennum, Donelium alioque Juris antiqui & intaminati cultores ferefflimos cundem inititilè viam, quam in nobis tam inique animadvertitis. Dem felicet, proprietates rerum à veteribus fusè expositas neque semper in finiendi partiendique formam redactas succinètis positionibus enuntiant atque declarant, quod omnium Artium, quae ab antiquis ad nos profectè fuit, magis etèrciè videbant.

CRUSIUS; si, quemadmodum Tu, inquit, Bökelmann, compendii tui utrum studiois commendare te narras, ita vulgo aut à majori parte haberetur, non erat quod dispendii quicquam in illis esse situm exstitimaremus. Sed per communia facra teftor, an non Auditores tui, tam frequentes aque notabiles, in illa Compendii disciplinæ proram atque puppis studiorum fiurum colloc.unt, sèque percepeitis illis, egregios esse Iurisconsultos arbritrentur, neque de ipsis antiquæ jurisprudentiae libris evolvendis examinandisque curam illam fuçipiant, & an non hæc res ad summum doctiurum Iuridice doctrinæ pertineat, adeoque an immemento compendiarium illud institutum, veluti caufa corrup:s jurisprudentia, vituperetur. Quod si Tu, sic ut nobis sed det consilium, devotam Themidis juventutem, ad ipsa vetùe Artis penetratio deductur, si exemplo praeris, ipsa veterum relponfà commentariaque, sic ut 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

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

deformi illâ, quam habemus, epitome reliâta sunt, idoneâ methodo legere, examinare, conferre inter se, iilqué immorari, dum plane penitulique intelligerentur; aut si non præberent se intelligendas, veros sensus emendandi conjeturis indagare. Equidem, si quod res est, fateri vis, eo modo, quid amplissimum Jurifconspicti nomen requireret, & quid ibi deesset, eti jam vestra compendia tenerent, agnitos esse crediderim; denique, res ipsa compelleret eos veram proficiendi viam insinuare, neque cœlleare, donec universum jus antiquum in memoriam potestatem redigissent, neque nos profecio pro Jurifconspictis habemus iilqué nomen illud venerabile pœníficuè adscriberemus, quæ si erim quandam definitionem, divisionem iilque adhærentes necio quas, ac heri nudusve tertiis natas questiones excipere atque resolvère possent; ne de aliis, qui nec id ipsum didicerint, cum dedecoris publici confessione loquar. Enimvero si compendius abolitis, tam egregium mutati confilii fructum capere liceret, credo, tibi ipse nullam viam iri cauam, quare nobis ad invenuita illâ & inamena compendia, pœnientiamque pulcherri mi confilii, redeundum foret.

BOKELMANNUS: Si nihil aliud à mutatione pœnientiâque tueri vos poterit, quam ille speratus succeus, credo fidem praefagio meo constituram. Quod si potes animum inducere, ut res tibi proponas, sicut exístium, dabo operam, ut intelligas, fermones tuos abhorere abusû civili, pænôisque vel ostentationis esse vel incriptum. Quod utribi vel saltem hifice viris Clarissimis persuadam, necesse erit animadvertemus, quomodo parata, quibus studiis exculta sit juventas, quæ ad percipiendam Iuris disciplinam scholas nostras ingreditur, & an ãnis hominibus confulsum videri potest, ejusmodi auditoribus committere fundamenta juris paratilariae proprio marte diffendâ; nihil autem illis O 0 0 0 3 ex-
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 paratitha but without any other assistance; and, moreover, to explain to them nothing
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exponere, quam ipsa veterum respondia commentariosque, non quae ex illis faciliora, sed obscura, difficilia nodosae 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 philosopharum, ut oculos animumque non advertas, ad eos, quibus cum res sit, nihil aliquid est quam splendide nugari. Non est hic locus de miûrima fœholurum prææque institutionis confuætudine queri; sed hoc palam est, novos Justinianaeos, qui se nobis offerunt, plerisque rudes esse politicis literatuæ, rudes historiæ & omnis Antiquitatis, rudes Graecæ linguae & proprietatis elegantiaeque Latine, ne dicam Philoûphoïa, praefertim moralis. Nec hæc, quæ te perveræitas agitet, ut causam corruptæ Jurisprudentiae, vel studii potius Juridici, (nam ipsam, opinor aequæ adhuc integræ esse quam fiuit adum) potius non prodideris ignorantiam Romanae Graecæ linguae, quam usum preparatoriam institutionis. Et quidem de Graeco fermone facies prudenter, quod nullum verbum de ejus peritia in Juris Studioso requirendà protulisti, perinde ac si nihilum magis quam Suedice aut Laponice dialeécticae notitia ad Juridicam Critiæ exercendam pertinereat. Quod si paulo durius Munkero nostrò, hac in parte, Delsis, elementarius Doctor, operam naviales, credo, non minus severè in contemptum Graecarum literarum, quam modo in compendiorum & systematum Autores inveæsus fuisses. Nunc autus es Licinium Rufimon, Ulpiano, Caji, Pauli fragmenta, Codicumque Theodorianum memorare; Graecum Jus & Basilicos thefearos, è quibus tot tantique valoris cimelii viri Graecæ docti eruerunt, atque adhuc inventigare possint, trifiti, ne dicamus pudendo, silento præteriifi. Neque teagnosco, Crufis, tam superbum eruditionis vulgâte cenforem &
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 \textit{splendide nugari} [to talk highfaluting 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 \textit{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 mediaeval scholasticism and the methods of the Schoolmen was often expressed by the phrase \textit{nugae scholasticorum} ('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".
& exaëtorem criticos, fine ulla Graecarum literarum notitia. Tametique Graecos Jurisconsultos basilicamque paraphrasin contentus sis omittere, vel Interpretibus fidere, quod in re critica fìimus, quam tutum arque decorum sit; tamen, in quem hujus studii, quod laudas, profectio, quâ ratione po-
test alienari ab illa parte Juris Justinianae, quod totum diximus, Graec composition est? denique in antiquis lati-
norum scriptis, quis unquam sine mediocri Graec literaturae peritiâ feliciter in exercenda Criti verfatus est, aut Criticum se profiteri suffinuit? Sed mittamus Graec permittamusque non tantum Accursianis, sed etiam criticis pace tua dice-
re; graec sunt, legi non possunt, quises se nobis obtuler-
runt; vel si criticam ne haætensus quidem omittere placeat, imitemur Illum, qui cum in Ulpiano legisfet haec verba, pros epos, fagacitate vere criticâ, monuit legendum esse, ita; pro se poscit. Sed revertamur ad institutum. Contem-
plare mihi, quefio, Crufo, adolécentes, vix tantum La-
tinæ doctos, ut animi sui fenæ, quod fatis sit, efferreque-
ant, Philosophiae & antiquitatis & Historiae Latine igno-
ros; adeone te praecopus amor inftituti tui teneri, ut his cum aliquo fructu eruditisilli & difficillimos antiqui juris commentarios exponi possè flatus? Nolli & experiaris, fieri non possè, totum uti corpus Iuris auditoribus tuis illustres; obscuriora & ardua queque, fine dubio excerpen-
da sunt, ut digna Interpretis opè, digna publice vocis offi-
cio videantur. In his tu adolécentes ita, sicut dixi, præ-
paratos cum valido profectu verfari, siccine Iureconsultos inde fieri possè credis? Non dices, opinor; sed in tuis au-
ditoribus suppleftilem humanioris literaturae prius, credo, requeres. Quid facies igitur illis, qui non habent eam nec adferre posse, quemadmodum decimus quique non re-
peritur, qui mediocrer, neque centesimus, 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 and ἀρχηγὸς Ὀζετικὸς\footnote{For ἀρχηγὸς Ὀζετικὸς reading ἀρχηγὸς Ὀζετικὸς. A collation of 168 novels (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 Authenticum. (The Authenticae are excerpts from the Authenticum attached to the appropriate section in the Codex.) See Wallinga Authenticum and Authenticae.} 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 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 pros epôs (according to the word) in Ulpian, with his true critical sagacity, recommended that it be read as pro se poscit\footnote{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 προς επος = according to the word, read it as Latin 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.} (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 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.
De Ratione docendi & discendi

hac parte fit instructus. Non inculcabis tamen illis compendia, domi legant, si velint; Professor altius spiret, Illefiglorum & notarum enigmata, Ille malas interpunctiones emendare ac interpolare, glossas varioque lectiones a textu genuino separare, luxata restituere, vitiatas sanare, plebsicitata atque Senatusconsulta concinnare; fugitiva retrahere locutioque suis reddere doceat. Hae enim visagere Professoris, haec tradare fectoribus suis jubes. Mihi vero quid inceptus quid famis hominibus indignius videri queat, nullo modo apparet; siquidem nec adolescentes ita, sicut diximus, instituti quicquam ex iis rebus percipere, nec si queant, ullus inde fructus ad eos redundare potest. Noli putare, me effe eum, qui spernam vel reprehendam instituti illustres; sed quod haec ad Professoribus doceri vis adolescentes, antequam paratita totius juris ab illis perceptra fuerint, superat omnem ftultitiam; ignoscere dicenti quod res est & sepham, sepham. Nec quisquam fanis ratione praditus terre potest Antecefores haec rudibus animis incultantes, atque eos qui Compendia talibus praecipitam corrupte jurisprudentiae ecos peragentes. Quid vultis tandem agamus cum iis, qui nihil quam latini fermois & senus communis intellectum habent? ut remittamus eos in scholas atque ad Parentis: an ut deineamus immani sumptu in Academias, ut uniuersitatem enigmata, quae tu dicis? an potius, ut ejusmodi nocteae Juris in illos transferamus, per quam de causis respondere, civeo regere consilii operamque foro navare potest?-Atqui hoc et in potellate compendiorum nostrorum, quia illa tenet memoria, distinxit judicio, probare potest--legibus, ut nos dicimus Audite nostros, hi non ineptis praditi ingenii caque dixi, praetare potuisse & feliciter omni die praebant. Non et quod mihi credas adfirmantibus, speeta Viros Clarissimos & 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 consultae*, 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,

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75 The Latin idiom *Scapham scapham* is from the Greek την σκάφην σκάφην λέγειν (lit. ‘to call a boat a boat’ or, more probably, ‘a tub a tub’). For the spelling *sichapham*, not *scapham* (see Latin text). This is repeated as above in the 1696 edition, p 606. Buder has *scapham scapham*, in the 1724 edition, p 68. The phrase does not appear in 1684, p 54.
Iuris, Dialogus.
ductos, per omnes Germaniae Belgicaeque respublicas sper-
fos, & ade negare, Compendiariam Institutionem esse effi-
cacirem ad utilitatem publicam, illa tuorum ffglorum, in-
terpretationum & coniecturarum demonstracione. Quam
quidem ego nunquam, ut tu facis de methodo nostrâ, con-
tempsi, vituperavi; sed, quod toties repeti, sequi debere
paratitkarem Institutionem, fentio, siudeo, contendo.
Nec credo, quenquam adeo bonâ mentis inopem fore, qui
non mihi potius, quam tibi haec parte fideem fit habiturus.
Inflam te quidem, atque hoc unum minus incepte, in hacre,
telligo, postquam illa compendiaria in Academias & Au-
ditoria Juridicae introducita est, juventutem in ea subsecere,
nihil aliiu siibi proponere, nec ulterior provehere studiorum
fuorum curas. Hoc igitur te queri, te incusare & exprobra-
re juventutem nostrâ, etiam verò Professoriibus, si qui Au-
êtorese f f tales fordonix preberent, oportebat; non etiam
detonare contra, quod nemo sapiens, aut juris prudens o-
mittendum putat, neque contendere Pandectas sine com-
pendio paratitlari esse docendas. Non ignoro, pleroque
Juri dedicatos, ut studia & ingenia sunt, tantum temporis in
haec comendiosa totius Juris doctrinâ confermur, uti per
fortunas ilias integrum illis non sit, aliiu deinde fadium in-
gredi novoque curfus de ultima coronâ denuo certare. Quod
profecto non hujus methodi, sed hominum & seculi cœli vi-
tium plurquam manifestum est. Eoque vires eloquentiae &
autoritatis vestriæ, Cruû, intendere debeuisti, urgenerofi
juvenes perfecto eruditionis amore novaque difficili cupiditatem inflammmarentur; non ut præcipites durentur in cujus-
modi laborum, quod sparsa tantum infinitâque lectione me-
oriam impleant, neque præceptis ullis regulisque universis
forment frumentque judiciar refigitudinem, quod statuissim
nixum fundamentis vagare legum notitiam diffuere, suaque
pppp

femet
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 paratitla. 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 methodo non infeliciter . . . usi, fines praeventum
quod Caesar studii statuit nostru, Rempublicam siliuit in paribus administrandam sibi commissam, non prece aut
pretio, sed virtute et eruditione obtenuere. (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 Nôl p 38 ft 13, on Huber’s feelings about an academic career.
De Ratione docendi & discendi

item intentione frustrari nesciebit. Quod si alterutrum à
Juris studio absque oporteat, vel criticam subtilitatem, vel
summariam universi Juris notitiam, & si facultatem non
habet utraque methodus, quâ conjungatur; age, videamus,
utra minore cum in commodo publico adhiberi negligique
posset. Eocompendiis & syllematicibus, ita ut à nobis propo-
nuntur & explicantur, palam est, haberiposlè jurispruden-
tiam, eo cum fructu copiâque, ut ad causas agendas, scri-
benda consilia judicandique munus sufficere posset, atque
sufficiat; clarisimis atque vivis exemplis argumentum undi-
que prebentibus. Veltri nullis compendiis imbuti univers-
fam quidem Artis scientiam, qua subnixi prompte & exped-
dite in foro hominumque societate verfentur, nunquam
perciipient; argutationes quasdam, observationesque rerum
ad ulium nihil pertinentium, ferupulos vulgarum lectio-
num coniecturaque plerunque superflus movent jaetan-
tique, & omnino talem sibi doctrinam comparant, quæ su-
pervacuam atiamque à communis usu vitâque subtilita-
tem, ut tibi verba tua reddam, praefere videatur. Deni-
que, sic ego, sic omnes, qui jurisprudentiam magis in re-
rum gravitate, quam in verborum captaione conficere cre-
dunt in animum inducimus; neminem sìne compendiariâ
totius Juris intelligentiâ valde promteque Jurisconsultum
est posse; nec aliter facientissimos antiquitatis & hujus, &
suprioris feculi Juris Interpretes exitialiâ videamus. Quod
si tu hiis rationibus necdum tibi perfruaderi pateris, dun-
taxat hoc admire, singuli ut sùo senâto abundent, & sine
detractatione, sine convivio quisque bono publico famulas
manus vocisque ministrii commodet; necalianum cor-
rupit jurisprudentia, neque compendia primâ inquisitionis,
ut discendentia juventutis probrose acceperet.

Crusius: Ego quidem hucuique, sicut volebas, disputa-
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 voci ac vita, substitutatem praeferre. (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.)
35

Juris, Dialogus.

tantem te Bökelmannne confecutus fum, tametfi plus è ver-
bis meis, quam in is erat, deduxeris. Nam fi recte ani-
mum illis adverdisse, non id mihi consilium suæfæ, colli-
gere potuissent, ut uiùm compendiorum, sicut à Te, sicut
ab aliis homibus claris ulüpántur, veluti causiam corruptæ
Eloquentia traducerem; sed festinationem nihil quam Com-
pendia quærentim in dicendo, nihil aliud in docendo praé-
tribentium infectatus fum. Quid autem? cenfæ faciamus
ali quando finem hujus altercationis & rogemus Huberus
ut & ille suffragium fium edere animique fententiam & ex-
perientiam exæemplum declarare velit; forte an medium ali-
quod consilium, periculis fecer veris five iætis utrimque va-
cuum, ab illo suppedietetur. Recte; meherele, regerebat
Bökelmannus: Nisi enim respondendi vices ab illo mihi
commodatas pennis intercipere & consumere velimi, tem-
pus est, ut desistam; quod eò jam proclivius accidit, quod
 tu, latere male teço, abscedis, & plus in alieno auxilio quam
in præsiris viribus fæpe collocare videris.

HUBERUS. Ego vero, si plura, de compendios & sy-
ystematibus Juris in medium proferre vellem, postquam vos
in utramque partem copiosislimne hoc argumentum executi
fistis, mihi ipfi vobisique gravis & inepte verbo fus haberner.
Nolite à me aliud expectare, nisi, ut simpliciter exponam;
quæ fit ratio methodusque institutionis, quam juvem-
tut, cuius fæpe adnotus fum, impiertor; atque exinde,
quem partem vestre contentionis ego probem vel impro-
bem, si res tanti videtur, colligendum relinquam. Enim-
vero non possum färis laudare nobilem Crusii indignationem
adversus pravum feculi noftri miorem, festinandi studia ju-
ventutis nihilque is quam Compendios Sysematvm li-
bellos exponendi. Sed hæc longa querela nulloque bono à
nobis iteranda. Permittite mihi, ut repetam priorum tem-
P 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\(^79\), 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,

\(^79\) 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.
36 *De Ratione docendi & discendi*

porum memoría, diversas docendi discendique juris rati-
nones vobiscum recensíam, atque exinde, quomodo ad hanc
methodum, quā nunc utimur, perventum sit, denique ex
 omnium viarum comparatione, quæ praetentissima sit, a-
nimadvertismus. Primo omnium ante JUSTINIANI temporā,
ut ipsē narrat, cum ad studium Iuris abiolvendum quadrī-
nium omnino definitum est, ita ulûs ferebat, ut e vicīes
centēs versius millibus, in quos libri de jure scripti,
erant distincti, studiofis vix sexaginta millia próponentur,
reliquis omnibus tanquam ab usuremotis, penitusneglectis,
atque ex illo ipso Compendio, adhuc non pauc velut super-
vacua praeberantur, quod erat Compendium Compendii.
Imperator deinde novā Juris epítome ex duobus librorum
millibus composita, methodum studendi hoc modo dispes-
titus est, ut omnium fīorum librorum institutio quinque-
nii spatio absolveretur, initio ab Institutionum libellis fato,
monitoque, ut ad reliquos libros paratitla quidem praecri-
berentur, vel ipsē leges ī latino in Graecum quibus verte-
reント, commentarios autem facere ne liceret Postea Ca-
far Leō Philosophe Compendii JUSTINIANAE fecit aliud bre-
viarium, in quō flectas leges & Constitutiōnes ē corpore
JUSTINIANI vertit in Graecum formam, eti non ubique
vel quād modō tam religiōse observet, quam JUSTINIANUS voluc-
rat. Atque ex hoc basilico Compendio, fāris ample tamen,
rūfus idem Leō fecit epítomen, opus meris definitionibus
et regulis coftans, prater alia sine, fīve manualia, qua
CONSTANTINVS Harmonopolis, MICHAEΛ Attaliota, MIC-
HAEL PSEΛUS, ANTIΟCUS Ballamon alique plures in no-
titiā Basilicorum à Suarefo recensī, ipsē quoque rūfus Leo-
NIVS filius Imperator CONSTANTINVS Porphyrogenetēs publi-
caverunt, fīct & peculiare Compendium Novellarum edi-
dit JULIUS Patricius Exconsul & Antecesfor Constanti-
no-
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, 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, 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 κατά ποιήσις (word by word), [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 κατά ποιήσις (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 πρόχειρα 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.

80 Cf. Constitutio Omnem § 1 passim.
81 Cf. Constitutio Omnem, 1. ex tanta legum multitudine, quae in librorum quidem duo milia, versuum autem trices centena extendebatis, nihil absum nisi sex tantum modo libros a voce magista studiis accepistis. The Latin text wrongly reads vicies centena for trices centena.
Iuris, Dialogus.

nopolitanus; è quibus omnibus fatis confest, quae fuerit inde à tempore Justiniani veterum Graecorum ratio docendi diffendiue Juris; videlicet, incipere à Compendiis, atque exinde ad Excerpta basilica, denique progradi ad universalum corpus Justiniani: nec eos ita exitimasse, dispersionis id esse doctrinæ juridice, si non eiæ insinuavit ante auctoritatem universæ sententiae, verba sunt Harmenopuli, si pulceriora, & utiliora maximeque necessaria in librorum manuali colligent. Imo patet ex codem Harmenopulo ceteriique superstitibus, id eos exigere, uti, quæ à tempore Justiniani ad eum ætatem plus annis quingentis evenerant mutationes additioneque legalis disciplinae, earum in suis epitomis notitiam studiosis impertirentur. Quod rursus vel lim observari adverfer eos, qui his diebus Artem Juriis contaminari violarique clamant, si quando aliquid hodiernis Juriis manualibus è moribus institutiusque sequentium temporum mièceri adjungique sentiant. Græci Imperatores, & Jurisconsulti, utcumque fuisse fores Justiniani in codem Imperio, minime religioni duxerunt, Illius Juriis prudentiam ad u/fum fui temporis accommodare; ineptisque fœ fore crediderunt, si compendia & manualia fuerunt, quibus adolecens tribus summas Juriis positiones tradebant, perinde compositae sunt, ac si Justinianus adhuc viveret nihilque ab eis ætate fuisset innovatum. Nos vero post alios fœcentos & quod excedit annos, extinxit Justiniani Imperio, qui jus eis haur aliter, quam ad supplendas leges domesticas cujusque populi recepimus, non adeo minus juventutis modestiæ manualia praeferebant, in quibus eos admoenum, quid de jure vetusto moribus hodiernis observaretur aut fecus? Sed pergamus. Dum ita Græci Juri resciantiam fuis moribus & institutis aptatam excolabant, in Occident. cum Imperio leges Romanæ exulabant & ignorabant; donec: Pppp 3

Lothaire
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 καλλίστα χρειώθη τε και άναγκαιότατα συντεμόντες ἐν προχειρῷ βιβλῳ συντάτον εν(82) 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.
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Lothario Saxone Imperatore, quasi postlimino studium ejus infauraretur. In his initiis, prima quidem ingeniorum occupatio fuit eaque sola libros Justiniani evolvere, dare operam, ut intelligenterur, diversos libros legisseque inter se conferre, diffidentia conciliare, posterioraque cum prioribus conjungere; cujus rei specimen Inerius in Excerptis Authenticos per Codicem spargendis audax & nobile dedit. Secundum haec principia progresse sunt homines studiosi ad proponendas Auditoribus suis Summas, ut loquebantur haud abfurdè, librorum Juris, quæ nihil aliud fueræ quam paratitla, quæ Justinianus appellat græce corrupto vocabulo, idque potissimum ad Institutiones atque Codicem, ut Placentinus & Azò praeiverunt. Ita enim exsistentabant, Codicem potius quam Pandectas iis, qui Institutiones percepserant, esse praegendum, quia recentius in illo jus est usque in foro certioris & frequentioris, quæ gratia Novellarum argumenta singulis in Codice Rubricis Inerius ille subjecserat; quod illorum institutum ad formandos judices causarumque Patronos, id est, validos Jurisconsultos, non erat, ut magnopere improbabetur, utcunque deinceps alter viuum fuerit potteritati. Juxta summas pro tyronibus Artis, in ulsum provectiorum scribentis glossas, quæ sunt breves interpretationes legum, secundum ordinem verborum, in quo genere facile principem locum tenuit Accursius. Fueræ, qui intentiore præ alius cura jus Romanum fleterent ad trituram forensem, cujus rei præcipuum Auctorem Durandus ille, dictus pater Prætice, laudatur. Poftea cum glossandi materia consumpta summarumque fatis esse videretur, fecuti Interpretes ingenti apparatu ad commentarios in omnès juris libros legisseque scribendos se contulerunt; preto jam repudiatoque Justiniani præcepto, quod priores, summis atque glossis contentis, cum illæ Caesaris edicto exacte 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.
Iuris, Dialogus.

congruerent; haec tam modice ab eo recedebant, ut auctoritate ejus comiter industriéque eufodire velle viderentur. Sed commentandi signum inprimis extulere Bartolus de Saxoferrato & Baldus de Ubaldis; aequo exinde copia enormis consiliorum, responsorum omnilque generis commentariorum jurisprudentiam, ad veterem, quae fuerat ante Iustinianum, incertitudinem, dubitationem confusionemque, sicut ipse præxixerat Cæsar, reduxit atque deformat vit; ut non minus ad communes Doctorum sententias quam ad ipsas fontes legum consilia sententiaeque exigerentur. His temporibus juventus ad studium Jus acceperat, imbuta, si forte, Philosophiæ scholarum, illa spinosa & incivili, à notitia utriusque literaturæ & antiquitatis alienitiam; nec alia ratio Jus studium confiare potuit, utque dum superiori seculo humanioris literaturæ lux e tenebris ignornantiae barbarice emerit. Ab eo tempore cum novam faciend induct univerfæ Iurisprudentia, tum ratio quoque descendit atque difcend juris alia planeque nova invaluit; necque tamen ea sine aliquâ varietate. Videntur omnino Juri Interpretes, qui literas politiores cum Jura scientiæ conjunxerunt, duorum fuitè generum. Quidam intra folos Juri Romani limites æc continuere nihilque alii aere vo luère, quam ut libros Æt Justiniano reliictos illustrarent aut emendarent. Alii faciendum putarunt, ut intelligentiam Juri antiqui cum æfæ nostris seculi peritiæque forensi conjungerent. Priores inter, familia duæce Cujacius, Dua rens, Donellus. Inter posteriores excelluerent Zalus, Alciatus, Viglius; ex ingenti numero Triumviro edidit. Ætatis eft. Sunt etiam, sicut nostri, qui non tam jus, id est, scientiam boni ægrique, quam antiquitates & Philologicas observationes libris Iustianis adperforant quales Antonius Augustinus, Budaeus atque Renardus. 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 fair\textsuperscript{86}, but also on antiquities and philology; such are Antonius Augustinus, Budaeus and Raevardus. All these

\textsuperscript{86} See D.1.1 pr. and D.1.1.1.1.
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inter alias industriae suae partes operam Arti utilissimam n amplified; emendando corrupta Juris antiqui loca; quod tamen nemen cum aliquo laudis succedit videmus aggressum, quam qui copiam librorum veterum, maxime Florentini Pandectae habuissent, aut ubi concilioris utendum videtur, qui longo docendi scribendique ufu literisque tam Gracis quam Latinis culti famam autortatemque insignem adepti forent. non ignoro fieri potuisset & aliquando contingisset uti qui neutram horum subsidiorum facultatem haberent, tamen felici quaedam conciliora nodum alicujus loci detextissent atque foliissent: cujus rei speciem Dominicus Baudius Jurisconfultus minime equidem Vinduus; dedit, quando Grotius ab eo monitum se fatetur, apud Ulpiannum in l. 1. §. 45. Unde VI. pro passides, legendum est; postedit: preter quem locum ego non admodum recordor, Grotium in lectionis recepta mutationibus, quae vidisse lauream tam et illam doctrine partem merito inter gravissima Juris confulti officia reputabat

Hoc faciant, adolens Themidis Cujaci aris,
Ingentique bono nomine nata Fabri

canebat ipse, cum juvenis fuos flores adesperet Inquiniamo, sicut olim Alcibiades, ut refert Plutarchus, magistro predicanti, fere corrigendo Homero parem efle, Ne tu, igitur fuitulus, inquit, es, qui adhuc schola des operam. Res enim est manifesta, neminem hanc studii partem in quaque disciplinâ profiteri posse, qui non omnibus numeris in ea sit exactus & absolutus, judicioque multis ethione continuaque tractatione rerum, in quibus verfatur, suabo limatoque: si quidem non modo callere, sed etiam judicare suam Ar item, & probare, quod ab Artis tue conditoribus extat reliquum, fine dubio ad summum, ut autortatis, ita scientiae peritiseque faftigium pertingit. Unum
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, 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 possedit should be read for possides (sic). Apart from this instance, I do not recollect at all that Grotius 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:

‘Let others do this, Cujacius, worshipping at the altars of Themis. And the Fabers, names destined for great fame’.

This he wrote when as a young man he “scattered his flowers” for Justinian. Thus once Alcibiades, as Plutarch 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,

[87] The Florentine was notoriously difficult to access. For a discussion of the texts available, see Stolte Brenkman p 73 ff.
[88] The 1684 text, p 70, reads pro possidet legendum esse possedit, as does the 1696 edition (p 612) and the Buder edition (p 76). The 1688 possides is a misprint for possidet. On his debt to Baudius Grotius wrote p 178:

Line 1 Nec alius dejici visus est, quam qui possidet. Lege possedit . . .

(omiss 9 lines)

Non alii autem quam ei qui possidet, interdictum unde vi competere. Legendum possidet, atque id olim annotavi suggerente Baudio.

(Nor does anyone appear to be deprived of possession except he who is in possession. . . . The Interdict Unde vi is available only to him who is in possession. At the suggestion of Baudius I formerly noted that possidet (he is in possession) must be read.)

[89] The 1684 text, p 70, reads: praece quam locum non monor Grotium in universa floren sparsione ad omnes Justiniani libros, illam lectionem ab omnibus receptae mutationem, adstruxisse: cum eam doctrinae partem mento inter gravissima Jurisconsulti officina reputaret. (apart from this one instance I do not recollect that Grotius in his Florum Spasio 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):

The two lines cited above appear in G.C. Gebauer’s Preface to Grotius’ Florum Spasio ad jus Justinianaeum (Naples, 1777), (and are part of ten lines composed by Grotius).

[90] See Plutarch’s Alcibiades, § 7.
41 Iuris, Dialogus.

intelligo Antonium Fabrum ad hoc institutum se contulisse natum, annos viginti quattuor, neque manuscriptis in Scriptum, nec etiam magnopere subnixum collatione veterum monumentorum, quae lectionis suo tempore receptae fiderem facere potuerint. Enim vero non adfentior Bachovio, qui eum elementer loquitur, eum appellat hominem corruenda jurisprudentiae natum; rami et Wissenbachius nollet hoc nimir avide convitum arripuerit, auditoque eum a lectione conjecturam ejus graviter dehortari lectus sit. Id tamen existimo, emendationes ejus esse plerisque non necessarias, atque ita comparatas, ut ab alius, sicut ipsi fatetur in prafatione sua, refelli non nequeant. In hac autem ego sum hærefi & libenter inter eum, in fluctuationibus juridiciis esse duas farcas anchoras, quibuscum autem utendum, nisi extremæ necessitate cognitum; sunt autem hæ meo judicio, confessio antinomie & mutatio lectionis Florentine. Sunt qui hoc modo tollendi difficultates legum appellant viam Regiam; sed quibus Artis fuit honos & integritas cordis curaque est, non postrum aliter arbitrari, quam hane esse viam militarem solvendi nodos gladio, de eis autem Artis profluebant ludibrio & ipsam dilacerandi. Nimis hæ acerba dicta Cruisi auribus accidebant, quam ut diutius ea silente transtitere poëtæ. Atqui ego, mi Hubere, modo non audebam praesumere, ait, quod nimir aperte jam profiteris, esse te adverso animo ab illa parte studii, quod inde à renatis literis versus jurisprudentiae delicias fecit, & clarissima nominis suificentis secti externa posteritas admirationi consecravit. Imo vero, replicabat ille, nemo praclarius de illo genere, nemò magnificientius de auctoribus, quorum tu laudem demonstras fuisse. Ita enim existimo & semper arbitratus sum, Professionem studii Juris criticorum, quod in emendandis mutandisque legum dictis confiit (ita ut immur verbo) habendum esse profasigio & quas...
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.91

To be sure, I do not agree with Bachovius92 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 preface93. In this regard, however, I am of that school of thought, and ευχομαι ειναι (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 Florentina. There are those who call this method of removing difficulties in the law the Royal Way (Via Regia)94, 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 (Via Militaris) of cutting knots with a sword95 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.96 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,
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quasi complemento doctrinae legalis, fere, fuit Censor
huius habita, respectu Magistratuum Romanorum. Sed ut
optima quaeque pellimo modo corruptur, ita nihil exi-
tiofius arti Juridicae, quam temperitas & luxuria Christo
esse mihi videtur. Nam reliqua docendi vitia, sive in methodo
praeposœz, sive in conciliando pigritia, sive in ipsa sene-
tiorum pervertitatem confinant, ipsos Artis libros intæros re-
linquent; Critica male exercita leges ipsas corrupit & fas-
crum Juris corpus violat ac imminuit. Ne vero huicmodi
infinita oratione prestantissimum institutum maligne à me
putes arrodi, dacan, quod pace tua sit, quid in vestro,
Christo, instituto potissimum mihi dilpiceat. Primum atque
precipuum id esse puta, quod occupavi dicere, vos prima
docendi juris rudimenta ponere in emendationibus, nec
aliam credere januam famæ patere, quam li receptas pro-
bataque ab antiquissimis codicibus lectiones follicietis ac in-
veratis. Tame si quid ego de antiquis Codicibus loquar;
cum satis confit, non habere nos alidum antiquitatis vene-
ratione commendatum, de Pandectis altem, nisi quod ex-
tat, Florentiae, vos, inquam, adolecentum, qui te vobis
committunt, initalis conceptris earumque futilissimi
probationibus occupatis, antequam terminos & regulas
artis universalis methodicæ institutione, quam penitus impro-
batis, perceperint, quæ re nihil inutilius & à verâ docendi
discendique ratione alienius esse potest. Ex quorum genere
non est mirum nasci tales Juris criticos, quales illud vetus
dictum notat, emendandis legibus neminem se dedere, nisi
qui de legisbus nihil intelligat: quod equidem si de omnibus,
qui in hac provinciæ laurenæ quæferunt, interpretati sint,
injuriam falsumque esse non negaverim. Enimvero, si quis
in indagandis legum senibus eiusmodi quid reperiat, quale
temulentum sed elegantis 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 teaching97 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 respondó, bene se res habet & feliciter! acclamationus. Nec minus si quid similis vobis haeret, applaudamus & gratulabimus. Ipsum quoque non minus grata ter, vobiscum, si quid occurrat ejus generis, communi- caturi.

Tu vero, (interrumpere Crustus) fatis infolénter, dum praetere fas admirationem. Criticos, utum ejus & studiosos auctoresque nimirum tamquam inter se quantae sunt, ut nec beneficium in Artem, quod faere, collatum, sine convito emendatoris commorare potueris. Mi Crusi; Huberus subridens; noli in ter di- ettum putare potius fuisse, quod de Baudio minime profecto ara preventis excidit: est tu quoque, sic noti minus inter nos, gaudeat hac parte morum prisci Catonis, quam toties fuit Baudius ulter apud amicos adscribit. Sed nec ego Baudii contur- liam neque tuam, facillime Crusi; quaeque sed magis in conspec- etu habui, quam quod ab aliis fece notatum est, ejusmodi luvis ingeniiorum, feliciorque divinationes & amica crìcos libentius inter pocula vel a poculis, quam inter occu- pationes succedere concatenatas. Forsitan inde contra- étum est, quod mihi fìc potius animo fèder, libros juris evolvere, ut inde regulas & exemplarum agendarum colligam, imitarique cupiam Antonii Mornacii inter alios multos institutum, qui rarius erat in Doctóribus Accursianis & Bartolístis, rarus in novitiis Interpretibus communibiōque fendentius inter fìe comparandis; sed ipse Juris cor- pori incumebat, ipsas leges memoriā judiciaque fugigebat; & tamen idem rarus in emendationibus censurāque juris an- tiqui; unam hanc, pulcherrimamque facultatem acquisive- rat, quibuslibet factorum speciebus applicare textus legum; exactè singulis convenientes, omnique ad usum humane societatis referre; neque minus tamen idem eloquentiā om- nique literarum cultu excellebat, suaque scripta talibus ubi-

Qqq 2 que
that is splendid and we will cry ‘congratulations’.

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, μητὶ χολωθης (don’t be angry) 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 φιλεταιρια (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 μητὶ χολωθης see Homer Iliad IX.33. ὁ θείμεζειτιν. ἀναξ, ἄφιξῃ σο ὅπε μητὶ 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 ἀφραδεωστι but has the right to speak his mind.
De Ratione docendi & discerni

que decoravit elogius. Nifi me vehementer opinio fallit, hac ratione Jurisconsulti officium melius impelletur, quam perpetuis finemque contendendi non habentibus emendandi conjecturis. Maxime, quando ita conjecturalis illa Crisii exergetur, ut propriae opiniones vestras de juris controversiis adjuvetis, rationesque adversantium & obstantiae legum argumenta refellatis; quod quidem loco secundo animadvertere cupiemam. Nam si toleranda fine manucriptis eft emendandi licentia, duntaxat tam evidens esse debet, ut minus facile refelli quam adffrui & approbari posset: quod de talibus, que tuendis opinionibus, in quibus Interpretes discrepant, adhibentur, nullo modo licet adfirmare; eujusque luculentâ specimina dedit Antonius Faber, dantur hodieque similia. Constituimus inde ab initio de singuliris inter nos discrepantiis haud agere; quamquam tua de articulo sit: Lege 101. x. de verb. obl. sententia, pro obligari legendum esse obligare, huic loco nimis pulchre conveniebat. Vidimus & Salmasium de mutuo cum Jurisprudentem eodem genere pugnandi utim; neque dubium, quin hac licentia invalidecet, quilibet Artis imperitiissimus idem jus Sibi in Infiltrandum, quod in alios sue notitiae scriptores exercent, brevis sit arrogatur. Quid dico, accepites celebrefque diversis auctoribus sententias in partes rapi! aperta via eft & patula porta, quam videmus, adscribendi conditionibus Artis sententias ab eftuo bonoque alienis similes, Republicae inferioris plane necesse situari. Dicam, & emendandi facro artificio dictantes faciam Jurisconsultos, nullam cedem mortis penam multatem esse, nisi quae more latronis alto confilio animique predestinatione commissa fuerit; in rixâ que fiant homicidias, subitis animi motibus, etj cultro, ficâ, gladio extra ordinem leniorem, quam capita suppiicio adficiendia. Ergo fas sit, Lapithas & Centauros convivias 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 Salmansius 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 (ἀδειατής) 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.

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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 tertio loco . . . becomes the second part. So too 1697 (p 614) and 1724 (p 80).

101 See D.45.1.101. Modestinus libro quarto de praelectionibus. 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.
Iuris, Dialogus.

et promiscua cæde cruentata fine metu mortis celebrare: qui rapido furore fodalium sanguinem duellis hauriunt, nihil amplius utrorem gladium metuunt. Quin tu, si ituc alius pretextu critice auctoritatis obtinebit, aliunde probes, ordinarià furti poenà eximendos, qui subitá cupiditate acceñi res alienas abüterunt: Quic matremfamilias alienam improvis libidine motus corrupt, eum expersa legis Jutiae sanétione non teneri: neque Textus deerunt, quibus mutatis lectionibus hæc layique possis evincere; si Lex Cornélia violentis hominum affectibus coque violentioribus, quia subitus, in atrocissimi criminis temperata ignofit; aut, si hæc sententia faciatate criticà legibus inferri poterat.

Nescio, ad illa CRUSIUS, quorum hæc ultima speçient, nec imaginari possüm, quis ad stabiliendam opinionem, ut mihi videtur, inauditam, articulum illum veteris Jurisprudentiae vellet immutatum. Possè equidem singularibus & exquisitis perfonarum rixarumque circumstantiis judici mitigandæ poene causam dari, fatore, urpud Alciatum me legere memini, de puero, qui fortuità ira colluvorem fœum cultro percussérat. Verum ò quis inde colligendum putet, homicidia quælibet subito rixandi studio facis & gladiis admissa, mihiore quam capitis supplicio adhibienda, ne ille parum incolumitati generis humani confuleret, quod salvum essè non possèt, si violenti affectus rigidis poenarum frenis à facinoribus non cohiberentur. Caetera tua, Mi Hubere, nunc quidem praetereo, quis enim finis contentionum! Discem eloquii, quam inficetus fœpe færape, qui Auctoribus noftris sententias, de quibus illi ne formiariunt quidem, adstringere malunt, quam levímanu vocule aut literæ aliando unius substracțione, vel additiove, vel mutatiove saeum veteribus senium Artique honorem.
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... retardabor (p 46).

¹⁰⁵ Alciatus *Dispunctiones*, 1.17.
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conciliare malunt: Sed his ego minime retardabor, nihilo-
que fecus Crisín juridicam, faventibus Mufis, dum spiritus
hos reget artus, alaciter exercibo, neque morabor;
Si vivor obtrœcisse curam voluerit,
Donec fœculum criminis fui pudeat.

Colliganusigitu vela, regerebat HUBERUS, pro-
pinquo portu; neque libet mihi reciprocare ferram, á qua
Tu manum generofo contemptu amorvísti. Unum addam;
æquum me censère, ne vos folos effe, quos æquus amavit
Jupiter, reputare in animum inducatis; omnes autem qui in
exercendis emendationibus fœ conficiendos non prævent,
quid de fœnsibus legum sit, perpicere non posse. Sed ma-
num de tabulâ, ubi addidero, me fœquum effe in adolefcen-
tia fœtam hominum, qui variae eruditionis liquorem non in-
èti levier sed imbuti, tamen in correctionibus legem ven-
ditandis auditoribus suis non præiverunt: Vininius, Mat-
thæus, Wifenumchius, motis, fæt feci, rationibus am præ-
dem expositis, tum vero hac inprimis; quod fatis comper-
tum habebant, eos, quibus hæc precipua Crisés profectio
arride, ab omnibus systematicâ doctrinâ, denique ab omnibus,
quæ cœlum prudentiam tradunt, disciplinas alios averfo-
que effe; cujus ìspecimen habuimus † Salmasium, quem
fatis confitat, cum alia hujus genera, tum divinum Grotii
de jure pacis & belli opus inolenter adspernari, atque ad
omnem politicam civilemque doctrinam tantum non nau-
fare confüevisse; quod & alii, si non omnibus ejusdem
instituti rigidis cultoribus evenire notabiliter animadventi-
mus, ejusque contemptus Salmasius fructus in succèfu de-
fenisonis Regiae confitiit haud omnino gloriosus. Prece-
tores illi mei sìe arbitrabantur, officii illæ fœi, facere Juris-
consultos, id eff, homines qui de quolibet facto consulti
respondere, cavere, scribere possent; quas boni Juriscon-
fulti
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
Untill our age is ashamed of its accusations."106

"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 πανυ (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 criminis sui pudeat, (Until our age is ashamed of its accusation) for Phaedrus’
Donec Fortunam criminis 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
Salmansius, p 131.
Iuris, Dialogus.

fulte esse partes, ut olim Cicero tradidit, ita hodieque facultates eadem illud nomen atque munus implet, a cuius gravitatem cos, qui folis verbis & syllabis inherent, mirifice videbant esse alienos. Enimvero non debeo praeire, Wissenbachium nostrum usuile maximum sui temporis Criticum, idque ei haestiffe a preceptore suo Mattheo Seniore, Groningenii; sed prorius alio genere Crisces, ac illud eft, quod in figlis & notarum enigmatis occupatur. Tenebat homines clarissimos immodica confuetudo demonstrandi navos juris, vel potius, ut loquentur, detegendi flagitia Triboniani, errores veterum Juris magistrorum, omniaque inbonus, absurdi, falsi notae, ut ipsis videbatur, deformationes passim indagandi, in locis communes redigendi atque exagitandi in auditoriis & in libris suis. Habet hic Facultas speciem libertatis neque vulgare famae lenocinium; fats viselicet animi esse Juris Interpretibus, ipsos Artis suae Conditores vocare sub censuram; ideoque res hac admodum latet patet, ut ingentes libri censurae Juris Romanorum extrent in lucem dati. Ego nunquam aliter de hac parte Crisces sensti quam de Antinomiis & emendationibus; non utendum illis, nisi extremam cogititia necessitate. Non puto facerilegium, reprehendere Justinianum, vel antiquos Justiniani, facerotes, quales se merito appellari posse credebant, sed hoc affectare gloriamque exinde captare, sicut facere videtur, qui numerum Juris neumrum tam immaniter augent, alienissimum ab officio boni Interpretis esse videatur. Nefcio, quae mea simplicitate fiat, ut judicium meum à judicio communi, quo jus Romanorum nititur, admodum raro defletat. Ideoque dedi toto biennio in publicis lectionibus operam, ut demonstrarem, pleaque loca Juris nostri, que ut misqua, inbonsa, falsa, absurda traductur, sano senatu intelleccta, nihil ejusmodi continere, cujus
lawyer as Cicero once said\textsuperscript{108}, 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 \textit{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

\textsuperscript{108} See Cicero \textit{De Oratore}, 1.48.212. His words are: \textit{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 peritus 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 \textit{Oratio II} p 64.
De Ratione docendi & discendi

cujus à claris hominibus insimulantur. Ea quorum lectio-
um memoriā nescio, an non aliquando cenfurae Cenfurae
Juris Romani & Anticriticam hujus generis incorrupto
eruditōrum judicio sīm propositus. Quae mea de criticā
studii Juridici professione flet fententia, fatis abundeque
differuīs videor. In historicis similibusque veterum scrip-
tis, ubi nulla dogmata in humanā societate stābita tra-
duntrur, res non hābit tantām ānima, quamquam ego, si
in hoc ipso genere me continuissēm, experimentā professio-
nis & fāme ab emendationibus prima non cepiśem, neque
tamen, si quæ mihi oblatē fuīlent, abrupte averſātus eff-
ēm; quæ pertinent exempla, quæ modo mihi ē differta-
tionibus illīs historicis obijecības. Quod ad systematā
compendioσa unīverśi jurīs attinet, non dicrepat institūti
mei ratiō à communi omnium temporum confuetūdine, nec
ab iis quæ modo in hanc rem luculentem à Bökemanno nostro
prolatā sunt in medium, modo ē duobus scopulis diligēnter
caveamus. Primo, ne studiōs compendia, sēcca, jejuna
& arida proponamus, verum talia, quae gustum melōris
doctrīne, simulque initium exhibere possēnt; tum vero, ut
adīdīus hortamentis exemplōque prevacuāmus, ne in hās e-
lemerēs subīstīre sē debere, nec posse prēāsīram. Denique
nollem, mi Cury, tantopere placuiśes tibi, ut rem ab o-
mni studiōrūm ordine judicioque remotiśīmam, cum atro-
ci invidiā fēcūs agentium, tam factiūdiō oratione prosequi-
tus effīsc. Nec eō, quod dicās, ut postrēmo definebas,
tē paucos notāre voluīśe nūndinatores sanctissīmae Ārtis,
quī Juris Docēre intra paucos mensēs perficēndos impu-
denter fusciōπunt. Nam hi prōfeştō sunt pauci, nec, si
aliās bene ē haberet Ars Jurīs, horūm causā, de corruptā
Jūriprüfudentia quēri in mentem tībi veniēst. Tu latē pa-
tentem errorem universalēmque vituperāstī, 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 anticitica of this kind with the correct opinion of learned men\textsuperscript{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 κοινοθεωρησις (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\textsuperscript{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

\*† modo a duobus . . . praesumant.

\textsuperscript{109} In fact Huber did this in his unfinished Eunomia Romana sive censura censurae juris Justinianaei . . ., 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.

\textsuperscript{110} Cf The title to Albertus Rusius Oratio de jejuna quorundam et barbaro iuris compendiaria, 1659.
illam esse preparatoriam Compendii Institutionem. At vero
nollem illum dīvīsī, generōrum illum spirītum, qui ad
instaurandām Juris disciplinam tanto cum impetu adīurgend
inde reformationem auñicarii, quo maximē obtentō, refor-
minationem in se ipsam rure oporteret.
Ego vero, CRUSIUS, aetūm agere nolo, & iremovo-
vende sunt amplius ratiunculē veltrē, quod in proelvī fo-
ret, hujus quidem colloquiōdium, sicut vos initītuis,
jamprīdem me habēt; aliās dabitur occasio; nunc ad alia
transcēamus: Cavendum enim, ne materia novi diaolgi suc-
crescat, neve reliquis convivis parum officiosi longiore fe-
cellū videamur.
Ilī quidem, excipiebat Wijngardenius, fuis quoque fa-
bellis detinentur. Sed antequam digrediamur, ne plane
nupris oculāris in hac scenē esse videar, dare mihi quoque lo-
cum, non dicendī sententiam, neque refellendi quicquam
à vobis dīctum & dīceptrum; fēd rogandi te potissimum
Hubere, non quæ caula corrupta sī jurisprudentiae, nec
an compendia sīnt dispensiā juventūtis; fēd quoniam me
favor studiorum, potius quam meritum eruditionis mea:
in partem alīquom docendi, sive indultu sīu commenenti
Amplissime Facultatis Juridicae receptis, fēcere cuperem,
quod potissimum ordine, quibus studendi gradibus adolescēntes
mihi commissent ad Themidos sacrarium deducere possim.
Quando autem Cll. Bōkelmanni Crustique humanitas semper
ad illos aditum mihi prēbet, Tui maxime consiliō prefir-
pment ad exemplō copiam mihi relinqui defiderarem. Intel-
lexi equidem genus universitū instituti, quod in studiō Ju-
ris excolendo probes atque commendes, fēd opus est mihi
exaētā magis & speciali descriptione, ac quae manuadītio-
ne a carceribus ad metam, quod ajunt; Eti enim tuus al-
quandiu fuerim Auditor, ideoque ordinis quem fervere, ra-

    R r r r  tio
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is teaching by means of preparatory compendia. But I would not wish that ἀγηνοράθυμος (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 yours111 and so the logical method

111 Wijngaerden was enrolled at Franeker on 1 January 1666 and defended his thesis under Huber in October 1669. See Postma and van Sluis, Auditionum Academiae Franckenensis p 195. He took his doctoral degree in Leiden on 13th March 1674. See Molhuisen, Bronnen Leidse Universiteit III, p 320*.
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tio mihi non plane ignotus esse queat, haud tamen dubito, quin longa discendi docendique experientia colgeretis & secreveris monita non tralatia, quae in promisco studioforum concurru proferre non solebas, quaque mihi hane discendi viam primum ingrediti, multum conducere potes crederim.

Ergo Tu quoque, HUBERUS, in eodem veritaris errore Wyngardeni, quo vulgus studioforum tenetur? Eminent vero sapere mihi usus venit, ut adolescentes discendi cupidi privatim me adirent atque ad interiorem amicitiam adicum affecerant; haud alia gratia, quam ut peculiarem methodum secretamque viam sibi panderem atque monstrarem, per quam celerius & felicius eruditionis iter conficere posset. Respondere sum solitus, maximum quod illis suggere possem arcanum, esse laborem indefessum in eà via, quam publice illis praerim; pararent se diligenter, antequam ad audirem venirent, auscultaret attentè, notarent quod non lectionem prius audirent, cuncta repetere domi, conferrent cum fontibus legum, mandarentque memoriam; rursum offerrent se examini, quoties occasio foret; hoc agerent, ut tyrocinium suum pacis onerarent preceptis, attamen universae artis, eaque validissime sua facerent, & in causas fontesque rerum ubique penetrarent. Quando tamen ejusmodi summà cohortatione non videris esse contentus, utque nihil inutili arciane polliceri habeam, nolo tamen deesse facilitatem meam defiderio tuo, quod ex animo, veteris amicitiae disciplinæque memore, proficieti, facile mihi perfluadeo. Ceterum, non est quod expectes ita Jurifconfulum à me formatum iri, sicut Stoici suum sapientem, describunt, neque ut Cicero suum oratorem esse voluit, cui nihil desit, qui quod summum est, quod nemo forsitum unquam adinterpret, fit confeactus, nec à studio forius tantum laboris durisque
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.\(^\text{112}\) 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

\(^{112}\) See *Oratio IV*, p 88f. The passage ‘For I have often found . . . the material’ (*Enim vero . . . penetrarent*) is taken almost verbatim from pp 88–89.
floor imperii exigam, sicut alii pluquam heroico instituto faciunt, ut merito vix esse tanti, eruditione esse, inexperti arbitrentur. Agam civiliter, atque ita, ut adolescentes ne desperent effici possit, quod ipsi praefecti sunt. Sic igitur ego fascerim; Qui animam ad studium Juris applicat, eum primo adniti decesserit, ut litteras ac artes, sine quibus Jurisprudentia non potest valde perspicere, mediocriter addicet. Literas intelligo Latinas & Graecas, priores exactius & cultius; alteras ita, ut scripta veterum, fallem interpretis ope distant & cum ratione tractari possint; sub literarum studio Historicum me complecti facile praefumetur: Artes quae ad Juris studium preparant requiro Logicam, et si hanc pene eam obsolecet, atque Ethicam, Mathematicas artes & Physicam, si quis addat, laudo, exigere non audeo; neque politicam premissa sed potius consiliari volo studium Juris; de oratoria quoque nihil dixi: nam praecepta Rhetorica literarum studio implicata sunt, Facultas scribendi habendi que orationes minvi videtur omnium difficultia, ideoque inter praepositorum non collocanda; sed alia studii exercitio in hunc usum solius commendare; vera eloquentia ex omnium rerum notitia exundat & exuberat, ideoque majorem postulat eruditionem, quam ab adolescentibus, qui nequid jurisprudentia maturi sunt, praebantur posset. Plura de propriis, non dicam; nec enim dubium credo cuquam esse, quin liberalia Literarum & Artium studio Juris praeconstenda sint; quomodo autem in illis sit verandum, a me hoc quidem tempore non expectas ut ediffiram: nisi unum, sed alii forstes omnium minime expectas ut ediffiram: nisi unum, sed alii forstes omnium minime expectabunt, monendum videatur; adhibendas esse litteras & Artes sine, priuquam leges aggregiare, sed tamen hic quoque locum habere Terentianum illud, Ne quidnimi. Intelligo, non

fine
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. *Ia est enim . . . ex multa eruditione et plurimis artibus et omnium rerum scientia exundat et exuberat illa admirable 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.
52 De Ratione docendi & discenti

fine offensâ Cruïi, forte nec fine admiratione Bökelman-
ni tūque id à meadfirmari. Quis enim non potius fīstimulum
ab hac parte quam suflamen opus esse arbitretur? Certa fī-
stimulum multō magis esse necessārium juventūti, res ipfā lo-
quirit, noſque, jam publike privatimque ūpe confelli fumus.
Attamen generōsis animis, qui philosophia litterarumve a-
more capiē fēotos illis dediunt, ego modo imperare non
dubito; saltem hačenus, ne legale studium inchoāre con-
cētantur, ubi primum ingenio judicioque ad accipientam Ju-
ris disciplinam maturi façti videantur; etsi in Artibus aliis
humanīque litteris nondum eo probeōtis sint, quo pervenire
possiunt & debent, qui harum laude confici arque cenfērī
cupiunt. Ratio conflat ab experientia, quae sic ferre me do-
cuit evenire, ut qui diu multumque philosophiae, literāriāe
ac historiās immorantur, earum amensitate vel facilitate eo
modo in finu suo adficiantur, ut cum ad Leges se conferunt,
earum studium patant esse tetricum & asperum, agraque ab
animis suas omnipare sōleant, ut earum disciplinam liberti-
er et alacriter fūcipient: Nemo autem dicit aut proficit
invitus & reluctante natura fūx ingenio. Velim igitur, qui
studiosum Juris esse capiē, idem agat, quod mihi Wissenba-
chius nofter autorum fuit, ut cum annum integrum in pre-
paratores studis commoratus essēm, Institutiones Justinia-
ni audirem atque deinceps in percepientis integra Artis ele-
mentis perseverarem. In illo anno vellem studīōrum meum
audire Logicam & Ethicam, edificare compendium historiae
universalis & dare operam, ut plane pleneque Suetonium
intelligeret. In quo pleraque ad antiquitates Romanas &
Juridicas ipṣiantia facile ordine atque historico offerent se
explicanda: Nam in omnibus vivam praecéptoris voceum, si
copia detur, adhibendum esse non est ambiguous. Interim
in legendis alīis Historiae antiquae scriptōribus vacuo tempo-
re
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.116

I would like my first year student to attend lectures on logic and ethics, commit to memory a compendium of universal history117 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 master118 should be heard, if the chance should offer. Meanwhile, in his spare time,

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116 See Huber’s Historia Vitae (170v) where he describes his own studies. Veen Recht en Nut. Bijlage 1, p 250.
117 e.g. Vossius’ De historicis Latinis libri tres, 1627; Dissertatio particularis de ratione universam legendi historiam in Vossius’ De Studiorum ratione opuscula, 1651.
118 Cf. Quintilian Institutio Oratoria, 2.2.8.

Licet enim sati exemplorum ad imitandum ex lectione suppeditet, tamen viva illa, ut dicitur, vox dilat plenius praecipueque praeceptoris quem discipuli, si modo recte sunt instituti, et amant et verentur. Vix autem dixi potest quanto libertius imitennr eos quibus favemus. (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.)
53 iuris, Dialogus.

re pergendum; neque minus, in continuo styli exercitio, non modò lectione sed & imitatione veterum eloquentiae autorum. Si qui sint, quorum ætas & ingénià non habéant eam facultatem, ut unius anni decursu his rebus mediocrítet defungi possint, his, sèlicet, tantum temporis adjiciendum puta, quantum opus est ad capiendum talem profection, qualis validioribus intra annis spatium contingere potest. Neque deeren, qui & de physica deque mathematicis codem anno primitias capere possint. Ubi vero studium iurisanno fecundo inchoatum fuerit, nolo novum Justinianæm ita fere totum folis legibus dedere, ut inchoata bonarum artium litterarumque studia deferat, nec amplius ad se pertinere putet. Nihil æquè deleqtat quàm varietas, nec est alia dignior studiofo recreandi animi ratio, quàm in amanitate doctrinae facilioris. Atque hanc viam, quæ confisit in continuatione studiorum primi anni, per omnem tempus descendi juris, eò fidentius commendare foleo, quod per eam non modo ad Artis Juridicæ peritiam felicius perveni, sed & eloquentiae ac Historiarum professione deinceps admodus, ci qualitercumque satisfacere visum. In hoc autem praefat illa, diversæ rationi, quæ plures annos preparatorii studiis prefíxit: quod & notabile temporis comprehendum facit, cujus summa ratio confit studiósis, & quod illam aversionem, quà fere laborant, quà valde sunt philosophi & critici, antequam jus didicerunt, antevertit atque consumit. Portio ipthum iuris studium hoc modo inprimis decurrendum exílimo, ut id quodammodo duplex effe meminerint studiósii. Primum certis gradibus conficetum sufficit ad forenses exercitationes cum fructu fulciendiæ; alterum ad interiorem juris antiqui notitiam & ejusmodi facultatem acquiringam pertinet, quæ ad ius explicandum docendumque sufficiat. Primum duobus intervallis abfolvitur, Institutionibus atque
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 worthier 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} \S\ 2.
\textsuperscript{120} See the Commentary, Chapter V.1.
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Pandectis. Institutiones velim bis tractari audiendo atque respondendo. Nam sola audito nequaquam sufficit ad expromquam validumque Juris scieniam consequendam, primoque statim ingredi qui serio vult proficere, non debet inutili vereundius superbiaque animi deterrire, quominus examini se quotidie committat. Juxta secundam auditionem, disputandi exercitium sedulo inchoandum & omni tempore, quod juri impedatur, continuandum censet, cum nihil coet efficacius preparando animo, sermoni, orio ad publicas actiones, quibus aliquando se Jurisconsulti exhibere atque preterare debeat. Expotitio & deceptatio fundamentorum Juris in hoc primo studio non potest aliter regi, quam secundum positiones compendii aliquibus systematici, quae in re nihil addendum habeant, ad ea quae Bökelmannus nollet in hanc rem exacte differuit. Nam quia primus studio Juridici 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, quem Graecos tribus post Justinianum seculis tenuisse modo probavimus, & quae in superiori dispositione Luculenter sciteque demonstrata est. Primâ deambulatione hujus itineris, quod ad Institutiones dirigitur, nihil aliud ad adolescentibus exigo, quam ut diēlata Preceptoris suis memoriam judicioque subigant, eaque cum textu Justinianae Regulisque Juris & preceptis de verborum significatione presse accurateque conferant. Secunda auditione textus ceteros, quæ e Pandectis & è Codicem magni numero in explicandis Institutionibus adducuntur, inspiceret, examinaret, perpendere debent, quod nemo aliter, quam iudicium cerebro, sit sic, praebetur. Atque hic est annu integrum jufus labor, accedente, quam dixi, continuatione studio rum liberalium & 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 \textit{Regulae Iuris} (rules of law)\textsuperscript{122} and to the rules of \textit{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 \textit{De Oratore}, I.48.212. ft 109 supra.
\textsuperscript{122} i.e. D.50.17. See Böckelmann’s \textit{Compendium}, at the back, pp 68–102.
\textsuperscript{123} i.e. D.50.16. See Böckelmann’s \textit{Compendium}, at the back, pp 1–67.
55 \textit{Iuris, Dialogus.}

P\textit{andectis} impendere oportet, e\textit{adem pr\ae}unte methodo summariae institutionis, quæ materiam omnem Artis definitionibus \& partitionibus exaurit, etsique decisiones \textit{que}tionum, talways ad integritatem Artis antiquæ, quam inprimis, quæ in ufú rerum humanarum hoc seculo verfántur, ex ipsis juris fontibus addit \& inne\textit{cit}. Quia autem mea lic eft ratio, \textit{Quam Artem aliquid omni vitæ sua tempore vult profiteri}, quæ fortunam rerum súarum sulcire cupit, haue unum prompte valideque fiere atque in habitum, quod Philo-

\textit{fophi crebris aëribus sieris docent, convertere debeere; cen-

\textit{fæ, repetita præleghione audientiæque \& examinatione opus es-

fè. Præinc biennio non minus in Digestis, eo modo transfigendum: Efi enim P\textit{andectis} ego ita tradere foleo, ut quæ in Institutionibus exposta sunt, illie denuo per no-

\textit{vas positiones non traëtentur ut explicentur, tamen ammon}

\textit{stris utilis Academicus opus est ad summarium quinquaginta li-

\textit{brorum interpretationem. Interca tamen temporis, opera danda eft Studiofo, ut non modo leges, Æ quibus positiones Juris probantur, ad fiduo intentæque perlegas, toulque inde, quæ ad intelligendam Artis doctrinam faciunt, col-

\textit{ligat; fed \& observationes ad illustrandam augendamque eam pertinentes, quorum materia gnaro scrutatori literarumque \& philosophiae perito desce non potest, a notitia receptarum sententiarum \textit{figeret atque recondat. Quod autem omnium ego praëtantillum in hoc instituto confilioque meo eft comperì, id eft; quod qui in illo triennio, Institutionibus \& P\textit{andectis} occupato, vacuum tempus evolvendis scripto-

\textit{ribus antiquis impedunt, inde jam Artis furnari, féliger-

\textit{re \& ad idemos locos referre possunt omnia, quæ ad illu-

\textit{strandum jus Romanum in Philosophis, Oratoribus, Hi-

\textit{istoricis atque Poëtis referunt, quod facere non possunt, qui ad legendos antiquos fæc toto conuerunt, 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\textsuperscript{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

\textsuperscript{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.
De Ratione docendi & discendi

Artis, cui se potissimum dedere cupiunt, universam compositionem teneant. Quando enim omnibus excellere multitudo rerum infinita & ingenii humani imbecillitas non patitur, optima ratio est, in una duntaxat scientia, quod summum esse afficere, de ceteris excerpere, quod ad illam unam pertineat ornamand & illufrandam; hoc facere non potest, qui compendiariam Artis illius notitiam animo non praeceperit; ideoque nec Jurisprudentiam ex antiquis augere & explebire poterit, nisi qui prius Artes cognitae, fixerit terminos, quibus obvia quaelibet includere debat. Triennio in Jure, quadriennio in Academia, sic abfoluto, studiósus, cui ratio temporis fui bene confiat, ad alterutrum finem fe comparare debet, ut vel ad forum fe conferat, cuius exercitationibus parem doctrinam adiuvare jam potuit acdebeat; vel ut alterum Juris discendi stadium renovato studio ingrediatur. Pars equidem multo maxima finem Laborum in illo primo stadio ponit, nec aut ipsi cupiditate proficiendi, aut parentes sumpsum prorogatione, ad alterum d currendum sufficere vel durare solent; nec ideo tamen posterius priori antevetendum esse quidquam recte atque ordine fuisse. Nam qui Jurisprudentiam forensem animo suo proponunt, his folium & totum jus antiquum in omnì sua ubilitate critica tenere non expedit neque sufficit, opus est illis institutione moribus feculi attemperta. Talis cum eloquentia Latīna, Graecīmi notitii, Philosophi atque Hultori literisque reliquae humanitatis conjuncta, quam huc nostra methodus requirit & praefat, in exitu quadriennii laudabilem Jurisconsultum, etiam fatis criticum exhibere potest: modo Politicam & juris publici doctrinam in illo triennio non omiserit addere privati Juris institutioni; denique, tune etiam feeta mens cognitione rerum gravissimarum justis orationibus eloquentiam exercere potest. Enimvero, si quis hae
they have a comprehensive view of the subject in which they chiefly desire to specialize. 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 Nat, 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: ‘Schrijven ontvangen hebendo van mijn Vader (in 1655), dat hij begerde 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 Pro Memorie, 3.1 (2001), p 148-153.
Iuris, Dialogus.

haec ita generose persequatur & impelat, ut nostra methodus
dictabat, eum ego non dubitem, pari alacitate fladium al-
terum, quod diximus, interioremque studii partem aggres-
surum: quod, videntes, consulisses in attentâ lectione totius
Juris antiqui, scit a Juveniano nobis est reliquum, ejus-
que collatione cum reliquis eorum scriptorum, e quibus Ca-
far corpus iusum colligit; quae quidem hodie perquam exi-
git superiiunt, fragmenta Caji, Pauli, Ulpiani, collatio
Ruffini, Codex Theodosianus & Basilica Leonis. Quæ fit to-
tum Jus completerentur, abundantius huic instituto fervi-
rent, et si nunc eadem fatis luculentam conferendi copiam
præbeant. Debet etiam hic efiæ lectionis arque colla-
tionis universi juris fopus, ut quæ dictata bona & æquæ in
positionibus systematicis quæestionumque decisionibus apud
eas tractari solitis nondum percepita sunt, haec è recepsibis
integri corporis legum, etiam ubi de rebus ab usu hodierno
remotis agitur, sedulo conquirantur & ad loca tum, quæ
pridem formata fueræ, singula redigantur. Dum hoc autem
studiofsus naviter agit, novimus alter fieri non posse, quin
ubique incidat in irregularos & difficultates intricatissimas,
quiibus tamen resolvendis & amovendis indeffìam operam
navare debet. Interpretès in hac obfcurâ via lucem affatim
præbent; sed ego tam un ita comp resisting atque ita mens amis-
suadere soleo, ut eo modo textibus intricatis, etiam pra-
sferatis aut dannatis, ut loquuntur, habitis, incipient,
quasi nullus Intrepidus esset in mundo. Nam si prius inter-
pretationes varias confulere & expendere voluerint; in sin-
gulis paulo minus difficultatis inventum ac in ipsa Lege re-
perient, parumque aberint, quin idem illis eventurum sit,
quod Patri Comico, qui confutis tribus Jurisconsultis, dif-
crepantibus, ita abibat ab illis, Ece[Mus, inquit, probe; Inc-
certior fum nunc multo quam dudum. Ubi vero Tu vires
S 111 in-
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

\[^{126}\text{See Terence Phormio, Act II, scene iv, lines 458-9.}\]
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ingenii judiciique tui expertus fueris, sive inveneris, quod
fatis tibi videatur, sive nihil impedieris, tempus erit, ut Inter-
pretes adeas, sive vel in tuis cogitationibus firmere, vel
harum defectum ex corum commentaris suppleas. Hei ve-
ro suave jocundumque spectaculum præbent, qui neglegé-
trum viam, quam per me licet appellares systematicam,
incen-
timenti hoc examen universi juris occupant: quando loca,
que non intelligunt, inopiae doctrine juridicae, continuo
fuisse conjecturas, interpolationibus, additionibus, substra-
cutionibus, transpositionibus ac omni genere emendationum se-
pe tam subtilium, ut uno spiritu diffiaris posset, in suis in-
telleclus sollicitant, cogunt, rapiunt. Plura Doctissime
Wyngardeni, non habeo, quæ hac horâ inter nos super hoc
que fuit communicari posset. Dantur equidem & alia, quæ
momentum in utraque studii viâ non spemendum faciant;
Sed cum in aetu magis & demonstratim praenesti quam in
oratione consiliere videantur, dabis veniam, hec ut sufi-
cittere nobis liceat. Wyngardeni novam parabat infantiam.

Quando Bökelmannus, ut abrumperet hos nimir studiosos
feriones, libellum proferebat, cui praefixus erat titulus
talis, Ephemerides Eruditorum, gallice conscriptus. Rario,
instituti nottor eft, quam ut eam pluribus exponi necesse
sit. Verum Bökelmannus aperto libro incidunt in hujusmodi
titulum, Ventriculi Quæreda & opprobria, opera A. S.
Med. Doctoris Amstelodam. ruribus alibi, Carissius Mosai-
zans, Authore N. Amerpoel & idgenus alia; quæ auctore e-
phemeridum illarum proximo eloquio prosequatur. Ad hunc
Bökelmannus, Nonne vobis indigna res videtur, hos ho-
mines, qui scribendis hujus diariis Reipublice literarum dant
operam, alia quidem illis inferere atque laudare nullius
momenti scripta, ruribus alia magne frugis & solide erudi-
tionis omittere vel frigide commendare, coque modo 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 Wijngaarden, 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 speecheifying, you will grant me permission to stop here.”

Wijngaarden was preparing to press on, when Böckelmann, in order to break up these excessively academic discussions, produced a little book to which had been affixed the title *Ephemerides eruditorum* (*Journal des Sçavans*), (originally) written in French. 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 Amstelodam.* Then again somewhere else *Cartesius Mosaizans, Auctore N. Amerpoel* 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

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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 Linguan Latinam versae . . . .
Iuris, Dialogus.

bitros ferre meritorum arque famae eorum, qui nomen aliquid inter litteratos affeclant? Mihi certe res non toleranda viderur, hujusmodi quoque nostratium libros, quorum inscriptiones vobis praegi, & quos in his locis rarus lector inspectione dignatur, illic ut opera consideracione literati orbis digna commemorari, nec quicquam ineptiarum Gallicarum omitt, quod fallendo aulicorum aulicarumque oti ferviat; interea commentationes hominum doctissimorum in uraque Germania & alibi silentio damnari, vel frigidà negligentique mentione, quasi quæ legantur insignas, tantum non ludibrio exponi: Neque sunt, quibus juftior hac parte caufa fìt indignationis, quique iniqvius fìt habiti, quam Jurifconsulti. Ad haec Crufius; nolim, Bökelmannne Clariflime, tam parvi animi querelam à te ferio intelligere emiffam. Quid enim queso refert, tuum de Actionibus vel ad Pandectas, meumque ad Legem, Si Paterfamilias, commentarium iftis Ephemeridi infertum vel non fuiffe infertum, magis quam fi Novellis hebdomadalibus, ut fì, eorum nomina subjeclà fuiffent, aut non fuiffent. Nifi tu putes, multum intereffe, menstrui an hebdomadales fìnt falti, de actis litteratorum, an de Regum & Principum, de pacis & belli negotiis fìnt compositi; aut nifi putes, invidendum efle Medicis & Artium Magistris, quorum laudes in novel lis decentantur, præ alii, qui modeftià contenti fandam ipse non faciunt, aut fieri curant, fèd expeclant. Enimvero non eft difficile è leclione Ephemeridum iftarum animadvertere, conditores illarum fere ex eorum efle gener, de quibus Fabius scribit, parva facile. Sane jurisperitos adhuc quidem inter eos fuiffe nullos, ipse ephemerides manifesto præ fè ferunt. Proinde faciunt id quod fieri conflantaneum eft, ut de rebus, quas non didicerunt, aut nihil, aut valde parce tenuiterque loquantur. Et mea quidem auctoritas fi Sffë 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 Leidsche 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 presumed 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 compendiose exhibens fundamenta et praecipuas controversias quae in singulis titulis occurrunt, 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 audacia prorecti quidquid illud possunt statim ostendunt. (These are such as do little things easily and, carried along by their audacity, they immediately display their limits.)
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quid apud eos valeret, rogarem Viros cordatissimos, ut Jurifconfultorum ordinem ephemeredum suarum memorialibus hostis eximerent, singulorumque facto committerent, utrum famam habarent, a mererentur. Quod si tu in aliqua parte gloriae posis, nomen tuum in illis diaris, cum amplo elo
gio cumque speciosa scripturis tuae historia confici, ita cen
ceto; scribas cum in pro cincto es edendi aliquem librum, tuo
vel typographi nomine, ad compilatores (sic), quid pares
emittere, quod sit libri tuum, quid in eo praepuet ex
cerpi laudarique cupias, inprimis ipsas Ephemerides earum
que Scriptores fac aliquo lucili charactere laudis adpergas.
Sic tibi nullam caufam fore poleceor hac parte Salvio & A-
merpoelio similibusque Heroibus invidendi. Necio, rege
bat Bokelmannus, quid ex meis verbis argumenti sump
siris, ut mea potius unius quam Jurifconfultorum communi
causa quodlem me esse putares. Quod si torem hoegenusi
bi contemnendum videtur, non habebis me tam confitentem
adverfamum, quam modo in caufa syste matum & Compen
diorum expertus es. Proinde facile patior, nihil esse commu
ne Jurifconfultis, cum diaris & Novellis itis eruditorum,
nisi quid Huberus disfentit. Ego vero disfentio, Ille,
venerabiles symmystae, nec ullo modo confultum duce, ut
honores elegantibus ingenii & pari fama notos ordini no-
stro inimicos reddamus. Nec enim ipsis utriusfendi ratio deef-
fet, si intelligerent, nos de infilituro suo tam inquiferire,
quam vos in animos vestros indicere vultis. Credo, non
amplius silentio nos omitterent, sed cum aliqua notä vel con-
temptus argumento scripta nostra suis hostis immiserent. vel
omittentes, que magno labore contitulent, si quid tibi forsitan
abortivi fructus tuoque nomine minus decori excedisset, nomi-
ne licet prefla, rnen, illi hoc sui compilationibus, nomine tuo
palam facto inferere non dubitarent. Necio, an non de meis

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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 τῶν νεαρῶν (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 résumés with some black mark135 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 omitteantes... duitatent.

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, quæ continent observationes Juris Humaniores, incontinenti forte scriberent, eas idem fere esse cum Menagii Amoenitatisus Iuris Civilis, et tibi liber illi mihi nunquam vitus foret, atque materia utriusque scripti nihil omnium inter se commune haberet; sola tamen incriptionis similitudo ad ipseiam veri sufficeret, ipsos libros excutere nihil ad rem pertinentem: Et tibi autem illa Digressionum meorum cum Menagii libris comparatio mihi forte pudenda vel pœnitenda non foret, tamen ex ejusmodi relatione simpliciter facta imperiti facile opinarentur, me præcipuas observationes meas debere Menagio, uteunque follicitie in praefatione monuissem, five laudandi conatus mei five excusandae feltinatione effec, propriis stylo & cogitationibus elaborata esse, quaæ publici juris facerem. Caveamus igitur Viri Clarissimi, offendere vel irritare genus hominum, quæ tam potens fame intrumentum in promptu est. Videamus illas ephemerides in manibus omnium doctorum & indiçtorum veríi, care vendi, cupide legi, ut fit in rebus novitare sui lectori bland entibus. Et quanquam vera solidaque exitimatio virtutis & doctrinae ab eujusmodi suffragis non pendet, ideoque talia fœcus quam merce, publicata magnanimo sperni possum; tamen si verum est, contemptu fame plurumque etiam contemni virtutem, viri prudentis esse videtur, nulla publice approbationis adjumenta, præsertim adeo late patentia adispernari. Est fane Jurisprudentia maxime ad gravitatem veritatemque doctrinae comparata, ideoque Gallis & sæuis auctóribus, qui philosophia, mathematicis & amcendiœ doctrinæ potissimum, ut appareat, delictantur, minus placuit, nec apta vita fuit ad augmentum scriptum, quod totum recreando non minus quam erudiendo lectori comparatum est. Credo, genus hoc scribendi etiam ad Germanos vicinoque, uti sunt omnes populi novitatis avidi, tran-
Digressiones which contains humanistic observations on the law, saying that it is almost the same as Menagius’ Amoenitates Iuris Civilis136, 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 preface137 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’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 τω ν νεαρω (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.

136 Menagius, Iuris Civilis Amoenitates. 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 fuit.) Certainly the contents of the Digressiones bear little resemblance to Menagius Amoenitates’. 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.

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 excussatione sublevetur, meo solius ingenii periculo expoitarit 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.)

138 Tacitus Annales, 4.38.
De Racione docendi & defendi

fiturum. Germanorurn, ingeniis propitia magis est Juris-
prudentia Belgique secundum illos aequo familiaris. Hi de-
fectum, quem Bokelmannus in Gallis arguit, forsitve sup-
plebunt, ordinemque nostrum pro parte aliquà literati or-
bis, habere non gravabuntur, atque, si juvat & refert, in
ipsum suis diariis nihil magis obliviscantur. Ego quidem hac
gratia libenter illis utor, quod ex iis per compendium seire
licet, quibus Auctorigibus studia nitantur, Favendum est in-
geniiis feculi nec folis mortuis utendum magistris, neque de-
cet esse tam fastidiosos, ut quae maximo labore clari homo-
nes, aut qui ind irefere cupiunt, opera doctrine compo-
suerunt, ea non modo legere, fed ne argumenta quidem
summaque librorum cognoscere dignetur. Nolim igitur
contendere, ut ordo nofiter, quas interdicta ab hac fecerà
Reipubli. literariæ excludatur, neque fane etiam ambire
muito minus, ut ratio nostrum habeatur. Facile patior, au-
ctores uti arbitrio suo, duntaxat, ne faciant Criticas gene-
rales, fed ut simplicitate narrationis, quae ets propria dia-
riis & novellis, contenti, abstringant omni judicio omnique
cribi: hanc enim integre eiuisque scritoris lectioni publica-
que affirmatione relinquire oportebat. Quod quidem eo
magnis requiritur neceffarum est, quo difficilis evitatur; si-
quidem observare licet, aliquos id fero in præfationibus
uis pollicitos, in progressu relationum calore scribendi ab-
reptos nihil minus præfetiis ac etiamnum præfaret. Scribant
igitur, CRUSIUS, argumenta librorum suorum & amiant
elogia, qui volent pascantque fedelicis imaginariis. Ego ma-
luerim, homines rogent, cur Crusius non compararet proce-
ribus permixtus achivis, quam ut elogia rationefque mo-
rum qualitumque scriterum, juxta tot dignas pariter in-
dignafque reverentia polteritatis chartas, comparentur atque
censeantur. Non defecerat adhuc materia dialogorum, fed
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. 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, 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 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

\*\*et etiamnum . . . censeantur.

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139 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.

140 The term Respublica literaria, according to Bots Republiek der Letteren, p 4, was invented and used by Erasmus. See Commentary Chapter IX.

141 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 ook bevinde dat hij allegert auteuren, ende die refuteert 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.
63 Iuris, Dialogus.

reliqui convivæ Böckelmanni, qui magis verecundia nos interpellandi, quam stà sponte in alio recessisse acceperimus horti subititerant, tandem affluebant, ut nobis valedicerent, hospitique gratiss actis, in urbem fecerent, quod et à nobis, pot iliquot ultima civilitatis complementa mutuaque amicitiae confectiones, 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. 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

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

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.
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.
⁴ Israel *The Dutch Republic*, p 565.
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*. 
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(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 *Athenaeum* 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,
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 praellectiones) were given by professors appointed for a particular subject, e.g. 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 Keessel Dictata ad Institutiones Vol. I, pp xv-xvi and p xviii, ff 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 supereceding 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 disputation 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 disputation 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

17 For a comprehensive discussion of disputations see Alsmann Colleign en Colleges, pp 274-323, Veen Exentia, 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 Exentia, 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), Donellus (1527-1591) and Hotman (1524-1590).
one or the other will suffice (XIX). There are many advantages in self-study, ie being an ουτόδοξος (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. 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 1694-1697

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 praelectiones), collegia and privatissima. The public lecture professors he heard were Noodt, Mathaeus 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 Vitriarius27 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 Mathaeus 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.
30 Van Strien and Ahsmann Scottish Law Students, p 5.
31 Cf. Dialogus, p 50; Oration 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

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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 Berbouw, p 2 ff. 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 minutiae.

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.
59 See Stolte *Brookman*, p 8, Mollhausen *Bouwen IV*, pp 104, 105, 32*-33*.
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. 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. 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? The father of curriculum reform was Justinian himself and his Institutes has remained a useful and practical introduction to Roman Law to this day. 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. 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.

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. 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, keven, 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 erroneous 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 inutilis, nihil perpeam posium (Constitutio Imperatoriam 3).
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 Keessel 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 (1564–1637) 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. Justiniani* which appeared in Herborn in 1600 and included a useful *Synopsis Institutionum iuris qua 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 Christenii (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 compendiaria* at Leiden (16 September, 1659).
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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.\(^\text{62}\) Both constitute a monument more lasting than bronze.\(^\text{63}\) Secondly, the students themselves are ill-prepared (illotis manibus).\(^\text{64}\) 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.\(^\text{65}\) The last error is that inadequately prepared students rush into disputations, 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.\(^\text{66}\) 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\(^\text{67}\) *Principia Iuris Civilis* of 1689,\(^\text{68}\) not least because of van Eck’s links with Böckelmann, Huber and Nooit. 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\(^\text{69}\) 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”,\(^\text{70}\) but the two men were destined to battle furiously over a number of issues, both academic and poetic.\(^\text{71}\) In his inaugural oration at Utrecht, 1693, van Eck [p 17], extending the olive branch, said: “before I left Frisia . . . I laid

\(^{62}\) Christenius *De Erroribus*, pp 7-9.
\(^{64}\) Christenius *De Erroribus*, pp 12-13. See also Voet *Ad Pandectas*, *De Statutis* 1.1.1.
\(^{65}\) *Evitut ut necessaria ignorant, cum non necessaria didicerint*. Christenius *De Erroribus*, p 13.
\(^{66}\) Christenius *De Erroribus*, p 14.
\(^{67}\) Cornelis van Eck, 1662-1732. See van den Bergh *Van Eck*, pp 37-54.
\(^{68}\) *Principia juris civilis secundum ordinem Digestorum in usum domesticarum scholarum seu collegiorum, quae recant, vulgata et in duas partes divisa 1689*. See Alumann *BGNR Utrecht*, pp 73-74, nos 79-85.
\(^{69}\) Van den Bergh *Van Eck*, p 41 and fn. 55.
\(^{70}\) *Summi vir iudicis et doctrinae, cui jurisprudentia multum debet et debendi spem habet.*
\(^{71}\) 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 poëticas conjungendo cum studio juris Romani*. Cf. Huber’s inaugural address Franeker, (1665) . . . *literas humaniores cum jurisprudentia esse conjungendas*. Huber also wrote poetry, eg for Crucius’ 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 Civilis}. 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 relinquarem . . . deposui illa infesta arma et tela minantia telis quorum animus meminisse horret}.

\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 \textit{BGNR Utrecht}, p 74, no 89.

\textsuperscript{75} See van Eck \textit{De Ratione Studii Juris}, p 20. [\textit{Stereum et jejunam atque angustam Compendiarium}. Cf. Rusius' description of jejuna . . . et barbara . . . compendiaria (1659).}
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 grietenij (rural municipality) of Westdönderadeel. Zacharias (ca. 1601-1678) had married Sjoukje Jensma (ca. 1503-1644), daughter of Meile Jensma, one of the old Frisian families (eigenerfden, 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 NNHB; to Veen’s article on Ulric Huber (1636-1694) in Zestig Juristen, see Veen Ulric 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 Westdönderadeel. In nomine Domini nostri Jesus Christi. Den 18/28 Junij 1626 zijn wij Zacharias Huber en Siouck Jensma na voorgaande wettige proclamatien in den Echtenstaet 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 (wesend een sondach omtrent halff twaalffen 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 Altikon, in the parish of Dinhard in the northern part of the canton of Zürich. His father was Ulrich Huber and his mother Elisabeth Sulisz. See too the Staatsarchiv, Zurich where the baptismal records of Dinhard are presently preserved. According to Vitringa (see Vitringa, Oratio Funebris Huberi, p 7), Aeus autem illi fuit Henricus Huber, genti Tigurinorum, occasione Belli Hispano-Belgici in has delatus unus, qui ob longos duces militaris sub auspiciis Belgorum, virtnitu suar
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 Franeker7 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,8 although Huber later discarded Wissenbach’s humanistic and antiquarian policy on teaching law.9 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 August10 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.11

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 tuler alios edidit in memorabilis illo praelio Neoportensi Flandriaco, . . . ultima seculi seculum superius anno. deinceps Politium Centurio mereuit sub Henrico Julio Brunsvicensium Ducem; unde natus in Friesiam delatus atatem ultra annos LXXX 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.)

7 See Postma and van Sluis Auditorium Academiae Franekerensis, p 609, no 5154, and Album studiosorum Franeker, p 252.
8 See, for example, Huber’s inaugural lecture (1656) in the edition of his Auspicia Domestica (Oratio I.), p 102. Tu quidem Beatissime Wissenbachi vivis etiamnum vivesque semper; nam fas non censeo mortem vocare qua tua mortalitas magis finita quam vita est; quin et latius in memoria et sermone hominum versabere, postquam ab oculis recessisti, sed nos publicae vocis silentium, nos gravitatis, sanctitatis, doctrinae fulgentissimum sidus, 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.)
9 See, for example, Huber’s 1698 Praefatio to his students in Praelectiones Iuris Civilis, part I (on the Institutes).
10 See Album Studiorum 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 ”Weis Gott...es gibt noch einen (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 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 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 Rector Magnificus and later again in 1667-1668 and in 1677-1678. In 1662-1663, when Laurentius Banck,\textsuperscript{15} then 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 Professor Primarius and Huber bade the Arts Faculty farewell. As Professor Ordinarius he was to lecture on the 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 Professor Primarius with the responsibility for teaching the 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 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 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

\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.

\textsuperscript{13} Böckler, J.H (1611-1672), Professor at Straatsburg.

\textsuperscript{14} (De bona mente or on the true love of genuine learning.)

\textsuperscript{15} Banck, Laurentius (1611-1662) Professor Extra-ordinarius Franeker (1647-1662).

\textsuperscript{16} Cup, Willem (1604-1667) Professor at Franeker (1647-1667).

\textsuperscript{17} See Feenstra BGNR Franeker, pp 49-50, nos. 133, 134.

\textsuperscript{18} Huber delivered the funeral oration on Cup on 29 January 1667. See Auspicia Domestica (Oratio XII), pp 265f; Feenstra BGNR Franeker, p 51, no 138.

\textsuperscript{19} See Dialogue, p 51f; Huber’s inaugural oration, passim and especially pp 103ff; also Oratio II passim, Oratio IV passim and the Digressiones.

\textsuperscript{20} See Veen Recht en Nut, Bijlage VII.I, p 337 for the Curators’ letter dated 26 August 1670.
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 themselves 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 third (24 February 1683) was a speech on the rights of the States of Friesland to make laws, and the fourth (16 May 1683) was a speech on the duties of the Student Council.

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. (Extitere quidem et alas 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 vestrum Ordinem.)
23 See van den Bergh Noodt, p 56. “Noodt to van Eck, 3 October 1693.”
24 See Veen Observationes, p 148f; van Sluis Roed, 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*.27

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.29

1.2. Vitringa’s *Oratio Funebris*

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.30 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 Friesland31 and by mutual support in the hectic battles with Herman Alexander Röell (1636-1718),32 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”),33 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”).34 When speaking of Heidelberg as a most delightful home of the Muses, Vitringa stresses that it was also the wet-nurse of their religion.35 Huber was a sincere follower of Calvin (says Vitringa) and could not accept the arguments of those interpreting scriptures in terms of reason.36 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
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 Funebres* 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.

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37 See Vitringa *O.F.Huberi*, p 18 parus illi risus, infrequens cachinnus ([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. Huber p 56.  
40 I was assisted in this by Dr. Robert Law, MB. ChB. MA. F.R.C.A., formerly of U.C.T. but presently in Shropshire, England. He commented that perhaps helped by modern antibiotics, Huber might well have lived.  
41 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.

It was not uncommon for a publication to develop out of the theses or propositions drawn up for disputations. 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, reprinted and ultimately developed into a more sophisticated and professional work. 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). 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, 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.

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

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42 *In usum privatae institutionis eg Lectiones iuris contractae*, 1678.

43 For a full description of Huber’s publications strategy the reader is referred to Feenstra *BGNR Franeker*, pp 47-98, nos 125-291, where the complex network of his written work is summarised.

44 See Abmann *Collegia en colleges*, passim; Veen *Exercitia*, pp 158-159; Feenstra *BGNR Franeker*, pp 50-51, nos 136-137.

45 *Priore multo locupletior* (much fuller than the former edition) eg Huber *De iure civitatis* 1694.

46 *Demo excusae* (reprinted) eg *Positiones juridico-theologicae* 1686.

47 *Varis libros ab auctore aucta et recognita* (extended and revised in various places by the author) eg *De iure civitatis* 1707; *hac nova editione multis locis emendata et aucta* (in this new edition, corrected and extended in many places) eg *Praelectiones I*, 1687.

48 Feenstra, *BGNR Franeker* p 60 remarks “De Lectiones juris contractae zijn te beschouwen als een voorloper van de hieronder nrs 191 e.v. genoemde Positiones sive lectiones juris contractae”.

49 e.g. the *Dialogue*, p 1; Huber *Digressiones, Lectio S* p 1; Huber *De jure civitatis*, pp 4-6 of the *Praefatio*. See Veen *Recht en Nut*, p 339 (Bijlage VIII).

50 Huber *De jure civitatis*, p 5 of the *Praefatio* ... *primas sicut in properum stylo fluevant, cogitationes publico aucto [iun] commendare, judicia hominum et census arbitri, deside pressius elaborata neptere editiones.*
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 I, 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 6 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 methodo 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 the 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 Franekeræ cum ex ordinaria Eloquentiae et Historianum cathedra solenniter in Juridicam deducetur, ex historia juris romani uttuisque studi 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 Chair of 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.)

52 The title of the oration in the 1746 edition of the Opera minora: Ulrici Huberi Oratio Inauguralis habita Franekeræ cum ex ordinaria Eloquentiae et Historianum cathedra solenniter in Juridicam deducetur; exhibens Historiam Juris Romani et ex eius argumento continuam probationem, litteras humaniores cum jurisprudentia esse conjungendas ad 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 excecutionem quibus otium quid illum Frisiae Ordines et apud Academiam suam feecerunt occupare constituit. Accedunt amoeniora quaedam alia, Franeker 1682.

54 Opera minora et rariora, juris publici et privati (Lesser and more rare works on public and private law) (1746). See Feenstra BGFR Franeker, p 50, nos 133-134.

55 Oratio II, habita domi ipsius, . . . qua exspectant quibus eis otium suum apud Academiam sit occupatum (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 BGFR Franeker, p 64, no 183; p 66, no 187; p 96, no 286.

56 Oratio IV qua respondetur ad objectiones quae moveritur 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 BGFR Franeker, p 66, no 187 and p 96, no 286.

57 De ratione ac methodo studiorum iuris illustribus et praestantissimorum jurisconsultorum 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 BGFR Franeker, p 95, no 285; Ahsmann and Feenstra BGFR 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).59 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.60 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”.61 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).62 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.63

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.64 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.65 Theretofore, Huber turns to Cicero, Quintilian and Tacitus66 for support and recommends them to his audience.67

Moreover, there is one interesting passage in this oration where, drawing on Suetonius68 he remarks that one of Julius Caesar’s great new schemes for the
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.69 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.70
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?71 On the mediaevalists and later
writers, Huber is here somewhat vague and non-specific. His views are more clearly
developed in the Dialogus itself.72 In his inaugural oration Huber lays considerable
stress on the need for Greek.73 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.74

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, 1682,75 is the first of two orations
delivered in his own home76 to his students, shortly after his departure from the Hof
van Friesland in Leeuwarden and his return to academic life in Franeker.

69 It is of interest to note the following: Ulric Huber’s Eunomia Romana was published posthumously
in 1700 by his son, Zacharias (See Feenstra BGNB Franeker, pp 94 and 95, nos 279 and 283). 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 unquam 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 (sic) arguere videtur Suetonius (Suetonius seems indeed to argue
this incorrectly).

70 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.

71 See Huber Oratio V, p 121.

72 See Dialogus, pp 39-41.

73 See Huber Oratio V, p 106 for Cato and Greek; p 114 on need for law students to have a knowledge

74 See Huber Oratio V, p 119.

75 Huber Oratio II, pp 62-74 habita domi ipsius . . . qua exponit quibus rebus utium sumum apud Academiam sit
occupaturn, 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

76 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 Cicero 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, 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.

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) based on his already published Lectiones juris 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 II 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 juris contractae, which had been printed while he was with the Hof and comprised part I of his later Positiones. The section on the Pandects is still...
unpublished, but the contents will feature in the disputations he is planning. 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. (*loca ... in quibus respirare liceret*).

Further, Huber mentions various contemporary writers such as Treutler, Bachovius, Struvius and Zoesius. 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 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. Those who suggest that by using compendia all students can become doctors in a few months 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 condemning all compendia. The accusation that the sterile style 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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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.
85 Treutler, Hieronymus (1565–1607). Professor at Herborn; he wrote *Selectae disputationes ad ius civilis Justinianaeum*, Marburg 1596.
87 Struvius, Georg Adam (1619–1692) Professor at Jena, 1646–1667 and 1674–1680. His *Syntagma iurisprudentiae secundum ordinem Pandectarum concinnatum*, Jena 1658, contains 50 annotations 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-Germanica forensis Jena*.
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.
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. In this *Oratio* Huber explains that he does not include material from antiquity because of pressure of time, but he does not deny that it is desirable and useful. Hence his *Digressiones* — again to be read in conjunction with the law. The supposed hostility to compendia is refuted with the observation that, in fact, they are generally used and not only in law, for no-one teaches medicine directly from Hippocrates or Galen, nor ethics from Aristotle. Even theology students do not drink directly from the Sacred Fountain.

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.
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.*\(^{106}\) Moreover, in conclusion he notes that Christianus Thomasius\(^{107}\) 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’.\(^{108}\) 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].\(^{109}\)

4.2. The *Digressiones* of 1670

As it was in the 1688 edition of Huber’s *Digressiones Justinianeae* 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.\(^{110}\) 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*.\(^{111}\) 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 *Dialogue*, 1684.

\(^{109}\) Huber *Positiones*, p 3, § 14 of the second *Praefatio*. . . . commodum erit reperire loca in itinere vasto, ubi resine liceat et jacunda repetitioe eorum quae pridem tenebat, disatere taeudium 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. 1 cap. 1 p [1].

\(^{111}\) See Huber *Digressiones*, p [2] of the *Dedicatio*. *Observationes primum Humaniores* appellabam quia tales initio sunt excepere consuetudinem. Postea mixtis non pauca quae vic hoc nonem tueri poterant Digestiones quod errant dicere mult. (At first I called these *Observationes* “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 adverts 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*.

### 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 students.

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112 This is the text used for this translation.

113 Huber *Digressiones*, p. [3] of the *Praefatio*. *Ceterum in calce Ditionib de Ratione juris discendi atque docendi olim publicatam, haec operi Digressionum, cum ipsa nihil quam Digressio sit, adjicimus.* (However, at the back to this work of *Digressiones* we have added the formerly published Diatribe about the method of learning and teaching law, since it is actually nothing but a Digression).

114 See Gane *Jurisprudence, Note on the Author*, p s ix, “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 en nut*, p 8.

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 Rechtsgeleerdheyt* and the *Praellectiones* 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 studiorum 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 School117. Although he is sometimes grouped with jurists such as Vinnius, Voet and Noodt118, 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.”119 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.
Ulric Huber (1636-1694)

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.

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 *minutiae* 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 jurists.

6. WHY THE DIALOGUE FORM?

In view of Huber’s previous writings the question may well be asked “Why did he choose 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 *Wegschaal van redenen over het verplaatsen der Academie* 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 Laertius 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.” 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.

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120 Van den Bergh Noodt, p 113.
121 See van den Bergh Noodt, p 120, ft. 69.
122 Cf Cujacius’ description of Conmani *doctissimus vir sed non juris* cited in Stein Elegance in Law, p 251.
123 See Feenstra BGNR 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 Plate III 48. “Είστε δε διδάσκαλοι ἐξ ἐρωτήσεως καὶ ἀποκρίσεως συγκεκριμένους περὶ τίνος τῶν φιλοσοφομένων καὶ πολιτικῶν μετὰ τῆς πρεποῦσης ἡμῶν παραλογισμένων προσέγγεως καὶ τῆς κατὰ τὴν λέξιν κατασκευῆς.”
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 πεπιθηκον ωρωγη (on the education of children)126 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 viewpoints 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 Apel127 with his Isagoge per dialogum in quattuor libros Institutionum divi Iustiniani Imperatoris of 1540 and Albericus Gentilis128 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’ Dialogue? 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’ Dialogue 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 πεπιθηκον ωρωγη 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 Iure Belli ac Pacis (See the 1993 Scientia Verlag, Aalen, edition of Grotius’ De Iure Belli ac Pacis and especially R. Feenstra’s Annotationes Nove).
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 *Weegschaal 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 Crassius as plaintiff and Böckelmann as defendant and Crassius 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 κεφόν πρόσωπον (non-speaking part).141

135 Dialogue, Praefatio, p [iv], de meritis singularum existimabilitis. (You will decide about the merits of each argument).
136 Dialogue, p 7 Cum enim tu Actoris, ego Rei partes sustinere videar, non habet res facultatem ut defendendi rationes incantur antiquam litis intentio apte, certe, idae peracta et absoluta 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 brought to a conclusion.)
137 Plato Phaedrus [229]. ῬΩΑ ΔΕΡῼ ἐκπρασόμενοι κατὰ τὸν Ἰλίσσον ἔµαι, ὅπων ἐν δοξή ἐν ἔρχομαι καθίζομεθα ἄ . . . ΦΑΙ. Ὁρᾷς ἦν εἰκόνα τὴν ὑψιλοτάτην πλατανόν; (SOCRATES: Let us turn aside from here and go along beside the Ilissus. Then we will sit down peacefully wherever it seems good. PHAEERUS: Do you see that very tall plane tree?)
138 De Oratore VII. Car non uiniamus, Cæsure, Socratem illum qui est in Phaede Platonis nam me haec tua platanus adhomin! . . . 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 Dialogue, p 3.
140 See De Claris Oratoribus § 6 . . . tum in pratulo propter Platonis statuam consedimus. (Then we sat down in a little field near a statue of Plato.)
141 Dialogue, 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 Rusius will be subjected to investigation as will the behind-the-scene voice from the unnamed Noodt.

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

1.1. Böckelmann in real life

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

\(^2\) On the life of Böckelmann I have relied chiefly on R. Feenstra’s article “Johann Friedrich Böckelmann (1632-1681). Een markant Leids hoogleraar” (in Dutch) in NNBW III, 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 juris themata. See Ahsmann-Feenstra BGNR Leiden, p 55, no 10.

\(^4\) See Ahsmann-Feenstra BGNR Leiden, p 551, 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

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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 Adriaan 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 compendiary 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], Sereniissimi Principis Electoris Palatini Domini mei Clementissimi gravioribus consilios negotisique ista immersus fui ut et telam coeptam et omem disipulatorum evenam per aliquot annos absicere 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 Communis et Electoralis Palatini, ibid. p 56, no 13; for Exercitationes ad Pandectas, ibid. p 57, no 14. It was in 1664, while still at the University of Heidelberg, that Böckelmann produced his Exercitationes ad Pandectas containing 25 disputations concerning books 1–6 of the Digest. Böckelmann himself had acted as Præsor and it is presumed he was the author. The Exercitationes was published (1664) in Heidelberg by one Adrianus Wijngaerten, the father of the Adrianus Wijngaarten of the Dialoge. Wijngaerten sen. was originally from Leiden and it is presumed he was the author. The Exercitationes was published (1664) in Heidelberg by one Adrianus Wijngaerten, the father of the Adrianus Wijngaarten of the Dialoge. Wijngaerten sen. who was originally from Leiden was active as a printer-publisher from 1657–1668. In 1668 he published Böckelmann’s Collegium Pandectarum compendiose exhibens fundamenta et praeceptus controversiae 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.

7 Appendix CI.

8 The Peace of Westphalia (1648) by no means solved the political, economic and military threats to Heidelberg, for the worst of these occurred after 1670, and in fact after Böckelmann’s death in 1681. In 1685, Louis XIV whose brother the Duke of Orleans had been married to Karl Ludwig’s daughter, Liselotte, claimed certain lands and when this was refused invaded. Heidelberg surrendered in 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, Brunnen Leidische Universiteit III, p 235*.

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

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

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 erfspacht (emphyteusis) of two adjoining plots of land in 1676. These were situated besides the Rhine at Hazerswoude, between the river and the Hoge Rijndijk. The first (deed of conveyance, dated 25 April, 1676) was for 504 roods of houtlandt (wooded land). The seller was one Jacob Wolbrandtsz. Verhagen who had obtained the hereditary tenure on 26 March 1667. The annual ground rent was 13 guilders to be paid to Haesgen Ouwelant. The purchase price of the lot was 500 guilders. Abutting onto this plot was the ground held by the heirs of the late Hendrick Bugge van Ringh and the late Jan Jacobsz. Koel. In the following June the erfspacht 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 Gemeenteraad 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.E.C. Knepelhout van Sterkenburg, entitled De Gedenkteekenen in de Pieters-Kerk te Leyden, Leiden 1864. See p 72, no 335 (To the everlasting memory of Johannes Fridericus Böckelmann, incomparable Professor of Law, died 23 October in the year of Our Lord 1681).
17 Thanks to the kind services of Prof. Jan Hallebeek of the VU University, Mr Arjan van ’t Riet of the Streekarchief Rijnlands Midden, and Prof. Paul Nève and Dr R.M. Sprenger, the deeds of purchase, 1676, and sale, 1683, were made available to me. It is particularly to Dr Sprenger that I owe a debt of sincere gratitude for her help in transcribing and translating these documents. See Appendix C and Chapter VII for comments on the significance for this work of the dates.
18 Emphyteusis, erfprachtrecht (Dutch) or perpetual quitrent (English). The word emphyteusis from the Greek ἐμφυτεύμα, 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 emphyteuseos, 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); Grothus’ Inleidinge, 2.40, 3.18; Van Zurck Codex Batavus, Erfpachten 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, 168321) to one Nicolaes Clignet of Leiden. Böckelmann’s executors were Theodorus Kraene, Prof. of Medicine and Johannes Mullerus, minister of the Hoogduitse congregation at Leiden, together with the guardians of Böckelmann’s minor heirs who lived abroad.22 The total area of the lots was 1 morgen, 57 roods.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.24 This is the property referred to in the Acta of the Senate of 14 July 167925 where it is noted that the Senate decided to hold a convivium pisciculorum (fish lunch party) outside the city for which purpose the noble gentleman Böckelmann made his property available, and it was held there.26 This is the site for the Dialogus. The question of whether the convivium pisciculorum (fish lunch party) was the occasion for the Dialogus will be considered below.

1.3. Böckelmann and the Praefatio to his Compendium of 1679

Certainly the most explicit statement of Böckelmann’s views on the use of compendia in teaching law to young students is to be found in the 1679 Praefatio to his published edition of his Compendium Institutionum Justiniani.27

The 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 student28 and ultimately to neighbouring universities. Although

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.
21 See Appendix C IV for the text of the deed of sale of 9 January 1683.
22 Attempts have been made to trace these heirs but to no avail.
23 One morgen equalled approximately 600 roods.
24 Feenstra Böckelmann, p 145, says that the property was worth 4000 guilders.
25 Molhuysen Bronnen Leidsche Universiteit, III, p 342*. . . . convivium pisciculorum extra urbem ad quod Nobil. D. Böckelmannus praeceps suum concessit, ibique celebratum
26 See Dialogus, p iii, p 3.
27 Compendium Institutionum Justiniani sive elementa juris civilis in brevem et facilem ordinem redacta, (Leiden 1679).
28 cf Böckelmann In Digesta, Lectori p [8]. Primum ergo Pandectas docere caepi per precepta et regulas satis consitas quas primum calamo excerpere Auditores sed et temporis jacturam et senhedi tacitum fugientes, quotquot poterat edita Heidelberge excitationes nostras sibi comparare, deficientibus autem jam exemplaribus obnoxie me negare, eos denso et ali coramel telamque non ultra 6. librum contextam, petisceun. (At first therefore I began to teach the 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

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31 cf. Noodt’s response to Huber’s attacks.
32 *Illotis manibus* See Noodt, Huber, Böckelmann, Rusius and others. A metaphor implying “without due preparation”. It stems from classical times and appears in Gaius *libro primo ad legem duodecin tabularum* (D. 1.2.1) and not infrequently in later writers, condemning the ill-prepared students who cannot cope with law.
33 cf. *Dialogus*, p 13 and p 42, where Huber says that *compendia* writers must have digested the material.
35 p 6 *Nec minun cum ars haec plerunque execeatur 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 theoretici et practici*, Frankfurt, 1643.
37 Mynsingerus (Mynsinger von Frundeck), Joachim, 1517-1588. He was known for his *Apotlesma*, *hoc est corpus perfectum scholiorum ad Institutiones Justinianae pertinentium*, 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 Constitution Imperatoriam § 7.
40 For further discussion of the Roads metaphor see below section 1.3.1.
41 Böckelmann, Compendium, Praefatio p [23] Pro compendio magnum studiorum Vestrorum det dispendium. Here Böckelmann is playing with the words, supposedly used against him. See below The Dispendium/Compendium antithesis.
42 Ahsmann-Feenstra BGNR Leiden, p 64, no 44 gives the date 1802 for a reprint at Amsterdam. As this bibliography stops at 1811, this is not evidence that there were no later reprints, although this seems probable.
43 Huber Oratio II, pp 63-64 . . . plurimum interest, qua via proficiscrai ad iter tuum prospere abolvenduni . . . monstrabo vobis cum viam qua et ipse potissimum iness . . . Non peremptabo vobisiam gyro aut ambages . . . sed via communi rogione 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 Nec sero, nec difficultier (neither late nor with difficulty); that over the via prava (wrong route) declares aut sero aut munquam (either late or never). Above the head of the successful student is a wreath encircling the words ars juris完美a (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)us Jur(i)us (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 shallow. He eventually found the key to learning and is passing it on to his students.

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

44 See Plate VIII.
45 See Plate IX. For these I am indebted to Prof Dr Remco van Rhee of the University of Maastricht.
46 As can be seen in the Latin below Böckelmann says the right hand path is the via aperta and the left hand the via anhau whereas it would appear from the picture to be the other way around. Feenstra Böckelmann, note 63, considers that Böckelmann is viewing right and left from the perspective of the successful student. It may also be the not infrequent Left over Right inversion which occurs when printing engravings from a plate. This presupposes that the lettering is added afterwards.
47 In English the term Via Regia or Royal Road refers to a broad, flat and easy highway. See the OED (road). In some of the texts consulted, as here, it is used to describe a hard, tiresome route.
48 Böckelmann, Compendium, Praefatio, [19] . . . videtis Emblemata in dextra (sic) parte referens viam apertam, quatuor gradibus interstinctam, qua nec sero nec difficultier ad perfectam iuris scientiam eunt Studiosi, nullis sanctis graves ns singulas, alias post aliam agentes; in sinistra (sic), adhuc montis praecipitio, sevibus repribus impediuntam, quam unius, omnes simul portans, nullo ordine, modo aut ratiione ingressus, aut sero aut munquam, certe non sine impeto labore et molestia somnia emettetu, ad misi ram citius quam scientiam perventurus. Et tamen huc regia est via . . . quasi Diva nostra paucos tantum sanctores, non multis mortales, ad summum sacrarium admittet voluisse. (You see the picture showing on the right side the open route marked off by four steps by which the students are proceeding to the complete knowledge of law, neither late nor with difficulty, not weighed down by any burdens, doing things singly one after the other. On the left side is a difficult route on a precipitous mountain blocked by 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.
49 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.\footnote{Böckelmann O.F. Crusii, p 14 aliam, aliam longeque rectam magis viam instat Crusius.} In his funeral oration for Albertus Rusius (7 March 1679) Böckelmann again laments the general student attitude, especially the wasted opportunities while touring Europe with their tutors. Our Rusius also entered on a very different course (p 21).\footnote{Böckelmann O.F. Rusii, p 21 aliam longe viam ingressus est Rusius noster.} By hard work and conscientious attention Rusius early made a brilliant reputation for himself and those students attending the oration would do well to follow the same road. This road, the \textit{Via Regia} is the one now recommended, but here the \textit{Via Regia} of serious study and sober minded associates is contrasted with the “\textit{Via Voluptatis}” in the company of drunken, quarrelsome and gluttonous youths.\footnote{Böckelmann O.F. Rusii, p 16 cum temulentis rixosisve juvenibus aut heluonibus.}

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

Now let us consider what Noodt has to say on this.\footnote{Feenstra \textit{Böckelmann}, p 142 and ft 73, writes that this epigram was cited until the end of the 18th century and the beginning of the 19th.} Van den Bergh claims that Noodt is attacking the compendia which his Utrecht colleagues van Muijden and van der Poll were using. Here Noodt admits that the old Royal Road is steep and dark, long and difficult. It is overcome by few and then only with much intellectual stress and effort. The Compendiary Road on the other hand is flat, direct and easy for everyone, even the somewhat unintelligent. However, the mountain (Böckelmann’s mountain?) is not as intimidating from nearby as it is from afar; there are pleasant levels between the steep gradients; the darkness and mists of confused thought dissipate and the pleasures of great understanding emerge. In addition, the fact that the easy route is popular is to be laid at the door of gullible students, over-ambitious and parsimonious parents and intellectually dishonest professors and tutors. So Noodt favours the old, if arduous, \textit{Via Regia}.

1.3.2 The \textit{Compendium-Dispendium} antithesis

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

On page 17 (1688) Böckelmann adverts to the fact that Crusius/Noodt has rephrased the epigram to read \textit{Compendium est damnum}. This is clearly not as pithy as the original, but it is a much more powerful condemnation of the Compendium. Although the Oxford Latin Dictionary (1980) gives \textit{damnum} as a synonym for

\begin{itemize}
  \item \textit{compendium} from \textit{compendo} = to weigh together, to make a profit by saving. Thus to make a \textit{compendium} means to “make a gain, saving” hence “to shorten or abridge profitably”.
  \item \textit{dispendium} from \textit{dispendo} = to weigh out, to pay. Hence \textit{dispendium} is a cost or loss and once in Virgil \textit{Aenid} 3.453 ‘a waste of time’.
\end{itemize}
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 [8] and p 17). Was Huber trying to strengthen his case against Noodt? On p 4 Crusius, addressing Huber, says he is glad to see that his Digressiones are an indication that he (Huber) does not promote compendia of jurisprudence which are nothing so much as 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, nec 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 wisp to 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 sunt compendia tamquam mera dispendia studiorum (all compendia as a pure waste of study time). Even earlier in his inaugural oration (1665) Huber uses compendium in the sense of a summary (p 103) and 5 pages later (p 108) 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 *NNBW 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.
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 Restitutio cap. Si Paterfamilias, 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 Wilnaerden 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 WIJNGAERDEN87 (1648-?)

3.1. Wijngaerden’s academic career and early life88

Adrianus Wijngaerden, son of Adrianus van Wijngaerden89 and Lysbeth Ardiers, was born in Leiden and was baptised in the Pieterskerk (22 April 1648).90 On 1 February, 1666 he enrolled as “Adrianus Wijngaert, Lugduno-Batavus, phil.” at the University of Franeker.91 It was there he met and studied under Huber as mentioned in the Dialogus.92 In 1669, while at Franeker, Wijngaerden defended three disputations De substitutionibus under Huber as Praeses93. 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 fundamentalium.94 At some stage after 1670 Wijngaerden moved to Leiden where, as Huber tells us in the Dialogus, he was

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87 Wijngaerden’s name appears in various forms. He was baptised as Adrianus Wijngaerden. He enrolled at the University of Franeker as Adrianus Wijngaert, Lugduno-Batavus, phil. on 1st February 1666. See Fockema-Andreae, Album Studiosorum, part I. no. 6889 (p 199), but appears in Postma and van Sluis’ Auditorium Academiae Franekerensis (p 195) as Adrianus Wijngaerden. At Leiden, 13 March 1674, he acquired his doctorate in law as Adrianus Wijngaerden (see the title page of his doctoral disputation). He was admitted as an advocate of the Hof van Holland as Adrian Wijngaarden. On the 18th July, 1676, his intended marriage was noted in Rotterdam (see the Gemeentearchief Digitale Stamboom) as Adriaen Wijngaerde. In the Dialogus he is introduced, on p vi, as Hadrianus Wijngardenius; he reappears as Wijngardenius on p 3, three times, and once each on p 18, 49 and 50. In the translation and commentary he is Adrian Wijngaerden, except where circumstances dictate otherwise.

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

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

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


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

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

94 See Feenstra BGNR Franeker, pp 50–51, nos 136–137.
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 Mattheus (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{advocare voor den Hooven van Hollant} 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{Haags 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}\textsuperscript{104} 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 Molhuysen \textit{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 Medicici} 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 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}

\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 3.
A Dialogue on the Method of Teaching and Learning Law

(Wijngaerden’s) private students. This question serves as a springboard for Huber to launch into a discussion of law teaching, as exemplified by himself, and seems to be the sole reason for Wijngaerden’s inclusion in the Dialogue. Huber’s contribution is largely a reflexion of the policy outlined in his Orationes II and IV of 1682. 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.
107 Dialogus, pp 49-50, cf Huber Oration IV, pp 88f.
108 Dialogus, p 51.
109 On Huber’s attitudes to disputations, see Veen Exercitia, passim.
110 Dialogus, pp 36-37. See Tanta § 21, Deo Auctore § 12.
111 Dialogus, p 39.
The Personae Dialogi

Ubaldis (1327-1406) who wrote consilia, responsa etc. which led to doubt (as Justinian had predicted) and the communis opinio. The techniques of scholasticism did not lead to a proper understanding of the law.

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

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

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

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

\begin{footnotes}{112}Dialogus, p 39.\endfootnotes
{113}cf. Huber Oratio II, pp 69f.\endfootnotes
{114}emendando corrupta juris antiqui loca (by emending the corrupt texts of ancient law).\endfootnotes
{115}Dialogus, p 40.\endfootnotes
{116}Dialogus, pp 41ff.\endfootnotes
{117}See Dialogus, pp 35, ff.\endfootnotes
{118}See van den Bergh Noodt, p 166, paraphrasing Huber’s words through Böckelmann’s persona. Dialogus, p 32.\endfootnotes
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 barbara iuris compendia* (1659). Brief notes are to be found in Feenstra-Waal *Leiden Law Professors*, p 37, ft 147a; in van Miert *Illuster 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; Ahsmann-Feenstra *BGNR Leiden*, p 206, no 553.
5 See Böckelmann *O.F. Rusii*, p 11 *infantiam suam pietate, bonis moribus, literisque ita ornavit ut mox omnissimam suae artis adolescentibus palman praeripuerit*. (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 compendiarum (16 September, 1659).

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.


7 (On the barren and barbaric legal compendiary teaching methods of certain persons.)

8 See Böckelmann O.F. Rusius, p 25. magna salis causa videtur multis . . . notos, ignotos, immo amicos, Collegae, necessarios aniimo plus quam hostili aggrandizantur et maledicetis abhominisque persecutione quasi lex naturae; uti vix vi repellere permittis, ila quaque obo diversam a nostra sententiam, manta coeli mixere nobis permittisset. (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 polemical 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 *praecox* (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 footprints 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?
12 Böckelmann *O.F. Rusius*, p 13 *Eruditissimus ac praestantissimus* (Salmasius), *ornatissimus atque omni genere doctrinae instructissimus* (Arnold Vinnius).
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 Compendiaria*, 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 quorundam et barbaran juris compendiaria (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 institores (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

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).

Rusius De Jejuna Compendiaria, p 19.

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

qui isto . . . modo hic captant compendium, va ne illi plenumque 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 Dispendium (Böckelmann’s Compendium is nothing but a Waste of Time). See van den Bergh Noodt, p 166.

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.\textsuperscript{20} 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)\textsuperscript{21}

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\textsuperscript{22}

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\textsuperscript{23} 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\textsuperscript{24}.

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,\textsuperscript{25} and Lucas van de Poll.\textsuperscript{26} His next port of call was Franeker where he was created Doctor Juris, 9/19 June 1669, his promoter being Taco van Glins.\textsuperscript{27} 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

\begin{footnotesize}
\begin{enumerate}
\item Sed tironibus etiam iuris compendia, ab eruditis concinnata, animum generali quadam idea imbuunt atque praeparant ad cognoscenda postmodum prelixiora et singula. Ia qui prudenter et curioso peregrinantur, delati in Urbem altissimam ampliam et aedificiis aliisque operibus atque situtum conspicuam, principio eminus ex turri quapiam alioue edito loco universam ejus faciem obtutu speculantur . . . Non igitur finem sed initium eiusmodi compendia dare debent Academico Iuris studio bonis artes suffulto.
\end{enumerate}
\end{footnotesize}
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 Crusius 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 rôle 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...
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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.

34 Oratio de causis corruptae jurisprudentiae Ultrajecti ad Rhenum pro concione dita, 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.

35 Noodt Corrupta Jurisprudentia, p 619 fungum e terra natum proxima nocte.

36 Noodt Corrupta Jurisprudentia, p 619 illoti atque inculti.

37 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.

38 See van den Bergh Noodt, p 164.

39 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.

40 Van de Poll, Lucas (1630–1713) spent most of his life in Utrecht. He became lector in 1667, Professor extra-ordinarius (1670) 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

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 . . . maar alleen om wat te carperen bij jonge luiden die daar 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 inventitur. § 15 Contrarium autem aliquid in hoc codice postum nullum sibi beam vindicabit nec inventurus. Constitutio Dio aucept § 4, . . .neque similitudine neque disconsa dedita.
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 prefaces 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 Marcius’ 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.

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\(^{48}\) 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 sweep of his criticisms.

\(^{50}\) See van den Bergh *Noodt*, p 303, ft 72.

\(^{51}\) Huber *Digressiones*, p 551. *Gerardus Noodt, Juric. Et Antecessor Ultrajectinus, ad hunc textum scriptum elegantissimum commentary in lib. 3. cap. 3 probabilium*.

\(^{52}\) *Lector quod ipsi videbitur eliget,*

\(^{53}\) ... *nihil innocentius est quam ejusmodi perturbationes opinionum inter amicos. cf. Dialogus, p 4 ft 14.*

\(^{54}\) See *Dialogus*, p 30; van den Bergh *Noodt*, p 22.

\(^{55}\) See Huber *Praelectiones*, Vol. III, p 677... *censeo 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.)

\(^{56}\) *Fatendum est hoc genus Censurae esse validum 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 indigantly 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 Mosaicarum 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".

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 Demosthenes 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

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67 Böckelmann and Crusius had held these positions since 1670.
69 Sed finio. Iam enim pridem Nobilissimus atque Excellentissimus ICtus & Antecessor Johannes Fredericus Böckelmannus amicus meus, Vir profecto gravitate, prudentia auctoritate summa studiisque doctrinarum Spectatisissimus profugavit hanc sententiam satis, nemoque practicae 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 vico aliquid velle adscriere hominis esse videtur non intellegentis. (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 Conratus 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 professors into the Probabilia?

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 Doct 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 541f.

74 atque inter eos etiam Vro Clarissimo Georgio Conrado Crusio, fto & Antecessori Lugdunensi immense doctus, rerumque 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 vno nullohis, interque eos Simoni van Leeuwen in additamentis ad notas Gotofredi ad d.l. 101 pro obligari restituendum esse obligeant, id est absi 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 other bound to themselves).

76 e.g. 1674 reads Ceterum visa mihi hae conjectura muto probable, ex quo sensi Vos optimis . . . 1691 and 1693 read Probabilis mihi hae (quid enim dissimulam conjectura est, sed visa mihi est alius probabilior ex quo sensi . . . and further qui etiam labeculam hand multo dissimilis deprenefisse se aliquando et diiusse significabat . . . becomes qui mihi significabat etiam se labeculam. . . . 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 280f.
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’s79 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 Haec 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 turis compendiaria* 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.

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. 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 Cyrum* (1662) and the *Positiones* (1682).3

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 Böckelmann4 (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, 1676.5 This is confirmed by the entry in Molhuisen’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.6 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 evidence7 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 Scavans* 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.

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3 See Chapter IV.3 and IV.4.
4 See Chapter V.1.
5 See Appendix C.
7 See Chapter V.4.1 and especially ft. 101 and ft. 104.
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*. 

*A Dialogue on the Method of Teaching and Learning Law*
CHAPTER VIII

THE JOURNAL DES SCAVANS OR THE EPHEMERIDES ERUDITORUM

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 Scavans. 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 Scavans 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 Scavans 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.

1 Information on the Journal des Scavans 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 Scavans was used from 1665 to 1682; Journal des Savants from 1683 to 1686; Le Journal des Scavans 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 orbis literatus.

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 Colbert⁶, the first editor was Denis de Sallo⁷ (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 aims⁸ were to promote the arts and sciences of the *Académie*⁹ 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 1665¹⁰ 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 ie 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*¹¹ 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 downs¹². 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.

The Ephemeredes Eruditorum

(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 Savans* (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 Savans* 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 case. 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 Savans* 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 *Ephemeredes 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 1667. The second covered the years 1666 to 1668 and appeared in 1671. 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 *Ephemeredes 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.

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13 Van Eeghen, *De Amsterdamse Boekhandel* 1680-1725, III, pp 111, 204-205.

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 Amstelodami*, 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 DIALOGLI

It is in the concluding section of the *Dialogus* (pp 58–62) that Huber, through the person of Böckelmann, suddenly introduces the *Ephemerides Eruditorum*. 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.\(^{17}\) (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.\(^{18}\) 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

\(^{16}\) On (pages 37–38). See Appendix D II.


news-sheets with a résumé of his next work\textsuperscript{19} and accompany it by much flattery of the \textit{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 \textit{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 \textit{Journal} and in the \textit{Ephemerides Eruditorum}

Although Böckelmann claimed that there was a marked lack of legal articles in the \textit{Journal des Scavans} one of the early issues contained a résumé of Simon Groenewegen’s \textit{Tractatus de Legibus Abrogatis et Inusitatis in Hollandia}.\textsuperscript{20} 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\textsuperscript{21} (1540–1590) and Mornacius\textsuperscript{22} (d. early 17th century). The chief thrust of the review is that Groenewegen copies Bugnonius and Mornacius that he concerns himself with trifles (\textit{bagatelles}), such as the Emperor Leo’s \textit{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 \textit{De Legibus Abrogatis}, those described here, are in many ways inadequate.\textsuperscript{23} However, one must remember that Groenewegen was concerned with the Roman law as abrogated in Holland, not France, whereas the perspectives of the \textit{Journal} and its contributors are from Paris. It is of interest to see that the book was obtainable in Paris (\textit{et se trouve à Paris chez Piget}).

Another legal work of interest to Dutch jurists, Antonius Marullius’ 1665 edition of the \textit{Codex Theodosianus} with the massive commentary by Jacob Gothofredus\textsuperscript{24}, also received a notice in the instalment of that year.\textsuperscript{25} This is a factual résumé of the predecessors of the \textit{Codex Theodosianus}, ie the \textit{Codex Gregorianus} and the \textit{Codex Hermogenianus} and the summary is in general impartial. Further, in volume 1 of 25 January 1666, there is a favourable résumé of Grotius\textsuperscript{26} \textit{De Iure Belli et Pacis} of 1625,

\textsuperscript{19} From the first edition it was customary for the editors or contributors to receive correspondence which was listed and summarised.
\textsuperscript{21} Bugnonius (Bugnyon), Philibertus, \textit{Legum abrogatarum et imusitarum in omnibus curiis, terris, jurisdictionibus et dominii regni Franciae tractatus} (First edition 1563).
\textsuperscript{22} Mornacius (de Mornac) Antonius, \textit{Observationes ad Quattuor libros Codicis} (Paris, 1635) and \textit{ad posteriores noz libros codicis} (Paris, 1640); \textit{Observationes in XXIV libros Pandectarum} (Paris, 1616).
\textsuperscript{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.
\textsuperscript{24} Gothofredus (Godefroy), Jacob (1587–1652).
\textsuperscript{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$^{27}$ Decisiones Aureae, Struvius$^{28}$ Syntagma juris Feudalis) and Dutch. Here we find the third edition of Simon van Leeuwen’s$^{29}$ Censura Forensis, theoretico-practica id est totius Iuris Civilis Romani usque recepti et practice methodica collatio of 1685 (Amsterdam). Also Laurent Theod. Gronovius’ Emendationes Pandectarum juxta Florentinum Exemplar examinatae (Leiden). Here we find the third edition of Ulric Huber’s Positiones sive lectiones juris contractae.$^{30}$ 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 Legiones juris contractae met scholia van Chr. Thomasius$^{31}$. The edition published in 1685 in Leipzig and Frankfurt. It was indeed octavo, unlike the earlier and later editions which were 12 mo.

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

Prima facie Huber’s introduction of the Ephemerides Eruditorum (the Journal des Scavans) 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$^{32}$ 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

$^{27}$ Berlicius, Matthias (1586-1638) Professor at Leipzig.
$^{28}$ Struvius, Georg Adam (1619-1692) Professor at Jena.
$^{30}$ See Appendix D V.
$^{32}$ 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 novelty33. 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 letters34. Probably here Huber is fighting for recognition on behalf of the profession as a whole. It seems unlikely that he himself felt personally slighted35. 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.

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 literati orbis.
35 1688 p 60. See Boëckelmann’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 diatrise per modum dialogi* was to provide an annotated translation from the Latin into English. However to appreciate the *Dialogus* it became necessary to set it into its physical and intellectual environment as a preliminary to attempting an evaluation of the work and its influence.

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

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

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

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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 Cononius see Stein Elegance in Law, p 251. (Most learned men, but not learned in law.)
6 See van den Bergh Geleerd recht, p 85.
7 See i.a. Veen Recht en Nat, passim and Kossmann Political thought, passim.
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 civis, 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”

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 methodo studiorum iuris illustrium et praestantissimorum iuris consultorum selecta opuscula* of 1724 which marks a noteworthy step forward. Firstly, we must note that the *Opuscula* was published in Jena not Franeker, and, moreover, three decades after the 1688 edition. In his *praefatio* Buder reiterates, in almost the same words, the problems which had bugged legal education for almost a century. In the diffuse but enormous “race course” of legal studies, students need a “Cynosura” and an “Ariadne’s thread” and if not a compendiary or royal road at least a sure and utterly reliable path. Having cited and rejected various writings, Buder comes to his crucial point. The texts he favours are often hard to come by even for university librarians and students can seldom, if ever, put their hands on such valuable aids. Although Buder recognises that there may be bigger and better books on learning law he will put together a collection of short works by well known writers and thus make them available for the students. Of the ten sections

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14 *Exhibitum tuo nomine ac mandato dialogum de ratione iuris docendi et discendi avide ac cum volupitate evolvi. Et est certe quod non tantum gratias pro done agam maximus, sed et pariter nostrae gratiae gratias Justiprudentiae quod dissertationem lepidissima causam eius agere voluisti pro recepta et successu felci tot annis comprobata iuris docendi methodo (quam non nulli non ita pridem satis festoer concutaculum ac protritum invenit) tam nervose ac erudite verba faciens, ut, quid solida possit in adversum eponi, haud equidem videam. De successor CI Noodt altum hactenus apud nos est silentium, nisi quod de qualbusdam Juridicae Professionis Franekeranae candidatu disseminata tam dividom fana etiamnum durat. sed qua spe eorum quibusque foedere qua fretus sit fulcuro, ut ibi, Vir Amplissime, procul dubio tam privato invocavit, ut nobisique hisque radicibus in eventu invicem sociatur. Vale, Vir Amplissime, et me ama. Lugduni Bat. 6 December Amplissimi nominis tui cultorum 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*.  

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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,16 one each by Maestertius,17 Schilter18 and Schultingh.19 However, the long and short of it is that any student turning to Buder for assistance will without question find the Huber articles the most practical and helpful.

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

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

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

16 Barbeyrac, Johannes (1674-1744). Professor at Groningen (1744).
17 Maestertius, Jacob (1610-1658). Professor of law at Leiden 1637-1639.
18 Schilter, Johann (1632-1705). Councillor at Strasburg.
19 Schultingius, Antonius (1659-1734) a pupil of J 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., Regtegeleerd, practicaal en koopmans handboek, ten dienste van regters, practitijns, kooplieden, en allen die een algemenen overzicht van regtskennis verlangen, Amsterdam 1806, translated by Sir Henry Juta, Cape Town, 1904.
23 Huber Oratio IV, p 100. Qui proficiere cupit, multa legere debet, non multos, πολύνοικοι εξερευνεται potius quam πολυλογητοι. (See Plato Laws, 641.E.)
A Dialogue on the Method of Teaching and Learning Law

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 Mosaiizans seu Evidens et facilis conciliatio philosophiae Cartesii cum historia creationis primo capite Geneseos per Mose 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 corrumpendae 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 Bibl. Iur. 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 (Βασιλικά Αμακεύς) 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 Bauldier) (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
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 canonicibus comprehenditur 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 πίναξ, 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 πίναξ 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 Συνοψις 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 Romanorum 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’, ie 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 summari 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 *Historia Universalis* 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 *Commentariunum de iure civil i 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 lettres 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, Guilielmus (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 Fabrianus* (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 (*litera 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 Thebani tabulae Graece et Latine 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 προκείμενα 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 juri 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 Chonizotes 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 1310).

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 (Βασιλικά), 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 civil (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' *Amenitates*. Yet on p 61 of the 1688 edition and p 108 of 1684, Huber implies that Menagius' *Amenitates* 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 Citationis 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 Omnen §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.
A Dialogue on the Method of Teaching and Learning Law

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 admiral 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 *Oratio de Jejuna quorundam et Barbara juris compendiaria*, see Ahsmann-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 notitiae 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 sibi vendicantis et abusus tam diæteticos quam pharmaceuticos perstringentis*, Amsterdam 1664. The work was reviewed in the *Journal des Sçavans* 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 accused 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 sterling 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.
## 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.

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Appendices
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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 rigidioribus & fronte caperata Catonibus [29] esse gaudere, reprehendendum putabis; ubi intellexeris, quales fuerint, qui tam strenuâ admonitione digni à me sint judicati scilicet, ex eorum numero dissoluti adolescentes, qui ad studia 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, sãtem ut exigam dies partem pravis ludicris ὁμολογητας subducere; ita fieri posse, ut ad tolerabilem doctrinae perfectum sine magno labore pervenirent; Quod in aliquis ita successit, ut hanc non modo, sicut vulgò aestimatur, eruditionem mediocrer adequerentur, sed nonnulli etiam hac via penitus ad [30] bonam frugem redirent 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 gratià narrat ipse Iustianianus in constitutione, quà libellos Institutionum confirmavit, se mandasse Tribonianum cum sociis, ut auctoritate Principali prima legum cunabula in Libros Institutionum redigerent.
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 — eminen(t) (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 ἀμβολεργία (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 percipi nequeunt; qui hoc genus compendia 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 diligentiores habentur, plerique verba compendiorum memoriae mandare contentis, (sic) cum illa recitare possunt, egregios se Iurisconsultos evasisse opinantur.

A4 1684, pp 34–35 (18 lines)

(Böckelmann is speaking)

Nec est, quod eorum aemulos id egisse per insidias arbitrere, Crusi, quasi sophisticis argumentationibus argutissime scholasticis simplicissimam, sed rectam eorum doctrinam aggressi fuissent. Te ipsum appello testem, quam ne definitiones quidem divisionesque per Institutiones & Digesta sparsas soleam illis objicere ignoratas, modò 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 quæat: hoc enim est officium, nisi fallor, Iurisconsulti, de jure consultum respondere posse, secundum regulas Artis quibuslibet verbis indutas. Sed Tu, Crusi & hic Huberus non ignoratis quando evenerit, ut qui in hoc genere candidatorum, à quibus compendia atque systemata ridentur, excellerebant, & jam studis aliorum regendis publice erant admoti, cum examini sese offerebant, nesciverint, quid esset Collatio, putarent, eam habere locum, ubi Ascendentibus succedetur, deque alii certi iuris capitibus, at minus obviis, ita responderent, quasi à facie nunquam ea cognovissent. Eòinverò non potest aliter fieri, quin talia quandoque systematum contemptoribus ev[42]niant, dum inde ab initio sententiis veterum obscurioribus indagandis, legum emendationibus excogitandis,

(cont 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 [35] 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 [41] 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)
ritibus atque formulis veteribus explicandis, ommissis disciplinae fundamentis, omni conatu sece dedunt; similes hisce, qui omnium primò Quaestiones illustres, intricatasque legum enantiochronias aliaque inusitata & auditu speciosa adolescentibus proponunt. Qui alterutrum vià ducuntur & incidunt, vel nunquam, vel difficillime rarissimeque ad veram eruditionis frugem emittuntur.

A6 1684, p 45 (5 lines)
(Böckelmann is speaking)
. . . tametsi Tu Crusi tertiusque Collega Rusius Noster eo nomine, plerosque recentiores Juris Interpretes immodicà libertate soliti estis insectari, quanquam . . .

A7 1684, pp 46–47 (29 lines)
Quis logicam, (liceat hoc repetere) quis Physicam aut moralem scientiam aliter hodic tradendam putaret, quis Medicinam tyrones artis, sine compendio vel systemate aliquo novitāi methodo conscripto docet? Nec sacrarum literarum ejusdem instituti auxilio carere potuerunt, quo fluctuantem discretionem memoriae judiciumque systematis aliquius aut summario locorum communium instrumento regerent ac praemunirent. Scio, non deesse, qui satius existimem, procul habere scriptores Institutionum hodiernos tanquam lamas & lacunas, ipsos scripturæ sacrae fontes adeoque salutares in hanc auras inauriendas. Sed aut me omnīa fallunt, [47] aut cibus breve videbimus eos ipsos, qui systemata magnificissime componerunt, Suis etiam in illa re sacrà Auditoribus, antequam eos ad altiora producant, ejusmodi Compendia vel quoconque libeat ea nuncupare nomine praebente; & Tu, mi Crusi nosterque Rusius, si diu, quod opto, vivetis, aliquando versus ad illum 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, saltem ipsi nunquam aliter quam inviti hac parte desideratis eorum obsequiomin. Namque, dum in hoc toti estis, ut sensa conscriptionesque locorn, quae in corpore Juris extant, soliciu expeditatis, indagetis, legumque nodos emendandis conjecturis solvatis, atque in eo studiosis praecatus; idemque illos inde ad initio facere doceatis, oporet alienissimos esse vos & illos a reciprociatione cogitationum sermonumque, sicuti fit in commissionibus illis disputatoribus. Nostra vià promptitudinem eruditionemque adipiscuntur, quae Jurisconsultos arguat atque demonstrat.
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 quaeestiones (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.

A6 1684, p 45  (5 lines)
tametsi — 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 . . .)

A7 1684, pp 46-47  (29 lines)
Quis logicam — 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 (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 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.

A8 1684, p 58  (19 lines)
Quo pertinet — 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 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.

9 This passage which has been excised from the 1684 edition from who . . . logic (Quis logicam to inde Haurierdai) was originally taken, almost verbatim from 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 constituta in eos, qui id ausi invenirentur, addita sanctione corrupendi abolendique scriptas ejusmodi commendationes.

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 jurisconsulti 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 praecipua corrigendi praebuere, careatis, tamen hanc viam initis, ut emendandi institutum proram & puppim studiorum vestrorum occupet, nec alius [75] quicquam, nisi quod urit & secat oculis 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 ater; nec est qui obloqui possit. Si quid simile vobis haeserit, agite, applaudemus & gratulabimur, e turhkaV

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 πάν όναντιον καὶ χρήσιν ὥς παρεχόμενον εν τοις πράγμασις, ἀποκρίνα, τε καὶ ὑπὲξελειν ἀλλᾶ τοῖς εἰκῶς πόλλα τῶν ἀρχαίων νομοθετημάτων παραδοκόμησθαι τοῖς ὑπερτοιν, ut Cedrenus, Harmenopulus and Blastares auctores sunt & res ipsa demonstrat. Ajunt, inquam, Leonem omnia in legibus Instinianaeis contraria nec usum in fondo habentia inde seervisse & abstulisse; proptera quod veterum nolium multae à recentioribus abrogata fuerant, suisse Graecis utilia tantum & consonantia proposuisse: Reliquum jus Latinum indagatoribus antiquitatis relinquebat. Hanc rationem aequè 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 Grotius in his whole book Florum 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 amony the most important duties of a jurist.

A11 1684, pp 74-75  (10 lines)

Alienum — 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\textsuperscript{10} which is given to one who has been forcibly deprived of possession, cannot be given to one who possidet\textsuperscript{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) ἐτύρμας (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 πάν ταύταν κατ’ χρήσιν οὐ παρεχόμενον ἐν τοῖς πράγμασιν, ἀποκρινα, τε καὶ ἀπεξελθεῖν ἄλλα τε ἡς εἰκώς πολλὰ τῶν ἀρχαίων νομοθετημάτων παραδοκιμαθήναι τοῖς τόποις, 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.

\textsuperscript{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.

\textsuperscript{11}In the 1688 edition, p 40, Huber writes ’pro possido [literal for possidet] legendum esse possedit’. This emendation has been resolved in various ways e.g. Spruit (D.43.16.1.45) for qui possidet conjectures qui possider desitis. JAC. Thomas and Watson (D.43.16.1.45) translates qui possidet as ‘the possessor’. 
Me quod attinet, nolo doctior videri quam praestare me queam, ideoque libenter fatoer, me nihil adhuc aenum esse proferrer 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.

This was also happily done by us after having exchanged some noble draughts and mutual protestations of friendship.
APPENDIX B — THE DIETERICH'S 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 decem et decem

tia conciliare, posterioraque cum prioribus coniungere; cuius rei specimen Iter
situs in Excerptis Authenticis prius. Odicum
spargendo audax et nobile sit. Sec-
cundum haec principia progresi sunt
homines studio ad proponendas Au-
ditoribus suis Summas, ut loquebantur
bald absurdè, liberorum juris et
bibilialus fure, quam paratissi, quae
ususius appellat Graeco vocabulo, id-
que fortissimum ad Institutiones atque
Codicum, ut Placentinus & Azn pre-
verunt. Ita enim existimabant, Codici-
cum potius quam Parendasius, qui In-
stitutiones perceperant, esse praelegendum,
quia recentius in illo jus est usque in
foro certioris & frequentioris, quia gra-
tia Novellorum argumenta singulis in Co-
dice Rubrice Iterius ille subjecerat,
quod illorum institutum ad formandos
judices caelorumque Patronos, id est,
validos jurisconsultus, non erat, ut
magispere improbaretur, usque ali-
ter deintem visum fuerit potestis.
Lusta
summis pro tyrannibus Artis, in uftum
proeditorum furibant glosas, que
funt

79 legibus inferri potest. Tu vero, excepere
Caesius, oblivisci vide, mi Hubere,
non in dialogo vereri; adeo propé a
declamaturi veheménti ab eft te videe.
Si vestigia tua sequeret, omnibusque col-
lecitis respondendum putarem, Sol nos
deficeret & impingeremus in id, quod
tu à principio stipulatus nobis praefcripti-
sit. In promptu altoquin effe offen-
dere, Te nobis aut afferente quod vitio
verti quest, aut nihil nos facere,
quod non magnis auctoribus melior-
ibusque rationibus defendi potest,
quodque non Alciatus, Cuiacius, Au-
gustinus. Duarenus, Fabri aliique sent
numero infiltrerant. Tu verò quicumq
de laude Crito juridicè criticorumque
superioris seculi commenores, haud-
quauam obscursis es odii avertionisque
ab ea parte eruditionis, quam nos rino-
gente invidiá, ferventibus Muftis, dum:
Spiritus hos regit artus, alacritate ex-
ceebimus, neque deterciremus, si
livor abiret, curam voluerit, dono
seculum criminis sui putesst. Colligamus
igitur vela regerbam proprioque portu;

neque
80 De Ratione decendi et defendi

neeque libert mihi reciprocare firmam, a qua Tu manum habes a me amovisti.

Num hoc addam, me gaudecre etqui

secat hominum egregiorum, a quibus

arrem meam doctus sum. Vinnii, Mari

thai, Willsenbachii, qui vari et erudito

nism liquore non tinasti leviter sed imbiti,

ramen in correctionibus legum vendi-
tandis auditoribus suis non praeverunt;

moti, factici et rationibus a me pridem

exploitis, tum vero hac inprimis; quod

satis cernuntur habebant, eos, quibus

hac præcius Ricosi professed anirider,

ab omni systematica doctinæ, desine

ab omnibus, quos civilem prudentiam

tradunt disciplinis alienos averosque

este; cujus specimen habuimus Salma-
fium, quem satis confiabat, cum alia huja

generis, tum divinum Gratii de jure pacis

& beli opus infolenter apsanner & ad

omnem politicam civilemque dotrinam

tantum non nauseare conuenire; quod

& alia, si non omnibus ejusdem instituti

rigidae, cultoribus eventris notabiliter

animadvertimus; ejusque contempus

Salmasi fructus in facebilli defensionis

Regia

Jurus, Dialogi. 85

prudentiam ad ulum sui temporis accon-

modare, ineptique se fore crediderunt,

si compendia & manualia sua, quibus

adolescencia summas Juris positiones

tradebant, perinde compofuissent, ac

si Justinianus adhuc vives in silique ab

ejus ætate fuisset invarum. Nos vero

poli toius sexcentos & quod excoerit an-

nos, extinctor Justiniani Imperio, qui

jus Eius haud alter, quam ad supplemen-
tas legum domesticas cujusque populi re-

cipimus, non audebimus juventuti no-

stra manualia prescribere, in quibus eos

admoneramus, quod de jure velut mo-

ribus hodiernis observatur aut fecus?

Sed pergamus. Dum ita Graeci Juris

scientiam suis mòribus & institutis apta-
tam exclamabant, interea in Occidente

cum Imperio leges Romanæ exulabant &

ignorabantur; donec Lothario Saxone

Imperatore, qui poëminio fidium ejus

inaugurarur. In his inititis, prima qui-
dem ingeniorum occupatio fut eaque

foe, libros Justiniani evoluerse, dare

operam, ut intelligerentur, diversos

libros legereque inter se conferre, diffusen-
Appendices to the Commentary

praefatio.

que criticis, quam vocant, in. Jurisprudentiam demonstraverim... Postremo, rogante Hadrianu Wijngaarden leco, qui nobis aderat, atque tum, scholas domesticas Lugduni habere instructum, totum studii juridici cursum, scire illum studiosus praeundum censo, simplici orationis filio dimensum sum. Donec Zökelmannus prolato ephemeredum literaturam libello, has disserationes abrupte, eaque occasione de instituto illorum diatriumph sive novellarum paucis inter nos adnum. Legite fultis, & valete.

UL.
De Ratione docendi et descendendi

Tu neque libet mihi reciprocum ferram, a qua Tu manum generoso contemplavit. Unum addam, me fessum esse in adolescentia sedam hominum, qui variae eruditionis liquorem non invidi leviter sed imbuti, tamen in correctionibus legum vendirandis auditoribus fuit non praeverunt. Finum, Matthias, Wittenbachius, moti, farceo, rationibus a me pridem expolitis; tum vero hac imprimit; quod fatis compertum habeant, eos quibus hoc praeposuit Crito, professo artidet, ab omni systematica doctrina, denique ab omnibus, quaes civilis prudentiam tradunt disciplinam alios vero folique esse: cujus spectum habulmus nescimus Salamum, quem fatis confari, cum aliis hujus generationis, tum divinum Grotii de jure pacis & bellorum in solenter adierant, atque ad omnem politicam civilisque doctrinam tantum non naufragii confinui esse; quod & alii, si non omnibus eundem institutum rigidas culturibus evenire notabiliter animadvertimus, eiusque contemptus Salmo fructus in succedentia dispositionis Regiae

P R E F A T I O.

Alio critice artis instrumentum solvere volebat. Quas res Bukelmannus non nisi ab illis, quiprius universum jus parasitarii methodo prompte validaque didicilente tentari suadebat. Rationes corum diversis vicibus commutatas agitataque, non fine punctibus aliquando josisque, sicut erant, homines liberis animique, salva tamen dignitatem, videbiris, & de meritum singularum exspectabatur. Me quoque tandem vocaverunt in partes, nec alius à me dictum nisi quod rationes docendi descendique juris variarum, inde à Justiniani no recessuerint, atque exinde, quae mihi prestantissima videretur, collegi; denique utsum absum-
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.


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Nobilissimis atque impositissimis
Dominiis Curavitibus Academiae
Concilibus, Urbis Zugdogenfis.

Suis meis observandis.
Appendices to the Commentary

...
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[Text in Latin, handwritten style]

Appendices to the Commentary

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 Coornsinder, Bailliuw
ende Schout der vrije Heerlijkeit van Haserswoude,
oirconde dat voor mij ende voor Michiel Ewoutsz.

5
Groenendijck ende Isaacq Arijensz. Elsthoux,
schepen derselver heerlijkeit als getuigen
hiertoe versocht gecomen ende personelijck gecom-
pareert is Jacob Wolbrantsz. Verhagen wo-
nende aenden Hooge Rhijndijck inden ambaghe

10
van Soeterwoude de weelcke bekende mitsdesen
voor hem. sijn hen ende nakomelingen versoacht
ende zulcx wel ende wettelijk opgedragen ende
overgegeven te hebben aen ende ten behoeve vande
heer Jan Fredrick Beuckelman, professor

15
inde regten binnen der Stadt Leijden ofte
ijemant

het regt van sijn Ed. vercrlijgende seker perthij
houtlandt groot vijf honderd vier roeden
dogh bij den hoop ende sonder maet als stootende
de mate mette voet gelegen in dese heerl-

20
heijt Haserswoude streekende voor uijtten
Rhijn tot achter aende Hoogen Rhijndijck belendt

fol. 57v

ten noortwesent Cornelis Jacobsz. van Eijck ende
ten suijtoosten de erfgenamen van Za. de heer
Hendrik Bugge van Ringh ende Jan Jacobssz. Koel, ende
dit met soodanige ongelden ende baenwercchen

5
alst voorsz. perthij subject soude mogen sijn,
ende voorts mette belastinge van een
erpächt van dertien Carolus guldens s’jaers
daer op t’voorsz. houtlant bij de voorsz. Hendrik Bugge
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van Ringh ende Jacob Buijck als procuratie
hebbende 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 Reijersz.
van Swieten ende voorsz. Verhagen in erfpacht
ende op erfpachts recht is uijtgegeven, nader
blickende bij de originele erfpachtsbrieven.
daervan sijn de, gepasseert voor mij gesubstitue-
eert schout voorsz. ende twee schepenen deser heer-
licheijt in dato des 26. en Martij 1666, daer op dese
jegenwoordige is doorstoken ende getransfixeert
omme bij den heere Cooper, daer mede gewonnen,
verloren, ende algedaen te werden of hij Comparant
t' zelfs waer ende waer naer d' heer Cooper
hem sal moeten reguleren. Wesende wijders
vrij als buijerlant, gelijck hij Comparant beloofde
mitsden t' voorsz. vercochte te vrijen ende te waren

van alle lasten ende beswaerenissen die daer op tijde sijn
possessie eenigsints gebracht ofte geconstiteert
souden mogen sijn, ondert verbant van zijn persoon
ende generale goederen egene exempt ter
executie van allen regten ende regteren ende
verte

fols. 57:
specialijck den Ed. Hove van Hollant. Entelijck
bekende hij Comparant ter sake deser opdragte alwel
Appendices to the Commentary

voldaan vergenoegt ende betaelt te wesen den
lesten penning metten eersten ende dat

5 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 oirconde der waerheijt soo hebbe
rick, gesubstitueert schout voorsz. desen ten

10 verluye 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 op
ten xxv en April XVI C ende
sesentseventigh.

xl 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
heerlischeijt van Haserswoude oirconde dat voor mij ende voor
Dirck Claesz Hijselendoorn ende Isaac Ariensz. Elsthout,
scheappen der selver heerlischeijt als getuigen hier toe versoght gecomem
ende persoenlijk gecompareert is d’heer ende Mr. Cornelis Bugge
van Ringh, advocaat, naergelaten soone ende mede erfgenaam van
Za. d’heer Hendrick Bugge van Ringh soo voor hem selve
ende noch als speciale procuratie hebbende van Meijnsge Cornelis,
Dr. wedue, item Simon Petersz. van Velsen getrouth hebbende Maertge
Jans, Jan Ewouts getrouth hebbende Geertge Jans ende
Cornelis Petersz. getrouth hebbende Aejgen Jans, soo voor hen
selven ende hen sterkmakende voor de ses minderjâ-
righe kinderen van Jacob Jansz. Koel ende noch voor de
twee nagelaten weeskinderen van Za. jonge Maertge Jans
15
gewonnen bij Cornelis Jacobsz. van Eijck kinderen ende
kints 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 verlije deses vertoonde ende laten lesen, de welcke inde voorszh
qualite verclaerde vercoght te hebben ende dienvolgende op-
te dragen bij desen aen ende ten behoeve van de Ed. heer ende
Mr. Jan Fredrick Bugge Beuckelmann, Professor inde
reghten vande Universiteit der Stat Leijden de verbeteringe
25
van seelkere partijhe houtlant ende erve groot ontrent
hondert drie en vijftig roeden gelegen tusschen den
Rijn ende Hoogenhrijndijck in dese heerlischeijt van Haserswoude
belent aen d’ een zijde ten noortwesten de genoemde
heer Coper en aen d’ander sijde ten zuijtoosten Mr. Johan
van Leesvelt advocaat bij de genoemde Hendrick Bugge
van Ringh ende Jan Jacobsz. Koel in haer leven t’samen
om de navolgende erfpacht aengestu mette huijsin-
ge ende getimmerde daer op staande, het welcke de genoemde
van Ringh alleen was toebehoorende. Ende dat mette
30
belastingen vande selve erfpacht sijnde twaelff gulden s’jaers aencomea
Haesgen Ouwelants dr. verschijnende jaerlicx den 1. februaerij

fol. 77v

waervan t’loopenende jaer ten lasten vanden heer Cooper
komen sal, voorts vrij als buijergoe est landen ende huijsen
Appendices to the Commentary

behoudens den heer zijn reght. Wijders volgens de erfpagt-brief daervan zijnde in date den sesentwintigste Martij

1667, belovende hij Comparant t’voorsz. vercopte te vrien 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 regieren ende specialijck den Ed. Hove van Hollant.
Entelijck bekende hij Comparant van de voorsz. vrecoopinge ende opdrage ten vollen vergenougt ende voldaen te we-

sen den eersten penningh metten laetsten ende
dat (boven de belastinge 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.
bailiuiuw ende schout voorsz. desen ten verlie vande
voorn. comparanten mette zegel tersake vant schout-
ampt van Haserswoude verordent uijthangende bevest-
tight ende mette voorsz. schepenen onder de plijkckque als
mede ten registre geteijckent opten xxvij

\[ C \]

Junij xvi
ende sesentseventigh.

Pieter Coormwinder

1676

Dirck Claes Hijselendoorn
Isaack Arijensen Elshoudt

xl penning soo vrij van de coop
als belastingen 20: 0: 0
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Rechterlijk Archief Hazerswoude

inv. nr 36 fol. 207r-v

fol. 207r

Opgeschreven

Ick Pieter Coornwinder, Bailliuw ende Schoudt der vrije heerlicheijt van Haserswoude oorconde, dat voor mij ende voor Maerten Reijnouts Verdell ende Cornelis Vredricks Reus scheopen der selver heerlicheijt als ge-
tuijen hier toe versocht gecomen ende personelijck ge-
compareert zijn de heer Theodorus Kraene, profes-
soor inde medecine in de universiteit binnen Leijden
ende Johannes Mullerus, predicant inde Hoogduytse
Gemeente binnen der selver stede, beijde gestelde
executeurs ende uitvoerders over den boedel ende goederen
mitsgaders voogden over de minderjarigen en uitlandige
erfgenamen van Sa. de heer Johannis Fredericus
Bockelman in zijn leven profecoor inde rechte in
de Universiteit der voorn. stadt, asmede specialijck
van den Hove van Hollandt, tot het vercopen van
dien geauthoriseert zijnde, de welcke bekenden
mitsdesen in dier qualite ende acht int openbaer ende
achtervolgens sekere beschreven voorwaerden ver-
cocht ende sulc nu wel ende wettelijk op te dragen ende
over te geven mitsdesen aen ende ten behoeve van
de heer Nicolaes Clijnet woonende inde gemelte
stad Leijden ofte iemandt sijns rechts ten desen
vercrijgende een vermaelijck ende welgelegen
hofstede, bestaende in een een huysinge versien
met verscheijden vertrecken, stallinge, koeshuysje,
mitsgaders een wel bebepote ende plaisante speeltuijn
ende boomgarden. Item een groote ende twee kleijne
visch-rijke vijvers, noch een aparte bewoonhuysinge
ende stallinge daer aen behorende, groot int
geheel ontrent een morgen en sevenenfigh roe-
den, staende ende gelegen inde heerlicheijt van
Haserswoude voorsz. aenden Hoogenrijndijck aldaer
belent ten suid’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, speeltuijn, boomgarden ende een aparte
bewoonhuysinge, tusschen sijne voorsz. belendingen
gleegen sijn, ende t’gene voorts aert ende nagelvast
is, sijnde belast met twee erfpachten, d’ene
verte

fol. 207v
Appendices to the Commentary

van dertien Carolus guldens ende d’andere twaelft’ Carolus guldens sjaers, beijde verschijnde jaerlixcn den eersten Februarij, aencomende Haesgen Ouwelants-dr. daer van het lopende jaer, mitsgaders het recht van verboeckinge komen sal tot lasten vanden voorn. kooper. bijders met zodanige andere conditien servitujten, vrijdommen ende waringen, als begrepen staen inde oude waerbriefen ende andere bescheijden, daer van sijnde de jongste vanden, sijnde twee opdraghts-en brieven in date respectievve den xv’° april ende den xxvij’n Junij 1676, die den kooper mettet passeren deser sijn overgeleverd, daer naer hij hem sal moeten reguleren ende voorts vrij als buijertoet, behoudens den heer sijn recht. In welcker voegen sij Comparanten qualitative qua beloofden mitsdesen t’voorsz. vercechte te vrien ende te waren als recht is onder verband van de voorsz. erfgenamen haer generale goederen egene exempt ter executie van allen rechten ende rechteren ende specialijck den Ed. Hove van Hollandt. Entelijck bekenden sij Comparanten in haer gemelte qualiteijt ter sace deser vercopingen ende opdrachte alwel voldaen vergenoecht ende betaelt te wesen den laesten penningh metten eersten ende dat met een somme van twee’ enveertig hondert Carolus guldens te xl grooten t’stuck in gereeden gelde, sonder fraude. In oirconde der waerheijt soo hebbe ick Bailiuiw ende schoudt voorsz. desen ten verluye vande voorn. Comparanten mettet segel ter sace vant schoutdampt van Haserswoude verordonct uijthangende bevestijcht ende mette voorsz. schepenen onder de plijque alsmede ten registre geteijsckt opten negenden Januarij sessien hondert drie’ entachtich.

st. soo van coop als ..........gelden (gulden?)

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 HEDOVVILLE.

A PARIS.
Chez Jean Cuvson, rue S. Jacques, a 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.

Une partie de la Lune aussi grande qu'un grand bâtiment, on serait encore bien éloigné de voir des objets aussi petits que les animaux qui sont sur la terre.

VENTRICULI QUERELAE ET OPPROBRIAE,


Cet Auteur se propose de parler du venticule, & de tout ce qui le regarde. Mais il traite ce sujet d'une manière extraordinaire, faisant une continuelle Prosopopée du venticule, qui explique sa structure & ses fonctions, montrant quels sont les alimens qui luy 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 Medicine fait aux hommes, elle a cela de mal qu'elle rend inutiles la pluspart des alimens que la nature produit pour leur viage ; & il soufrit qu'il n'importe pas quelles choses on mange au commencément ou à la fin du repas, parce que tous les alimens se melent dans l'estomach. Mais il ne veut pas qu'aussi les alimens on melle les medicaments purgatifs, non pas mesme les pilules, d'autant que les purgatifs corrompent les alimens & les alimens empechent les purgatifs d'agir. Et quoy que l'on croye communément que la nourriture que l'on prend, fasse beaucoup d'impression sur le corps, il dit que cela ne peut arriver...
Appendices to the Commentary

LE IOVRNAL
qu’apres 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, puis que leur lait ne peut pas alterer la con-
stution des enfans.

HISTOIRE DES COMTES DE HOLLANDE,
aussi l’estat & gouvernement des Provinces Vnies des Pays-bas.
In 12. A la Haye. Et le trouve à Paris chez Piget.

Le principal dessein de ce liure est de représen-
ter l’estat & le gouvernement des Provinces Vnies. Mais afin d’en donner vne connoissance plus
parfaite, on a jugé nécessaire d’y adjoindre l’Histoi-
re des Comtes de Hollandé, dans laquelle on peut
voir l’estat de cette Province avant qu’elle eût fe-
coité le iong de la domination d’Espagne, & se fuft
vnie avec les autres Provinces qui composent au-
jourd’hui le corps des Estats Généraux.

Cette Histoire a été premierement composée en
Flaman par Scriuerius, & depuis traduite en Fran-
çais par vne personne qui n’a pas voulu estre con-
nue. Elle est fort courte, mais elle ne laisse pas d’ex-
pliquer toutes les choses, qui doivent preparer
l’esprit à l’intelligence du discours qui suit.

La seconde piece a esté faite pour montrer quel est le Gouvernement des Provinces Vnies. On
y voit d’abord ce qui a donné lieu à leur Vnion, les
conditions sous lesquelles elles se sont vniées, le
rang qu’elles tiennent entre elles, la forme des
petit Lac diametralement large d'un jet de pierre rempli d'arbresseaux dont les racines sont telle-ment entrelaissées 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 fort de ces Fontaines une eau fort claire, qui coulait au dehors de ces Arbresseaux par deux differens chemins vers l'Est & un peu au delà vers le Nord, formée à une demy-lieu 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 Pyr-amides, les Puits des Mommies, la Sphinx, les Ta-lismans & 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 çaurait parler de tout cela dans celui-ci.

BIBLIOTHECA SACRA ET PROFANA;

Et Ouvrage a esté imprimé sur un Manuscrit qu'on a trouvé dans la Bibliothèque du feu Cardinal Brancaccio. Le seul titre fait con-naître ce qu'il contient.

CARTESIVS MOSAISANS. AVT. IOANNE

Il semble que cet Auteur n'a fait dans cet ou-vrage que fuire 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 pou-
voit expliquer parfaitement suivant ses Principes,
tout ce que Moïse y dit de la création du monde ;
du moins il pretend que la doctrine de ce Phili-
sophe 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 paral-
le 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 ma-
tière dès la création du monde.

2. Que l’un & l’autre commence la Philosophie
par la considération de la lumière, comme le pre-
mier 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 distin-
cution de la Terre, de l’Eau, de l’Air, & de leur pro-
pre constitution s’accorde fort bien avec ce que
Moïse en dit.

5. Que les raisons que Descartes donne de l’ac-
croissement & de la variété des Végétaux ne sont
pas contraires à l’Histoire Sainte.

6. Que ce que Descartes dit touchant la con-
1677.
A Dialogue on the Method of Teaching and Learning Law

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J O U R N A L

Situation & 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 manière dont l’un & l’autre se furent pour établir la différence 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 Créateur 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 réduit en esprits, qui passans du cœur & des artères dans le cerveau, & du cerveau dans les nerfs & les muscles par un continu écoulement, 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 différence 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 lui inspira un souffle de vie qui le fit devenir non seulement une ame vivante, mais encore une ame connaissante & intelligente.
Appendices to the Commentary

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ce 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 gene-
alogies d'Allemagne n'ont qu'à dire la vérité, &
ne sont pas obligez d'inuenter des fables, & de
forges mille menlonges, comme sont contraints
de faire ceux qui dans les autres pays veulent don-
ner de l'éclat & de l'anciennelet à des maisons obscu-
res & naissantes.

Mais ce qui soulage le plus ceux qui entrepren-
ment de faire la genealogie des grandes maisons
d'Allemagne, c'est qu'il n'y a pas en ce pays un seul
Gentilhomme qui ne prenne soin de faire dresser la
genealogie, & qui n'ait toute preste la preuve de la
noblese par les trente-deux quartiers. C'est pour-
quoy Bucelin qui nous en a donne un volume tout
entier, n'a eu aussi bien que Rittershulius, qu'à ra-
masser des memoires qui estoient tout derezz.

Pour ce qui est des autres genealogies que celles
d'Allemagne, il les faut lire dans ce livre avec pre-
caution, parce qu'elles n'y sont pas toujours fort
exactes.

TRACTATVS DE LEGIBVS ABROGATIS
@ inustatis in Hollandia. Authore Simone à Groene.
wegen. Noniomagi. In. 4. Et le trouve à Paris chez
Piget.

Out ce qu'il y a de bon dans ce livre a esté
tiré des ouvrages de deux lurisconsultes
François, Buygnon & Mornac, dont le premier a
fait vn livre des loix Romaines abrogées en France,
DES SCAVANS. 161
& l'autre a composé plusieurs volumes pour faire
voir celles qui sont encore en usage, & qu'elles trou-
vent conformes à nos Ordonnances & à nos Costu-
mes. Il est vray que cet Auteur a fait l'application
des loix Romaines au droit qui s'obsèrve en Hollan-
de : Mais ce travail est peu considérable ; car il ne
touche les plus grandes questions que fort légère-
ment, & s'arrête à des bagatelles. Par exemple, il
s'amuse à montrer que la Nouelle 8. de l'Empe-
reur Leon par laquelle il est defendu de manger du
bouoin, ne s'obèrve plus en Hollande où ce mets
est fort estimé ; & il passe par des plus vne infinité de
belles questions, qui meritoient d'etre appro-
fondies.

JOHAN. FERNELII PATHOLOGIAE LIBER
quartus de febribus, cum earum prognosti et curatione

Il est constat que la Pathologie de Fernel est
vne de les plus excellentes pieces, & qu'entre les
Auteurs 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 speculatiue entièrement deschée
de la pratique, & que montrant seulement à con-
noître les maladies, il n'enseigne pas le moyen de
guerir. M. Loenius a entrepris de suppléer à ce
defaut, en adjoignant à ce traité de Pathologie vne
Therapeutique tirée de divers endroits de Fernel
mesme, & des liures de quelques autres Auteurs.
Appendices to the Commentary

JOURNAL DES SCAVANS

POUR l'Année M. D.C. LXXXV.

TOME TRESIEME.

A AMSTERDAM,
Dans l'Imprimerie de G.P. & J. BLAEU,
M. DC. LXXXVI.
Aux depeus de la Compagnie.
A Dialogue on the Method of Teaching and Learning Law

BIBLIOGRAPHIA SIVE
CATALOGUS LIBRORUM

Qui hoc anno 1681, varius in locis typis mandati vel hic adiportati ad nos pertinens.

Biblia Sacra et Interpretes.


SS. PP. Theologi et Morales.

Appendices to the Commentary
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*

<table>
<thead>
<tr>
<th>Name</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>HUBER</td>
<td>1636-1694</td>
<td>Professor of Rhetoric and History at Franeker</td>
<td>1657-1667</td>
<td><em>Oratio inauguralis — De nexu humaniorum litterarum cum jurisprudentia</em></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1657</td>
<td><em>Digressiones</em>, First edition</td>
<td>1670</td>
<td><em>Lectiones juris contractae</em>, First anonymous edition</td>
<td>1678</td>
</tr>
<tr>
<td></td>
<td>1678</td>
<td><em>Praelectiones juris civilis pars prima</em></td>
<td>1678</td>
<td><em>Hof van Friesland</em></td>
<td>1679-1682</td>
</tr>
<tr>
<td></td>
<td>1682</td>
<td><em>Oratio II</em></td>
<td>April 1682</td>
<td><em>Oratio IV</em></td>
<td>May/June 1682</td>
</tr>
<tr>
<td></td>
<td>1684</td>
<td><em>DIALOGUS DE RATIONE DOCENDI ET DISCENDI JURIS</em></td>
<td>1684</td>
<td><em>Hedendaegse Rechtgeleerthyyt</em></td>
<td>1686</td>
</tr>
<tr>
<td></td>
<td>1688</td>
<td><em>DIALOGUS in Digressiones</em></td>
<td>1688</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BÖCKELMANN</td>
<td>1633-1691</td>
<td>Appointed Professor of Law at Leiden</td>
<td>1670</td>
<td><em>Oratio funebris</em> on G.C. Crusius</td>
<td>27 July 1676</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bought property at Hazerswoude</td>
<td>April/June 1676</td>
<td><em>Vis maaltyd</em></td>
<td>14 July 1676</td>
</tr>
<tr>
<td></td>
<td></td>
<td><em>Oratio funebris</em> on A. Rusius</td>
<td>7 March 1679</td>
<td><em>Compendium Institutionum</em></td>
<td>August 1679</td>
</tr>
<tr>
<td>CRUSIUS</td>
<td>1644-1676</td>
<td>Appointed <em>lector</em> at Leiden</td>
<td>1669</td>
<td></td>
<td></td>
</tr>
<tr>
<td>RUSIUS</td>
<td>1614-1678</td>
<td>Appointed Professor at Amsterdam</td>
<td>1646</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1659</td>
<td>Appointed Professor at Leiden</td>
<td>1659</td>
<td><em>Oratio inauguralis — De barbara juris compendiaria</em></td>
<td>16 Sept. 1659</td>
</tr>
<tr>
<td>NOODT</td>
<td>1647-1725</td>
<td><em>Probabilia</em> Vol. I</td>
<td>1674</td>
<td><em>Professor at Franeker</em></td>
<td>1679-1684</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Professor at Utrecht</td>
<td>1684-1686</td>
<td><em>Oratio Inauguralis — De causis corruptae jurisprudentiae</em></td>
<td>12 Feb. 1684</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Professor at Leiden</td>
<td>1686-1725</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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 Aninaersiones
1659  16 September. A. Rusius' Oratio inauguralis — De jejunia quorundam et barbaras juris
compendiarum.
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 Mosaizans auctore N. Amerspoel
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
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* (ΔΕΣΩΤΟΝ). 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 Krüger-Mommsen *editio stereotypa*¹ 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, Noodt 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 Utrechse 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.
A Dialogue on the Method of Teaching and Learning Law

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 singulam materianum principia et fundamenta tum textus universi et singuli qui sub singulis titulis continentur plene et accurate sub certa methodo explicantur, adiectis ubique castigationibus in Rationalia Antonii Fabri. Frankfurt, 1630.

Basilica
Heinrich, G.E. et al. (eds), Basilicorum libri LX. Leipzig, 1833-1897.

Böckelmann De Actionibus
Johannes Friedrich Böckelmann, Exercitationes de actionibus in quibus speculantur dominio, servitute, hereditate, possessione . . . agitur. Leiden, 1687.

Böckelmann Compendium

Böckelmann O.F. Crusii

Böckelmann Differentiae

Böckelmann In Digesta
Johannes Friedrich Böckelmann, Commentariorum in Digesta Justinianii Libri XIX. Leiden, 1678.

Böckelmann De Foelici Stata
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Böckelmann O.F. Rusii

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SUMMARY

DE RATIONE JURIS
docendi & discendi diatribed
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 Utriusque 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 seperately paginated addition to Huber’s revised Digressiones of 1688 which is the text chosen for this work. Here the
summary notes in Feenstra's *BGNR 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 Cicero 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 propraedicitive 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 propraeductive 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 obstruct 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 *Dialogus* 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 *Dialogus* 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 *Dialogus* 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 Scavans*. 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 *Dialogus*, 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 Franker 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 accrescendi, 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 Auspicià Domestíca 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 geprivilegieerde 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 Digressiones 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 telling 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 Dignissiones* 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 theologische, rechten en medicijnen. Vervolgens richt de aandacht zich op het juridisch onderwijs, namelijk de colleges, *de privatisima* 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 ontevredenheid met 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 recht. 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 worden 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 ten opzichte van Böckelmann een vijandige houding aanneemt door het een doorspilling 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 ongedierte 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 Scavans. 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 geschreven, 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.

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