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
Summam Diatribæ exhibens.

ULRICUS HUBER
Auditoribus suis S. D.

Unc dialogum initio fieri varum calamam effusum vobisque promissionem serius exhibeo, quia rursus eum, mutato consilio, aequicavit; ut sit, ea que cum voluptate scripsi, absoluta minus placere. Sed quia postumum ejus illa prævia policitatione unus innotuerat, alienique a meo consilio sermones de eo cedebantur, sensi non esse integrum mihi, supprimere editionem: nihilque potius esse credidi, quanquam adhuc, nihil in eo à nobis actum esse, nisi ut sententiam, de re ad utilitatem vestram pertinentem, juxta alios innocuæ libertate diceorem. Si argumentum præsumere vultis; est heic Colloquium in horto Clarissimi Böckelmanni apud Lugdunum Batavæ ante complures annos habitum, cui occasiæm dedit ejus Colleca Cruflus vir egregius, qui satis acrioratione Compendia juris civilis in privatis scholis adhiberi solita ineditatur, eorumque loco Studiosos, inde statim ab ingressu auditorii, legere totum juss antiquum obsviasque difficultates & enigmata conferendo, conciliando, emendando, interpungendo, omnique alio criticae artis instrumento solvere volebat. Quas rese Böckelmannus nonnisi ab illis, qui prius universum jus paratitlari methodo prompte valideque didicerissent, tentari suadebat. Rationes eorum diversis vicibus commutatas agitatasque, non sine funtionibus aliquando juss.
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 up turn and turn about, sometimes

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

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

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

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

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

PRÆFATIO.

jocisque, sicut erant homines liberi oris animique, salva
tamen dignitate, videbitis, & de meritis singularum exi-
slimabitis. Me quoque tandem vocaverunt in partes, nec
aliud ad me dictum, nisi quod rationes docendi discernendi
juris varias, inde a Juttiniani aevi recensuerim, atque ex-
inde, quae mihi prætantisima videretur, coloregerim; de-
nique usum absumque criticas, quam vocant, in jurispru-
dentia demonstraverim. Postremo, rogante Hadriano Wijn-
gardeno, qui nobis aderat, atque tum scholas domesticas
Lugduni habere instituebat, totum studii juridici cursum,
sicut ego illum studiosum praemundum censeo, simplici oratio-
nis filo dimensionum. Donum Böckelmannus prolato epheme-
ridum literaturam libello, has disceptationes abrumpit, ea-
que occasione de instituto illorum diariorum jux novellarum
paucis inter nos auctum. Non ignoro quam exigua laudis
redactamentum a patrocinio Compendiorum sit expectandum,
et si nemo paulo prudentior usui illorum abstineat, imo qui re-
prehendunt, sepe contentius utantur, nihil tamen proficiet,
si maxime cuncta ilorum vitia, quique in illis summan studi-
diorum collocant, strenue vituperes, tam non decretur, qui
dignationem nescio quem, scilicet, in compendia derivab-
bunt. At vos legitis satis, & nostrum sequimini, quod heic
dabitur, consulam. Si ullam sæveriori leges vosibus prescribent,
quæ methodum discendi hoc pretextum pervertunt, nullum sa-
tis fecio, praebent, quodcum bujas gravitate veroque fru-
ctu conferri 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.

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 at 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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* 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 fiant, ut cum ad Artes studiorum facultateque doctrinæ opus est Antecelloribus in scholis illustribus atque in Academis, adeò pauci ad eam rem administrandam idonei reperiantur, quique reperti sunt tam raro auditorum Mecenatumque expectationi fatisfaciant; maximè, cum, ut hodiè res sunt, Academiae functiones iisque paulo felicius tradita, nec honoribus suis neque commodis, quibus, ut ajunt, aluntur artes, carere videantur; adeoque parum abit, quin id praefrent, quod olim Marco Tullio in summa voto rum suiffè legimus, ut in otio cum dignitate vitam sibi transigere liceret. Verum hæ rationes non faciant, ut difficile sit, re diligentius expensæ, causas reddere, quæ Professores Academiae tam paucos habeant sibi pares, à quibus cum aliquo gloriae publicæque approbationis fructu exercantur. Nam primo omnium, ex immensâ multitudine adolescentium, qui ad capiendum ingeniæ cultum mittuntur in Academias, fatis confatat, esse pacificos, quos æQUE JUPITER amaverit, ut ingenio memoriamque valeant ad eiusmodi apparatu eruditionis acquirendum, quem ad docendas artes literarum scimus esse neceffarium. Quorum autem ingeniæ quandoque sufficerint, horum voluntatem fere ab ea studi intentione, fine quæ excellens doctrinæ haberi nequit, remotam esse videmus. Ut autem sint, quibus & naturæ vis & patientia laboris adeò, his pterumque fortunæ rationes, sive angustæ sive hilarioris, negant tam longam diffendi 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) *Id quod est praestantissimum maximeque optabile omnius sans 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.
2 \n
De Ratione docendi & discendi

nus, per legitimos studiorum gradus maturese cere queant. Denique ex iis, quibus omnes haec opportunitates conflit tam generosi copiam faciunt, bona pars, vel fato, vel Judicii aut opinionis errore deflectunt a via recta seque itineri committunt, quo nunquam ad verum doctrinae facrarium enti atque penetrare poefunt. Id autem sepe mirari subit, quod, cum omnis difficultas in perceptione memoriaque rerum, qua in singulis diviiplinis traduntur, consitferre videatur, in ordine modoque discendi atque docendi tanta varietas & confusio ac inde proficiendi impedimentum, bonis mentibus objiciatur. Cum hac de re non ita pridem, quod ad Jurisprudentiam attinere, inter aliquot Juris Studiosos orta effet disputatio, laudantibus, ut sit, singulis suorum Preceptorum rationes, impetus me cepit, idque tum prae me tuli, fore ut in scriptum redigere, meisque Audito-ribus traderem, argumenta Colloquii, quod olim multi cum Johannes Friderico Bökelmanno & Georgio Cumrado Crusio Antecessoris Luduno Batavis, super hocipfo negotio intercesserat. Cum Bökelmanno familiariter Heidelberge in honestissim\ae studiorum \æmulatione jucundoque amicitiae commericio vixeram. Crucis in Academi\ae Franqueranae Wissenbachio nostro operam dederat, dum ego illic rudimenta Professionis Historice deponerem. Atque deinceps arctior inter nos consuetudo invaluerat, cum ad accipiendum doctrin\ae titulum in Franekeram ille se cons-tulilet. Digrefus eram feriis ætivis in Batavos, nec committendum putabam, quin Lugdunum ad homines amicitiae tam Veteres candidolique visitarem. Peraeto apud Bökelmannum primi congressus officio, multus inter nos fermo de rebus antiques jucundissimæque consuetudinis Pa-latine fuerat; donec Crucii intervenitus ad promis\ua de rebus obviæ Collœqua ternenem avertit. Quæ tandem in-terrum-
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 sincero genuinae eruditionis amore. The oration was delivered on 30th November 1657 (O.S.). See Feenstra BGNR Franeker, no. 129, p 48; Veen Recht en Nut, p 38.n.13, p 58.

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

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

terrumpens Bökelmannus; sunt, inquit, amici aliquot suaviores, vestriisque, ni fallor, moribus egregie convenientes, qui prandium mihi apud puçinam meam condixerunt, Rogo, comites vos & convivas, & si libet, confabulones praebetatis. Annuentibus nobis, rhedam ejus penitentem, quam habebat more beatorum hominum, contentimus, brevique itinere villam ejus urbanam ad antiquum Rhenitutus ingressi, convivas illic, speculabat recens advecessos offendi mus. Inter quos, præter Wyngardenium Auditorum olim meum, neminem mihi notum reperiebam. De apparatu & tralatitiis epularum solennibus fabulisque nihil referam; sed menis sublatis, animisque à fedentarià fatigatione, per hortum ambulado, recreatis, accidit, ut nobis quatuor; nam Wyngardenius se ad junxerat, sub platano quodam confidentibus, fermo per ambages ad inquisitionem de flatu Academiarum studiique jurisdicto modo methodoque deductur. De flatu Academiae frequentiisque fidenter ilii & magnificè loqui, nec obscura mirari se meas rationes, quæ fecissent, ut tam illustri theatro me subduxissent; tamen, ut erat hominum candor & liberalitas, videri volebant, eo factum esse, ut ipsis locus tanti honoris & emolumenti patuissent. Inde Crusius de meis Digreßionibus, quas superiori anno de Praelectionibus ad Institutiones Justinianae excerptis incepere; probabat earum institutum, et si nonulla viros mihi effet in illis collocare, quæ ab ipius fententià judicioque abhorrerent; de quibus indicabat, se per literas mecum agere confitiusse, nisi nunc faciendum mihi videretur, ut coram de illis familiaris inceptaremus. Ego non recuparet, sed Bökelmannus & Wyngardenius intercedebant, eo quod ille locum, & congruus ad disputationes de opinionibus juris, fententiisque discrepantibus parum idoneus neque factus & institutus videretur. Atqui, regeretabat Crusius, L 111 2 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 carriage7 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 Wijngaerden8, 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 tree9, 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 numbers10 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.11 Then CRUSIUS began on my Digressiones12, which in the previous year I had extracted from my lectures on Justinian’s Institutes13. 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.14 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,
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non erat, quod scholasticas argumentationes de magistrallis controversiis aut profundiis legum sensibus ac antinomias, expectaretis. Neque meum, nec Huberi ingenium animique voluntas ad ejusmodi contentiones, hoc præsertim tempore convivalis jucunditatis inclinabat. Sed agite, quando ita videretur, discrepantis nostris, eti humanioribus atque ad litteras politiores speciantibus abstineamus; de communibus tamen studiis colloqui nihil vetat; quid enim potius sit, quod sit hac platano, quæ mihi ad dialogos literatos consècrata videretur, agamus, non venit in mentem. Nihil abnuere cæteri.

Quare Erusius, Haud facile dixerim, mi Hubere, pergit; quam mihi volupe fuerit, animadvertere è tuis Digressionibus, te non esse ex corum numero, qui systemata nobis & compendia Jurisprudentiae, quæ nihil quam totidem dispendia sanctissimæ artis sint, omni die obtrudunt & secundum ea juventutem sibi commissam instituunt an corrum-punt. Verum id mihi praeter expectationem accidisse fato, quod in omnibus quatuor libros observationum illarum humanorum, non incidit in ullum speciem emendandi textus vitiofitus Juris nostri; cum tu ignorare non possis, dari adhuc plurima loca, quæ in turpibus scripturae mendis hæreant; & videmur jure quodam nostro expectare, dum Tu illud studium crïcós jurïcëx jam pene sfitu & equalore obstum & obliteratum, inter paucos alios escolas, atque in ullum honoremque præstitum reducas. Cujus instituti propopitique nulla me vestigia in hilce tuis Digressionibus, quæ nihil alid fere, quam Observationes Juris Humaniores, ut ipse quidem eas appallatiti, continent, reperissè, non potui quin angre ferrem. Nescio enim quid taciti argumenti hocce tuum de criticis silentium, in tali opere, pra fè ferre videatur, non esse tibi consilium, hanc docendi juris viam infiltere, quæ per examen omnium veteris Jurisprudentiae locorum in emen-
“don’t expect scholastic argumentations on the controversies of the masters or on profound legal perceptions or antinomies. Neither my nature, nor Huber’s nor our mental desires are inclined to arguments of that kind, especially at this time of convivial pleasure. But let us discuss our differences since it seems a good idea, even if we avoid the humanities and matters referring to classical literature. However, nothing prevents our speaking about our common scholarly interests. For I cannot think what is better for us to do under this plane tree which seems to me to be sacred to learned debate”. The others did not decline.

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

Institute) 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 colloquia. 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 Pan. II, lib. I cap. xxiv, p 551.
Iuris, Dialogus.

e mendatione textuum depravatorum definit, ac ita nobis antiquam Artem nitori suo genuino integritatique refituit. Nam si hoc in iis meditationibus, quae pertinent ad politiores litteras cum Iurisprudentia conjungendas, faciendum non putasti, quando & ubi fas sit hoc à te praetolari, mihi quidem sperare difficile est. Eaque res tanto minus expectata mihi contigit, quod jam olim, cum adhuc in genere Historico verfarere, criticis emendandi conatibus non abstineris; siquidem recordor, te in disserationibus, quas editisti de Temporibus ante Cyrum observasti, nec non correxit vita in locis quibusdam Diodori Siculi atque Orosii, quae nec cum ipsis nec cum aliis incorruptis rerum gestarum monumentis convenire judicas. Deinde vero cunctis bonamentis amatoribus optimæ spei signum extulit videbaris, in oratione, quam habuisti, cum ex Eloquentiae & Historiarum Cathedra solemniter in J residicam transites. Id enim unice in universa Oratone illæ agere videris, ut conjunctio- nem politioris criticæque literaturæ cum Juris prudentiæ,studio inculcæs. Præinde gaudeo, hanc occasionem mihi oblatam effe, quæ confiliæ huæ occasionem de te ipso cognocerem, sperans futurum, ut quidvis potius quam inintuiti aedè præclari mutationem in causæ tibi fuisset intelligam.

Dux res sunt, ita regerebam, Clarissime Cruři, ad quas responsum debo, Prima quod tibi mihique gratularis, me potius edidisse Digressiones à Praelectionibus Insinitianis, quam systematicum Institutionis Imperatoris, Compendium, Alterum, quod in Digressionibus meos ipsem quam de criticis observationibus, quæ huic operi in primis convenire viderentur, festellerim. Quamquam autem contentus effe poteram eæ laude, quæ mihi in invidia systematum & compendiorum adécrispsiti, habeo tamen rationes, quæ nec hæ in parte tibi penitus adfertiri possum vel de-
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 Justinianeis* 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.”

\(^{16}\) The *Tractatus de Temporibus ante Cyrum* first appeared in Huber’s *De genuine aetate Assyriorum et regno Medorum disputaciones 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, habita Franekerææ sum ex ordinaria Eloquentiae et Historiarum cathedra solemnitæ in Iuridicam deducendæ, ex historia iuris romanii utriusque studied conjunctionem exhibens*. See the Commentary Chapter IV.3., Feenstra BGNR Franeker, pp 49-50, nos. 133 and 134.
De Ratione docendi & discendi.

beam. Paranti de hoc instituto sententiam meam pluribus verbis exponere, Bokelmannus, comprehensa lectori manu meâ, Quin tu, mi Hubere, quod ad hoc caput adducere, inquit, huius homini cede suas partes; nam id ego meliori jurè vindicare mihi debeo, ad cujus invidiam vel contemptum, hae orationis Cruisiæ pars, si quid inde contemptus invidiaeque potest oriri, in primis redundat. Novinum nos inter nos Cruisius & ego, atque libertatem oris animique ejus, utpote Zutfanienfis ego vicinus Westphalii, & jam Collegra familiaris que amicus tam bene perpres tam habeo, ut nec ego caesaris irascendi habeam, quod coram instituta mea vituperat, nec ille sit ægræ laturus; si pari libertate rationes ejus refellam; libentius id Te communi amico praebente & arbitro facturus, quam si cum folo ipsò vel scortim apud ignotos aut minus intelligentes faciendum foret. Æquum Bokelmannus petere videbatur, ideoque & cum defiderio meo cessi respondendi Cruisio transtendendum putavi, donec illi de compendii & syllabusfabrum absumpserit, id unum stipulatus, ut quam æquitatem animi praecelleret, Bokelmannus, hanc uterque in orationis progressu fideliter præmissaret, Utroque blando cum risu annuente.

Si quid mihi, pergit Bokelmannus, lucifensorium hic causâ foret, non immerito queri possem, & aequus jam pridem nimis odioosus in vulgus rumores & pene jam in dictatorium; abiusque, compendium Bokelmanni nihil esse quam dispendium, fortet an etiam conquereret, nisi eventus me compendiamque meum abolveret, omnemque dolendi cau- 

fam publici applauditus frequentiæque gloria præcederet; nam fas est, opinor, magnifice loqui adversus contemnentes & calumnias invidentium compellere jactantia? nec scio, an non brevi continuis auditorum meorum flagitationibus, de compendio meo typis publicis evulgando, morem gerere
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 friend18, 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 ignorat 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)”19. Perhaps I would also have grounds for complaint if the outcome did not clear me and my compendium 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.

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

debeam. Sed adhuc quidem Crusi doctissime, de compendiis & institutione methodicae Juris, quatum nihil quam dicit peremptoria, summarque inquisitionum & sомнамата перцепи, nec fatis dicernere potui, fitne vobis posse oportet, omnem genus compendiorum & syntagmae eliminare, vel an in meo libello sit, quod disipiceat & quod ad severioris disciplinae legem emendatum cupiatis. Quod si placet, ut hac quaestione defungamur, faciendum tibi cenfo, ut de hoc generis totam animi tuum tentantium & quo pacto in docenda juventute procedendum putes, exponas. Cum enim Tu Aetoris, ego Rei partes sufinere videar, non habet res facultatem, ut defendendi rationes incantur, antequam litis intentio apte, certo, clare peracta & absoluta fuerit, sicutdem haec tres proponenda intentionis suæ virtutes à synthematicis nofris accepimus. Dein ego, ficur potero, contradictiones vices peragam litemque eo modo apud hostes duos, si videbitur, arbitros contentabimur.

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

When that point was reached, CRUSIUS said: “Come on then, the proposal 
does not displease me, for what could be pleasanter or easier for me than to argue 
a case which is so close to my heart and to say before my most amiable colleagues 
what for a long time already torments and, fixed deep in my heart, racks 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 Tite! Si quid ego adiuno, curamve levass
Quae nunc te coquit, et versat in pectore fixo
Ei quidem ret petris?

(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 Quintius 
Flamininus, 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; Alslmann-Feenstra BGNR Leiden, p 178, no. 427.

23 Cf. Noodt’s inaugural oration p 616,...
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omni non solum elegantia doctrinâque, sed & à communi
uûi preferre subtilitatem. Quam nobilissimae disciplinæ
contumeliam non utique ipfius ineptia, sed inœitiam non ad-
sequentium ego quidem imputandum censeo. Hwid enim
ciff, quod impediret nos ad eandem Artis perfectionem eniti,
modo eadem contentione viaque procederemus? At nunc
studioso juris beatos fé valdeque eruditos credunt, fi brevi,
quæ venditantur, Artis compendia vix animo comprehen-
derint, & definitionum partitionumque summæ & actu-
num solennia carmina memoria: mandaverint, artemque
omnium principem & latè diffusam in angulas tabellas pau-
casque & sêpe ineptas quaestiones coer<taverint. Interim fi
quis sigilorum & notarum ænigmata, fi interpunctiones, fi
Glossas, fi varias lectiones judicet atque discernat, fi las-
nas librorum juris legumque suppleat, fi viiita, infecta,
luxata deterga & refituat, fi Leges, plebiscita, Senatus
Consulta, formularique actionum conceperet & fugitiva retra-
hat, id omne nimis anxii: fluitque diligentia effe opinantur.
Nec ita vulgus tantum imperite juventutis per inertiam aut
ignorantiam, sed etiam Professores ipse mercedis aut ambitio-
ne frequentis auditorii in tranversegum aguntur, ut nihil pen-
fi habcant, animos juvenilis credulitate fluxos atque obnoxios
corrumpere, pulcherrimamque artem subvertere & parentum
vota frustrari. Hi sunt, qui fatis esse jactant, fi velbinas
quotidie horas studiofis libris incumbant; Id enim spatium
temporis sufficere abolvendò penFA quotidiano, quod illis
è compendio preceptoris sui secundum ordinem lectionum
privatarum injungitur. Quid denique frequentius auditur,
quam viam illam veterem acregiam, asperam & praeruptam,
etiam obfcuram & multis anfractibus detortam, eoque lon-
gam ac molestam effe; illam à pauci, quamquam sedulis
atque ingeniosis vix multâ lucubratione & immenso labore
vinci.
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not only from any elegance and learning but also from every-day practice. I
deemed think that the contumely heaped upon our most noble discipline is
certainly not to be attributed to its inherent triviality,24 but to the blameworthy
ignorance of those who do not comprehend it. For what is there which prevents
our working our way up to that same perfection of our discipline as our
predecessors, provided we proceed with the same rigour and along the same
path. But nowadays students of law believe they are fortunate and truly learned if
they have barely mastered brief (for it is as such that they are recommended)
compendia on the subject and have committed to memory the main points of
definitions and partitions and the set formulae of actions, and have compressed
the chief of all sciences and one with an extensive compass into a few small
notes, together with often silly questions.25 Meanwhile, if anyone were to
critically examine and distinguish between the enigmas of sigla and marks,
punctuation, glosses and variant readings, if anyone were to fill in the lacunae in
the books of law and in the individual fragments, if anyone were to identify and
restore faults, omissions and misplacements, if anyone were to reconcile laws,
plebiscites, senatus consulta and the formulae of actions, and recover the missing
words, this is all considered to be excessively solicitous and stupid diligence. 26

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

24 Cf. Noodt’s inaugural oration p 616 . . . videri supervacuam atque alienam ab omni non solum doctrina
atque elegantia sed a communi quoque non ac vite, subtilitatem praeferre. (. . . 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 en ditos
beatosque existimant, si quae brevù Artis compendia vix comprehenderint; et definitionum ac partitionum
actionumque solemnia carmina memoriae mandaverint; Attenque late porrectam, in angustas tabellas, pascasque et
saepe ineptas quaestiones contamerint. (Thus indeed they think that they are truly learned and fortunate if
they have barely mastered short compendia of the science and have committed to memory the formal
words of definitions, distinctions and actions. They have compressed a widely extending science into
short notes and a few and often silly questions.)

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

27 Cf. Noodt’s inaugural oration p 619 . . . venum multi aut inertia aut ignorantia aut spe mercedis et
ambitione frequentis audienti ados transversi apuntur: ut nihil peni habeant . . . animos juvenilis undulitate fluxos
atque omnium corrupere, in primis parentum voto 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
pervious 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. Manc autem compendiariam, planam, simplicem, rectam, omnibus patere, ac ne segnibus quidem recordibusque inviam aut infuperabilem esse, eaque ad jurisprudentiam brevissimae certissimeque pervenire. Ego vero censeo, plures illa nostrar via praeclaram scientiam obtinuisse, quam qui vulgarem & compendiariam iniere, qui etiam tum mihi, cum in Portum fium pervenerunt ac spera confecti sunt, naufragium fecisse videntur. Scilicet, fallit ambiguitas vocabuli; ex fintatio dicitur, ea mora est, & quod compendium vocatur, Sapientiae damnum est. Quod sitantopere Compendia expectant, ea privatim legant & habeant Studio; Antecessores publice privatimque altius spirent; & positis his in Institutionum narratione totius operis fuisse omnibus fuisse membris, post deinde apta & diligentia & accurata Pandectarum & Codicis interpretatione, tanquam nervis ac thoris masculum illum prudentiam vigorem confin- gant pariter atque intendant. Verum quia plerisque pene- tuit tam praeftantis disciplinæ, è re angustiis incluñJuris- prudentia est; quæ quibus ipfi, quid tam exigimæ disciplinæ deinceps futurum arbitramini? Atque utinam exempla de- effent huic tam juito metui? Quid Livium immittuit praeter Annæi Flori, quid Dionem Cassium, praeter Xiphilini epitomen? Si Polybius, si Trogum Pompeium, si alios non confraxilent aut excerpsilent studiis homines, fortissimis integris uteremur, neque in antiquarum rerum memoriam tanta- tus hiatus pateret. Eloquentiam videamus, quid cam perdidit, nonne compendiaria, per quam eloquentiae laudem affeclant, qui nec dum benè loqui didicerunt? Quid multis? ipsum Papinianum, Paulum, Ulpiam, quid abiti- lit aut accidit, nonne Compendiaria Justinian? Quod si illa veterum extarent scripta, quantum ad rem literariam conferent, quantum ad publicum, quis ignorare potest; M m m quì
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On the other hand we hear that the road with compendia is smooth, simple and straight, open to all and not inaccessible and insuperable even for the lazy and unintelligent and by it one comes most quickly and surely to knowledge of the law. I indeed think that more men have achieved outstanding knowledge by my route than those who entered on the common compendiary route for they seem to me to have suffered shipwreck when they have come to their harbour and have achieved their hopes, for the ambiguity of words deceives them; what is called speed is actually delay and what is called a compendious summary is loss of wisdom. But if it is the students who so greatly desire compendia, let them get them and read them privately. Let the professors aspire higher both in their public lectures and in their private lessons. And having set up as it were the skeleton or limbs of the whole work in a detailed exposition of the Institutes, let them then afterwards by an appropriate, careful and accurate interpretation of the Pandects and Codex, as it were the sinews and muscles bind together and at the same time extend the virile strength of legal science.

But because most students dislike such an excellent programme, legal science is, for that reason, confined within narrow bounds. As a result what do you yourselves think will be the future of such an attenuated discipline? Would that examples of this most justified fear were lacking! What destroyed Livy but the epitome of Annaeus Florus; what destroyed Dio Cassius but the epitome of Xiphilinus? If learned scholars had not abridged or excerpted Polybius, Trogus Pompeius and others, perhaps we would be enjoying them in their entirety 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

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28 See Böckelmann’s Praefatio to his Compendium passim; the Commentary Chapter V.1.3 and plates VIII and IX.
29 This passage from Silicet to damnum est does not appear in the 1684 edition. Cf. Noodt p 621. Silicet, 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 exaratione Institutionum totius operis sive ossibus sive membris, post deinde Pandectarum et Codicis lectione apta, diligente, acutitate, tamquam nervis ac thoris, masculum illum prudensiae vigorem constingat 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 lectione of Noodt with interpretatione. The rest of Crusius’ speech is an abridged version of Noodt p 621. Sed quid dissimulam to luci restituta sunt. Crusius/Huber omits a passage criticising Justinian which leads into the remarks about the benefits obtained from discovering the fragments of Ulpian, Paul etc.
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qui intelligit, quantum potuerint erudita praetare ingenia, postquam illa Theodosiani Codicis, illa Licinius Rufini, Ulpianus, Paulus, & Caii fragmenta luci refituta sunt. Haec eo pertinent, Viri Clarissimi, ut veras corrupta jurisprudentiae cauas, simul quibus viis ea constituta, his & florentem facile retineri & omnifem reftitui posse, intelligatur. Atque haec quidem summa fuit eorum, quae Crutius, majore copia verborum pro instituto suo, differebat.

Ad qua Bokelmannus: Satis fecisti, inquit, Candidissime Crutis, postulatione nostrae; neque mutatum controversiae nostrae statum, ab eo, quod inde ab initio profellis es, animadverto. Proinde haec esto summa quaestiti nostrae, retenete Tu corruptae collapsaeque jurisprudentiae cauas adsignaveris hanc syntematicam eum comprehenderam institutionem, quae nunc in Scholis Juridicis utimur, & cujus me sectatorem auctoremque, denique, sic enim tibi placet, Reum eft profiteor, quidem maleficium id opportet eft non tralatium, quod inertia, avaritia ac ambitionis macula deforme, corrumpenda jurisprudentiae cauas praeberit, accidiamnun praestet. Denique, id animadverterendum est, an ita faciendum sit, quemadmodum tu praecipisti, ut si quis omnino sibi neceflarium putet eftium modi compendium, quod definitions partitioneque rerum, quae sunt in Arte Juris, actionumque solennia tradat, illud sibi privatim habeat ac legat; Antecessores autem publice privatimque ne fese ad talia demittant; nifi foritan, idque vix, in Institutionibus enarrandis. Ubi vero ad Pandectarum & Codicis interpretationem transferiert, procul habitis iudicis breviariis, ipsos veteres integros & illibatos aggregiantur. Ego ita exifitimo tibique contentio, Crutis, non eft perfectione Jurisconsultum, qui se veteribus, hoc eft, ipsis Pandectis & Principum Constitutionibus per fex totiusque
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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

\textit{Juris, Dialogus.}

que legendis evolvendisque non dedat, sed nego id esse tentandum, priusquam paratitlariis notitio omnium librorum juris antiqui, exprompta memoria judicioque comprehenda sit. Nec arbitror ejus sententiae te fore, qualsi Pandectae Principumque Constitutiones, auditu primo ab adolefcientibus & disciplinæ juridicae ignaris intelligi possint. Nimis enim manifesto omnium quos didicerunt, quique medio in curbi defeceret, vel qui defunctoriæ id alicuando inspexerunt, experimenta te refutaret. Infinita rerum actionumque humanarum varietas superans etiam Graecæ, nedum Latinæ Linguæ divitas, fecit, ut antiqui Artis hujus conditores, aliarum more disciplinarum, nativos plurium verborum usus ad diversas abstractasque significationes transfigerunt. Quis fine eorum, ut vocantur, Artis terminorum praviæ notitia, quibus referenda sunt veterum nostrorum scripta, gravissimae & difficillimae eorum commentationes intelligat, quæ species factorum ab illis subtiliter involuque fructas, si verba decus singula percipiat, memoria judicioque subigere, nedum explicare & applicare posset. Nonne id perinde foret, ac si declarent (quæ te comparatio delectat) antequam Latinæ locui didiciissent?\ Ne dicam eos, quibus summae rerum differentiae, perfonarum necessitudines, obligationum vincula, succedionem judiciarumque ordo non innotuerunt, eos intricatissimæ de his rebus disputaciones veteribus occurrentes nihil magis intellecturos, quam quilibet nostrum enigmata vel arcanæ mathematicam, quibus nuncuam imbuti furemur, perciaperet. Nescio, quæ fit illa tua Cruß, aliorumque paucorum intemperios, ut omnibus in universum comprehensi adè sitis infesti; quibus nulla unquam ætas, nullus auctor erudiendi juventutem carere se posse credit. Ipsè Iulianianus juræ populi Romani hau aliter à te tradi posse judicavit, nisi primo levit ac simplici viā, post deinde diligit.
to the reading and unravelling of the ancient writings, that is the actual Pandects and the Constitutions of the Emperors in their entirety, but I say that this is not to be attempted before a summarised knowledge of all the books of ancient law has been understood, and committed to memory for easy recall and assessment. And I do not think that you will be of the opinion that the Pandects and Constitutions of the Emperors can be understood at a first hearing by adolescents who are moreover ignorant of legal learning. For you would be refuted by the exceedingly clear experience of all those who have studied law but have dropped out in mid-course or who have at some time looked into it cursorily. The infinite variety of topics and of human actions, exceeding the riches of the Greek, much less of the Latin, language, brought it about that the ancient founders of this discipline, as was the custom in other disciplines, applied the original use of many words to different and abstract meanings. Without previous knowledge of the technical terms (termini Artis) as they are called, with which the writings of our ancient authors are packed who would understand their most weighty and very difficult treatises? Who could commit to memory and assessment, far less sort out and apply, the types of acts introduced subtly and obscurely by them, if he does not even understand individual words? Surely it would be (and I know you’ll like this comparison) just as if students were practising declamations before they had learned to speak Latin. Let me not say that those to whom the major classification of things, the relationships of persons, the bonds of obligations and the order of succession or of trials are unknown, will no more understand the intricate debates on these matters which occur in the old writers, than any one of us would appreciate the enigmas and secrets of mathematics in which we have never been steeped.

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

\textsuperscript{32} The following passage and several subsequent passages refer in summary to the Emperor Justinian’s views on education as expressed primarily in the \textit{Constitutio Omnen} as well as the \textit{Constitutiones Deo Auctore} and \textit{Tanta}. Huber does not cite Justinian directly but adverts to his statements, sometimes using the same words, sometimes paraphrases.
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gentissimâ atque exactissimâ interpretatione singula completeretur. Quin cum prudentissimus Imperator commentarios ad Pandectas Codicemque sub falsi pœnâ feribi vetuerit, Paratilla tamen, id est, singulorum titulorum summam & compendia, quibus non posse carere discentes intelligebat, illis fuppeditari permittit: Contra quàm vos, præciliis rejeçtique compendiis, tyrones vestros ad ipfa, quæ vocat Cæsar, immensa volumina commentanda productis. Porro quid ego hic de Aristotele, Cicerone, Quintiliano aliique hominibus doctrinæs auctorisitates & testimonia proferam, quid de hoc & superiori fæcto narrem, cum nihil sit manifestius, quam id egisse omnes at compendiis ut inciperent aliterque in ullâ studiorum disceplinâ facere folium esse nemi-nem. Tu adoleœentes nullis, inquam, preparatos initiis gravissima juris antiqui volumina vis aggredi? Sic Mediciæ admovendos doce confeñit toto Hippocratem atque Galenum evolvere; Philosophos Aristotelæm atque Platonem edificere, Rhetorices Historiæve studiös immenfæ veteris eloquentiae rerumque gendarum monumenta feratur, Sine dubio pari, quà nos, infamiae dabis insignitas artificis compendiæorum Historiae universalis & Systematum Rhetoricorum. Nemo peius de politiore literaturâ meritus erit, quam Johannes Gerardus Vossius, qui de omnibus huma-nioris doctrinæ partibus compendia atque systematæ fecit, etiam de Arte Historiae, quam ante cum nemo in Artis formam redigi posse præsumpserat. Tibi quoque Theologi factae doctrinæ corruptores videbuntur, qui compendiis & Systematibus rudium adoleœcentum animos ad diffusum rerum factarum notitiam introduserunt atque eamnam in eodem instituto perseverant. Quid mihi adverfus hanc necesfitatem de Livio, de Trogo, de Dione, de Polybio narras, quæ breviiæ illi nobiles Auctores interritum adijissent.
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 paratitla33, 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”34 (as Justinian calls them) volumes.† Indeed, why should I here provide examples and evidence from Aristotle, Cicero, Quintilian and other most learned men? Why should I tell of this and the previous century? For nothing is more obvious than that everyone has used compendia as a beginning and that no one is accustomed to do otherwise in any programme of study. That’s why I say “Do you wish the young, without any initial preparation, to attack these most weighty volumes of the ancient law?” Thus you would say, “Teach those who are to be trained in medicine right from the start to read Hippocrates and Galen in their entirety; teach philosophers to commit to memory Aristotle and Plato, and rhetoricians and students of history to examine in detail the boundless records of ancient rhetoric and ancient achievements.”35

Without doubt you will label with the same ill repute as us, the distinguished authors of the compendia of universal history and the systems of rhetoricians. Do you say that no one will have deserved worse of the liberal arts than Gerardus Joannes Vossius36 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?

*† Quin cum... commentanda producitis.

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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 logicam, quis physicam aut moralens scientiam ex ipso Aristotele adolescentibus hodie tradendam putant, quis Medicinam doct in Academis ex Hippocrate vel Galeno . . . (who would today consider teaching young men logic or physics or ethics from Aristotle? who in the Universities teaches medicine from Hippocrates or Galen . . .?)
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.
Quid habent simile Compendia, de quibus nos loquimur; cam iis, quibus antiqui Scriptores coarctati sunt? An nos Digesta Codicemque contrahimus, ita ut Livius à Floro Dion à Xipholino, Trogus à Justiniano contracli fuerint. Adeone Tu dividere necis compendia Notionum & regulorum; quibus percepsis, Ars quaeque facilius intelligi potest; ab epitomis, quibus ipsi libri angustâ formâ describuntur & exhibentur? Quanquam ego ne quidem studium faciendo tales epitomas damnare putineam, quibus füipientur, simus Viros intelligo usus esse, multque etiamnum maximho cum fructu utuntur.

Et enim, me aut omnia fallunt, aut omnigena lectionis memoria dextrae in compendiarum rerum dictiorumque notabilium, qua legendo audiendoque percurrimus, intelligentiam. Quae si meditando ruminandoque füaeta scripto comprehensa, verbiisque suorum Auctorum expressâ consignataque fuerint, quae prehier efficaciorque proficiendi, animoque res pulcherrimas imprimendi methodus excogitari posset, ego qui dem non intelligo. Etiam vero judicium, quod in omnium rerum humanarum doctrinae, quod genere longe maximus est ésse momenti, hoc modo acerrime validitateque exercetur & confabulatur. Quin etiam qui à fæ lectione perpenta alius tra dere & inculcare cupiunt, si, quæ memoria intellecutionem complectuntur, ea in compendium dictiorum redigere füisque auditoribus succinætæ ob oculos exhibere non posse, ni quoque discipuli audita fecum ipsi colligere & contraca recolare animoque recondere quant, neueri unquam res eadem latius explicare & ad usum applicare poterunt: Adeoque si qui in eo præceptores auditoreque gloriam ponunt, quod compendiarii non sunt, eadem operis licet, ad docendum dicendumque, pene dixeram, ineptos fœateantur. Ego quidem nihil prius studiois, 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

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* Etenim . . . putaverint (p 16).

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57 The following lengthy passage (marked * to †, Etenim me aut omnia fallunt, (p 13) to suppimendum 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[7] to the reprint of Institutionis Republicanae Libri Singulares (see Feenstra BGNR Franeker, nos 219-222, 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.
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peremptorique, ut ita loquar, difficere volunt, auctorum, quam compendia facere scriptorum, qui pleniore manu res ipsis se cui necessarias tradant. Horatius, si unquam aliter homo quidquam sapiens rationem putavit, idem moner, Quicquid praecipies, esto brevis, inquit, nec metuit doctrinæ ierilatatem; Namque ubi cito dicit perceperint animi dociles, tunc omne superabacum pleno de pectore manat, ut idem adferat. Quin doctissimos homines, maximos esset compendiarios, neque maiores ullos, quam qui bibliotheæ, bibliothecæ ambulantes vocantur, oportet, argumentumque praefantæque huic insituti vel maxime præbet, quod ab omni antiquitate, quanto quisque minus ineptus sapientiaque videtur esse coniunctionoris, tanto majorem in diciendo scribendoque compendii habet rationem, ut olim Lacones & Homericus Nector, qui ποιήσαντες άριστες άριστες λαμπρας, compendio sed efficacissimo orationis ut ebatur. Quod autem, Optime Cruës, ab ejusmodi Epitomis, insignium aliquid scriptorum clades lacunacque, summo cum orbis literati detrimento, causam acceptisse quereris, an auguratis, Mirum est equidem, hanc rationem non modo non deterruisse veteres à compendii ejusmodi faciendis & publicandis, sed etiam coit etiam, tot secularum experimenta, talem inde pestem oriri non fuisset convictos. Nam ut aliarum artium historiarumque epitomatores antiquos silentio præteream, inter Jurisconsultos ipsosque gravissimæ sapientiae conditores non modo Hermogenianum epitomas scriptisse confit, verum etiam, Paulum inter auctores Pandectarum anteqnianum Alfeni Vari quadranginta libros Digestorum in epitomen re degitur, idemque Lavolenum facile de libris decem Labonianis posteriorum inscriptiones excerptorur in Digestis loquantur, quæ tamen inplà opera principalia postquam erant excerpta, nihilominus salva integraque ad eptatem utque Jus-
who stoutly and resolutely, if I may say so, wish to learn, to make summaries of the writers who deal over lengthily with material that it is necessary for them to know. Horace\textsuperscript{38}, (indeed expressing the opinion of all wise men) gave the same advice ‘Let whatever you teach’, he said, ‘be brief’ and he did not fear that his words would fall on stony ground. For, as he himself avers, ‘when impressionable minds grasp what is said concisely then everything that is unnecessary runs off from the full mind’. For it is right that the most learned scholars should be the greatest workers with compendia, and none more than those who are called βιβλιοθήκαι ἐμφυξο (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 παρα μεν ἄλλα μᾶλλα λέγεις (few words but spoke very clearly)\textsuperscript{39}.

Concerning your complaint, most excellent Crusius, or your guess, that the destruction of the works of certain outstanding writers or the gaps therein, a great loss to the world of letters, is caused by epitomes of this kind, is it not indeed amazing that this reasoning not only did not deter the ancients from composing and publishing epitomes of this sort but that these same ancients, with the experience of so many generations behind them, were not convinced that so great a bane arose therefrom? Now, to pass over in silence the ancient epitomisers of the other arts and of history, it is agreed that among the jurists and the actual founders of our most venerable jurisprudence not only Hermogenian wrote epitomes but also Paul, one of the chief sources of the 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

\textsuperscript{38} Horace \textit{Ars Poetica} 335 \textit{et seq.}

 Quiquid praecipies, esto brevis, ut cito dicta
Percipient 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 \textit{Compendium Institutionum Iustiniani}, Amsterdam, 1710, at the end of his introductory \textit{Methodus Institutionum Imp. Iustiniani}, [p 14]. Huber cited them in the Praefatio i.e. address to the students, in the \textit{Positiones Iuris} 1682 and also in the Praefatio of the \textit{Institutionis Reipublicae Libri Singulares}; see Feenstra BGNR Franeker p 67, nos 191-196.

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

Flinius, qui omnia sumpserit, ut volunt, per annos quadrungentos & amplitus, ex iisdem titulis capitum in Pandectis, remanisset videmus. Quanquam si autenticis scriptoribus compendiorum instituto praeposci poterat, id ab ejusmodi metuendum fuisset epistomatoribus, qui doctrinam laudant universa opinione veteres illos prolixioresque auctores, quos contrahebant, omnium hominum reputatione superabant. Ego vero nihil errare me putem, si Laboeuis & Alfeni Vari scripta ab usu temporum Pauli & Iavoleni remotiora, ex quo à tantis viris contracta in oculos hominum reducita sunt, frequentius libentiusque à studiosis, quam prius, lecta fuissent dixero. Vulgaria quidem ingenia folis epitomis ut contenta fuerint, neminem tamen, cui studia ad animum pertinerent, extitisse credo, qui non e lectione compendiorum ad ipsa veterum illorum majoraque scripta videnda & exploranda inflammaretur. Neque fane quod Hilligerus & Vinnius Donellum nostrum, alias Thuanum, seplium Mederayus, aliique multi alios hodieque contraxerunt, ullam adhuc periculum imaginari possum, quo ipsi Auctores illi è manibus hominum doctorum excutiantur minorique pretii, quam alias unquam, habentur. Quin si quem id genus scriptorum compendia, dictandi voluptate afficiunt, aliter evenire non potest, quam ut, qui praefentiam operum illorum, quasi per transtannam viderint, in ipsa ufque penetralia intimoque receffus & latifundia progeri & exspatiari velit. Ceterum, quod inter antiquos aliquot præcipui scriptores, quorum adhuc integra compendia extant, (Iuris heic alia ratio eft) grave detrimentum pasfi sunt, id ipsis epitomis accepto ferendum esse credam, ubi quæ causæ populos omnes nationesque in Europæ sedibus fuus excisit, urbisque & 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 singulantis which was first published in Specimen Philosophiae Civitatis, 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 Hedendaoge Rechtgeleertheyt (1686) in the Begiijienen der Rechtzonde (1684). See Veen Exercitia, p 142 ff; ibid Recht en Nut p 183 ff; Feenstra BGNR Franeker p 75, nos 210-221; p 76, nos 222-224; p 94, no 280; p 73, nos 209-210.
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hanc ad libros manuscriptos abolendos mimuendosque apud gentes barbaricas, jure belli in humana divinaque omnia grassantem, non suffecisse cognovero; aut si alii Autores, quorum nulla suae compendia, elementius habitos esse magisque integros, ad nos pervenisse, compertum est; sive eadem belli clade cuma fuerint involuta, sive Christiani veteres religiose infestgentilis sapientia monumentis, quod belli incendium euaferat, id imprudenti zelo piisque in temperie supprimendum perendumque putaverint. Ne Justiniani quidem Caesaris propitium in Corpore Juris contrahendo tam mihi reprehensione dignum quam neceffarium fuisse videtur, sì in modo contractionis rectamiam tenuislet. Nifi tu putes Iulii quoque Dictionis consulium eadem notà censure prosequendum, quod ille Romani juri, suam tamen magnitudine laborantis, compendium publicare decreverat. Ego vero magis Hubero nostro adfense-rim, qui in oratione, quam modo laudabas, inaugurali, non putaret esse nefas irafi Marci Bruto, quod nimis crudo fervitii odio & improperarà festinatione faluberrimi conatus fructum humano generi studioque Juris intercessi videatur. Etenim quanto cultius Justiniano Iulii Caesaris ingenium, quanto melior & doctior Triboniano fuit Trebatius, quanto beatiora florentis Romae quam iacentis & à Gothis oppressa tempora, tanto concinnius ac eruditius Iulianum præ Justiniano compendium extitisset. Verum, te arbitro, Crucis, est quod gratulemur Iulii Caesaris manibus, quorum infatuum fatum, quod clarissimi nominis memoriam compendii Juris titulo non desinebat.

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

And not even the Emperor Justinian’s plan to abridge the body of law seems to me to have been deserving of censure but needful, if only he had kept to the right track in his policy of abridging. Unless you think that, because the dictator, Julius Caesar, had decreed that there should be provided a Compendium of Roman law41 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 held 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 Trebatius was more upright and learned than Tribonian, and in as much as the period when Rome was at her peak was more fortunate than when she was laid low and oppressed by the Goths, so a compendium by Julius Caesar would have been more polished and learned than that of Justinian. Presumably, Crusius, in your view, we should congratulate Caesar’s departed spirit on his unpropitious destiny because it did not dishonour the memory of his great name with the label of a legal compendium.”

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

41 See Suetonius Caesar § 44. Nam de ornanda instruendaque urbe, item de tuendo ampliandoque imperio pluta ac maiora in dies destinabat . . . ius civile ad certainum modum religion atque ex immensa diffusaque legum copia optimam quaeque et necessaria in paucissimos conferre libros. . . . (For he [Caesar] designed further and greater works for enhancing and enlarging the city, likewise for safeguarding and extending his dominion. . . . [He planned] to reduce the Ius Civile to definite bounds, and, from the immense and scattered multitude of laws, to gather all the best and all the most necessary into a few books.)

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 Ausicia 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 renum confusione laborabat. Adeo quidem, ut Caesar Julius inter praecipues ordinandae Respublice curas, huic morbo nonnisi magno et audax remedium succurrendum judicavit. Quippe ex infinita Legum et disputationum mole tollere superflua, seligere et in paucis confere libros (sic) ut multos postea saeculis a Justiniano faciat, probatisima quaque denovenet. Quod nisi mori cum infusa et hac utique parte inapicata occipisset, ci piores menues invidibili cum pasteuritas fructa absolvisset. Per me quidem fruere conscientia tua Briti, et quantum vis, imputa Idus Martius populo Romano. Consulasti tamen immortalitate tuae potius quam orbi terrarum. . . . O quam praelato Magni Dictatoris beneficio Jurisprudentia fruenterus! Quanto olius Justiniano (ignoscant sacratissimi manes) Caji Caesari ingenium, quanto melior et doctior Triboniano Salpicianus, quam disparae Donotheo nescio cui, vel Theophilo, Saeculam atque Trebatius, quanto beatiora florentis Romanae quam jacenti et a Gothis oppressae tempora, tanto elegantes, tanto concinniis et eruditissimus (confessionem vis veritatissimae extinxerat) Julianium praebuit Justinianae Compendium extaret. (And legal science also suffered from the great number of laws and the
Iuris, Dialogus.

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

Bene recordor; ait, Bökelmannus, cum tu modo, indignabundus; Quod si tantopere compendis delectantur, ajebas, Studioi, habeant ea privatim ac utantur, ut libet. Non obturē significationes, gratiórem tibi fore studiorum viam, quā fine compendiis, tanquam bone mentis remoris, veteres ipsos incontinenti aggredentur. Et sic, noli diffinulare, Crucī, qui fētām tuam sequuntur, de nostra methodo sentiunt ac in vulgus opinantur; meum Compendium, dicunt simpliciter, esse dispensarium studiorum, quod tu vi deceptū fugiēs facile, damnām esse dicebas. Sédulo id agunt, ut studiōsiam juveniūm ex auditorio meo, tanquam ē Scylla vel charybdi, ut in Cebetis tabulae fenex ille facit, qui pueris vitam ingredientibus rectam viam praemonstrat, quā ad veram fapientiam pervenire quæant. Séd bene habet, quod rationes velit à fēnsi communi abhorrent et prejudicio generis humanī damnantur; nec minus primo intuitu, quam experientiā docente, liquent in hoc esse comparatē, uti rudēs & infirmos animos studiorum multitudine a varietate rerum onerent; duorumque alterum, aut desertores studiorum efficiant, aut cum magnō labore serius ad id perducant, ad quod leviore viā ducitī, maturius perduci potuissent, ut sapientissimus Imperator de hac ipīa institutionis disceptantia loquitur. Idque te ipsum Crucī, non luto negaturum, quin tibi sē nascat; quando fatis consìcit, te hanc ipsam ob causām, duntaxat in Institutionibus, eādem viā definitionum atque partitionum, velis nolis, procedere cogi, alioquin omnibus à primo limine despecturis auditorium tuum. Adeone vero facilis tibi videtur hæc compendiorum doctrina, tam humilis, ut professe-
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.”

BOCKELMANN 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 παρονοµασία (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’ table when he points out to youths on the threshold of life the right road by which they can come to true wisdom. But all is well because your arguments do not accord with the general perception and are condemned by the judgement of the human race, not only at first sight but also when taught by experience, and they are clearly in accordance with the following ‘that these methods burden the unformed and unstable minds of students with a multitude and variety of facts and achieve one of two results: either the students abandon their studies or with great labour they eventually reach the point to which they could have been led sooner by a less arduous road’, as the most wise Emperor said about this very problem in basic legal education‡.

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 Institutes, 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...

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* † 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 especial 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 essential were to be put together in a few books, as was done many generations thereafter by Justinian. Had not Caesar’s unfortunate and, in this respect, undoubtedly inauspicious death befallen him, he would have achieved this within a few months with incredible benefit to posterity. As for me indeed, Brutus, enjoy your moral stance and as much as you like, blame the Ides of March on the Roman people. However, you considered your own immortal reputation rather than the benefit of the world, . . . Oh, how would legal science have benefited from the wonderful service of the Great Dictator! How much more cultivated was the talent of Gaius Caesar than that of Justinian (may his most imperial spirit pardon me). How much better and more learned was Sulpicius than Tribonian. How unlike to some Dorotheus or Theophilus were Scaevola and Trebatius, how much more blessed were the times when Rome was flourishing than when it was laid low and oppressed by the Goths. How much more elegant, more well-structured and more learned (the force of Truth wrests the admission from me) would Julius Caesar’s Compendium have been by comparison with that of Justinian!

See p 9; cf. Noodt’s inaugural oration p 621, Plane legat et habeat illa.

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 Comupta Jurisprudentia (p 621).

Cf. Constitutio Tinta, § 11.

See the Series Lecutionum of February 1671 and of September 1671 (Molhuysen Bronnen Leidse Universiteit 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

riæ vocis officio non indiga vel indigna sit? Miṣeret me conditionis tuae, qui, licet invitus ad tam humile scholæ ministerium, ex parte saltem eaque infimæ te demittere sis coactus; quod tamen ante nos, quotquot jurisprudentia claros & admirabiles posteritati fecit, gnavorum inimituerunt. Denique, non possim fatis mirari, qui sat, ut in re tam obvià, tam prostritæ viri undique docītūris tam rarè satisfacere posset expectatione desiderioque studiorum juventutis, cujus quidem judicium universæ conspirantis, in hoc gener œ nullo modo spenendum esse, communis famæ experimentis jam pridem abunde compertum est. Sed mittamus judicia studiorum, quoniam his arbitris parum abest, quin fluent fata fortunæque profœrorum; compendia ipsa, si placet eorumque indolem consideremus, an ea tantum facilitatem vilitatemque praeseferant, ut profœroribus indignum sit, ea privatim adoleœcentibus interpretari. Nam de publicis praelectionibus concedo tibi, non esse faciendum, ut in iis compendia, vel stytemata, vel quicquam, præter antiquæ juris monumenta, celebretur. Verum nostra, ut olim vocabantur, summae institutiones, quibus privatim excercemus adoleœcentes, breviarum, ficit vox fœnæ, esse debent, paucisque dictis universæ juris fundamenta complecti regulatque tradere, quibus judicium in difficiœlibus rerum argumentis controversiâque regatur. Quod nec fine obscuritate aliquà collocari, nec fine induccióne utus & exemplorum intelligi, nec omnipne fine Interpretis ope consilioque perfici potest, ut ego & Huber & Wyngardeniœ, & quicunque non gaudent insulsæ philautiæ à communi viâ recedere, fatabuntur; seçi inquam, non modo tempore, continúæ laboris intentione, fundamentales Institutionum Pandectarumque regulas & postera rerum, quibus instruœti leges ipsæ cum fructu evolvere possent, bene
it neither needs nor is worthy of the honour of a professor’s voice? I pity your position for, albeit against your will, you have been compelled to lower yourself to such an inferior educational occupation, in part at any rate and that the meanest part. However, before us, all those whom jurisprudence rendered famous and worthy of admiration by posterity, undertook this work with zeal.

Finally, I cannot adequately express my astonishment as to how it comes about that in so obvious and so common a matter, most learned men far and wide can so rarely satisfy the expectations and desires of young students, 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 brevioria (abridgements) just as the word implies and ought in a few words to embrace the basic principles of all law and to convey the rules by which justice is regulated in more difficult arguments and controversies. Even this cannot be done properly; it cannot be understood, without introducing usages and examples and, in short, it cannot be achieved without the aid and advice of a teacher, as Huber, 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 κριτήρια (means to judge cases), and having mastered that, they could read the actual laws with profit.

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

bene valидеque didicisse. Non quod ego, vel quisquam
sanus homo studiosus tum grandis temporis spatium ab ipsis
legibus litterisque veteris prudentiae exclusus velimus. Po-
tiones compendiorum vel imprimit ad hoc comparata sint
oparet, ut indices legum praestent perpetuoque studioseos
ad fontes remittant, ne quicquam de principiis juris crede-
re in animos inducant, nisi quod e Textibus ipsis clare fo-
rideque probatum videant. Qui verò in id sedulò incum-
bit, ut summarias positiones illas Artis universæ, cum le-
gibus allegatis quotidie conferat easque judicio distinguat me-
morizeque inigat, hunc ego non unius alteriusve horæ spa-
tio sed magnà parte diei noctisque vix possè defungi certus
& expertus sum. Quod velim, habeas, Cæsi, ad fæulum
fornæ tuum, quo me, felicet, insignitum voluiisti; nec
enim me fugit, quid hæc de re in invidia facilis est, meæ
spartæ fit, quæ autem fœulis studiis, bene habère, si
vel binas ternasve singulis diebus horæ studii privatis mo-
que compendio imponderant. Hæc, felicet, est mollis illa
Bökelmanni disciplina, quæ juvenitis affectum fœbi frequen-
tiamque conciliat, ut invidia criminatur. Sic est ratio
mea, Cæsi, res hominêsque civili considerare & expendere
judicio, consilia machinalaque adhibere, quibus exitum
cuique negotio convenientem sperare liceat; non 

cæcum, non subspenfæ, infinita, sublimia loqui, non quare vias
in terris fecundum signa fæderum, ubi lapides monumenta-
quæ ob oculos extant; non inculcare studiisgrandia, mag-
nifica dictæ, sed ulù cautæ & inania rebus, denique non Hercu-
lus cothurnos aptare pueris, quod tu in oratione modo
effusæ, si quis unquam alias, fecisse videris; Id agens, ut
qui recerter studia legum attingunt, mole doctriæ, quam
portare non possunt, ut Justinianus ait, obviam, repu-
diatis cum supercilium primæ eruditionis elementis, quibus

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 (μετεωρεῖν); 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 suffultis possint graviora & perfectiona scita legum suffertare, ut iterum fanctissimus Cæsar.

Incendebatur Böckelmannus, quando Crüsius, Nautu, inquit, in simpulo, quod ajunt, flueat excita & necio, quo paeco, parum abeit, quin Majestatis violatæ reum apud Cæsaris tribunal agere me velle videaris. Atque ego, magne compendiorum Patrone non magnorum, non omnia, quæ de syltematibus vestris in animo fuère, simul unoque spiritu effüivi; nec omnia, Tu, quæ modo in hanc rem à me dicta sint, reponfionibus tuis confecisti. Conceñi ego, si meminitis, Antecessores in Institutionibus explicandis non male facturos, si prima Juris fundamenta per definitiones divisionesque exequerentur; in Pandectis non arbitrabar id expedire. Quod antequam latius profèquar, non possìum silentio præterire, quod Tu compendiorum Institutioni vestrae specialis Imperatoris autocratis fecutum jam tertium praetendis, quæ paratilia quæ secundum libros suis componis permìstit Justinianus, vestrae forunt Compendia. Scito, quando fécit in animum inducis, errarevehementer.

Erudire te potuit Johannes Leunclavius (in prologo de prisco paratitlorum usum ad Collectioniem Constitutionum Ecclesiasticarum Balsamonis) qui mentem Justiniiani de ratione docendi Juris paratitla, docet hanc esse, ut liceat, quemvis ad titulum adnotare, quæ aliis in Titulis ac locis illum ad titulum pertinentia reperiantur. Hic priscus scilicet, germanusque paratitlorum usus. At vero quid ei simile traditur a nostris paratitlorum hoc exo scripitoribus? ait Leunclavius, quorum tu videlicet errorem feceris. Idem jamus à Coela Vir solum Cujacios minor (in summaris ad ix. prior. tit. lib. i. decretal.) idem Carolus Annibal Fabrottus. (in not. ad d. Constitutionis Ecclesiastic.) qui Cujacium, quid paratilia sint, ignorant non dubitaret adfirmare; quod
students ‘so that they can undertake the weightier and more perfect knowledge of the law’, to cite the Emperor yet again.”

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

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

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

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

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

Ægidius Menagius Vir Cl. ad omnes qui Paratitla scripserunt, extendere non dubitat. Quare definenis Imperatorii præcepti auctoritate tam humile institutum, cujus te laudatores profiteris, docendi jüs è compendiis, extolle re praepoioque non suō exornare. Bene habet, replicare Bokelmannus, quod mecum Budaœ, cum Cupacio, cum tot eruditiimis etiam in ipso genere politioris literaturae, hominibus, comparare suffitīne, in non pudenda inficiā, quid paratitla Justiniano significent. Verum si meoppostitis in hærere non pateris auctoritatibus, ego me tuis nihilum magis obligatum fentio, quominus ipsé meas oculis, quid apud Justinianum paratitla sint, percipiam. Verba Caesaris hæc sunt, Sufficiat, per indices tantummodo & titulorum subtilitatem, quæ nuncupantur, quædam admonitoria ejus facere in præfatu. Digest. Interdiccit Imperator commentarios fieri, permittit facere singulorum indices capitum, subtilitatem titulorum, admonitoria quædam. Nihil me omnia & senlis ipsē communis fallunt, Indices titulorum nihil sunt aliud, quam breves rerum declarationes, quæ singulis capitibus tractantur; neque simplices indiciae, fæ etam admonitoria, quid res singulae sibi velit, idque per subtilitem verborum, hoc est, tenuem levemque expositionem, quam proprio subtilitatem esse non ignoras. Quo pacto summariæ nostra compendiaque melius & expressius designarentur, expecto dum ratione vel autoritate probes. Imo nec hoc velim oblivisciæ, ut hæc verba tuis juribus fugitivis, hoc est, è fede fuæ remotis, quorum annotationes paratitla vis esse, tam bene convenire doccas, quam nostris ea summariæ sive Compendiis, exactè convenire probavi. Quod autem ad vocem Ætius attinet, cum, sive notare velis, quod praeter vel quod juxta titulos adicitur, quod utrumque prepositionis significatio praefert: N n n 3
Aegidius Menagius\textsuperscript{54} does not hesitate to extend to all who wrote \textit{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 \textit{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 \textit{paratitla} are in Justinian. The emperor’s words are as follows: ‘Let it suffice to make certain comments on it [the \textit{Digest}] by means only of indices and clarifying notes (\textit{subtilitatem}) on the titles. These are called \textit{παρα\´τιτλα} (\textit{paratitla}).’ See the preface on the purpose and plan of the \textit{Digest}\textsuperscript{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 \textit{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 \textit{paratitla}, just as well as those I have proved precisely conform to our summaries or compendia. But however, as regards that word \textit{παρα\´τιτλα} (\textit{paratitla}) I shall not quibble if you wish to indicate that it means that which is joined to a title in addition (\textit{praeter}) or which is added alongside (\textit{juxta}); the significance of the prefix \textit{παρα} allows of

\textsuperscript{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, \textit{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 \textit{Paratitla} are, Menagius cites the \textit{Constitutio Deo Auctore} and the \textit{Constitutio Tanta}. He follows this by citations from Leunclavius’ (1533-1593) notes on Balsamon’s \textit{Collectio Constitutionum Ecclesiasticum} and Janus à Costa’s (1560-1637) \textit{In Decretales Gregorii IX summania et commentaria}, 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’ \textit{Amenitates} see p 61 and footnote 130, and Chapter VIII.31.

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

in non magno discrimine ponam. Ego vero, Crusi us, nullo modo id agebam, ut de vocis hujus notatione litigarem: sed utrovis modo eam interpretari velis, mihi ad rem ipsam progredi fatius videtur. Namis alte modo intonabas, quando me contempi Cæfariis reum peragere velle videbaris. Quanquam ego Te Bökelsmann meliore jure, si non hoc totum ineptum est, laxa dignitatis Cæfariæ deferre possem. Nam si omnino libellus aliquid primæ institutionis ad inchoandam Juris disciplinam opus est, quæ vos agitab infamia, ut alium compendium quaeratis, quam Cæfar ipse Justini anus composuit & Juventutis söllicitate commendavit? Quis neget, hunc effe contemptum Cæfarii instituti, quis neget fieri non posse, quin detrimentum studia tyronum capiant, si alius discendi principiis, quam ipsius Jurisprudentiae conditoris, imbuantur? Quid alium neoterici compendiorum Suafores & Autores agunt, quam ut pusem Academiam ipse lectum illo notabilia honore, quem Justini anus tam magnificè illius imputat, cum ait, Digni tanto honore tantæque reperti felicitate, ut & initium votis & finis legum eruditionis, à voce principali procedat? Quam vero illud est, quod Studiohis hac perversa methodo eripitur, quod qui Justini anus veteresque Juris Autores adhido legunt, eorum dicta fententiaque Sibi familiares redditas, semper & ubique non modo in Scholis, sed etiam in foro laudare & allegare possum, multò certè luculentius & efficacius quam regulas itorum compendiorum, quibus fæ vulgus Candidatorem, si diis placet, magnificare solent. Denique, certitudo fententiarum Juris non potest haberi ex hodiernis systematis, cum auctores eorum alii ab alius sô & sô diversi sint, & quod ex uno didici fì, si ad alium te transferas, iterum sepe deductemum sit. Ex adverso, qui folos veteres se fæcantur, quicquid didicerunt, immutabilia autoritate ad
CRUSIUS said: “But I was in no way concerned about arguing over the meaning of this word but which ever way you wish it to be understood, it seems to me better to proceed to the actual issue. Just now you sounded off mightily when you were trying to accuse me of denigrating the emperor. Although, if it weren’t completely stupid, I could with more right accuse you, Böckelmann, of insulting the dignity of the emperor. For if there were at all any need for some beginner’s text-book to introduce the study of law, what madness drives you to seek a compendium other than that which the emperor Justinian himself composed and solicitously commended to the young? Who will deny that this is contempt for the emperor’s instructions, who will deny that this cannot be done without the studies of beginners suffering harm if they are imbued with basic principles of learning other than those of the founder of the legal discipline, Justinian himself? [A3] What are the modern advocates and authors of compendia doing other than depriving the young university students of that distinguished honour which Justinian so magnificently ascribed to them when he said that they should enter on their studies ‘being found worthy of so great an honour and of such great happiness that both the beginning and end of your legal education proceeds from the mouth of the emperor’? How valuable is that which is being stolen from students by this perverse method! For those who carefully read Justinian and the ancient legal writers can always and everywhere cite and adduce their statements and views, thus rendered familiar to them and they do so not only in the law schools but also in the court, and certainly much more authoritatively and effectively than they do the rules of those compendia on which the common herd of candidates, if they are lucky, are accustomed to pride themselves. In conclusion, certitude regarding legal opinion cannot be got from present day systems since the authors differ (δις δια πασών) 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 . . . commended to the young’ (Nam si omnino to Juventuti sollicite commendavit) and the following passage from ‘what are the modern . . . they trust . . .’ (Quid aliud neoteric to confirmari, 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 sene\cprime{\cprime}tam in doctrina scholaram usque fori perseveraturum esse confidunt. Pr\\'\'eterea, ex eo, quod Tu ipse confessus \& professus es, illa compendia, styloscribenda esse brevi atque conciso, fieri non potest, quin eorundem, qui talibus adnuecunt, ingenium atque oratio sterilitate \& necicio quam contrahant ariditate, per quam adolescentes, quos maxime decret ubertas \& florida dicendi copia, degenerant \& corrumpuntur. Notum est etiam, qui Jurs studium feliciter exercere volunt, eos amoenitates historicas humanioresque litteras, cum eo coniungere debeb, quemadmodum fieri oportere Te ipsum scio \& alius femper esse retultur \& modo mihi contenderi ulterior esse largitum. Inuper, Ars ipsa juris ea methodo pervertitur aliumque induit habitum, quam a Jurs conditoribus accepit \& quam habere debet. Repletur novis Principiis terminis, ut ajunt, semibarbaris atque fictitiis definitionibus \& partitionibus in systema scholasticum deformatur. Qu\\'\'a re\'\'it, ut studiis inde ab initio novis immixi fundamentis, in progres\'\'u \& in ipsa praxi rationes decidendi non tam ex limpidis antiqui juris fontibus, quam ex lamis \& lucubris, est praeposis regulisque systematici petere conficere\'\'it. Quis non abomine\'\'tur hos compendi\'\'orium fructus \& specimina!

Respiranti Cru\'\'o, Mirari equidem liceat, Crus, respondet Bokelmannus; quod cum h\'e rationes tibigraves valideaque videantur, in prim\'\'a oratione tua nihil ejusmodi miscebatur, sed abrupta severitate nihil quam nigrum theta compendii inuremendum putaveris, quo nihil omnium temporum hominumque eruditorum exemplo, judicioque magis adversum poterat fingi. Unum, fata\'\'or, adjecer\'o, quod me fugirefibrantem, Indignabundus, si quis omnino compendi\'\'orium dele\'\'taretur, a\'\'gere re\'\'cesseras, ut ea privati-
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 θ. Nothing more hostile could have been conceived as a precedent and a judgement at any time or by any scholar. I do admit that one thing you added escaped my rebuttal. You were mightily wrathful if anyone was in any way delighted by compendia but you reluctantly conceded that students might have them and read them in private;

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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 Omnem § 2, where it is written of the Institutes that they are ab omnibus turbidis fontibus in unum liquidum stagnum convertitas (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 ‘... it is inevitable...’ to ‘... from the precepts and rules of the systematists’ (fieri non potest to consequerent) is taken almost verbatim from Oratio IV, p 90.

61 θ (theta) stands for θανατός — 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 habere et legereque studiòs, ceterum juxta Pandectas atque in Codice nihil ejusmodi usurparent. Sicut in omni hac disputatione, Crispi, pro tuo potius quam pro communi rationis captu differis, ita nihil imprudentius, nihil a discendi docendique juris ordine alienius adfirmari potuit, quam in Institutionum explicatione compendium Artis usu venire possè, in Pandectis & in Codice non esse serendum. Quis non contra videt, si quis abhorrebat a novitiis systematibus, eum quod ad Institutiones attinet, in promptu habere Justiniani compendium, quod Imperatorem ad hunc utem parati & prescripti juventutè intelleximus. In Pandectis autem & in Codice, cum seiret aliquid esse necessarium, quod summam eorum librorum docetiam exhiberet, industriae Professorum commilit, ut paratilla, id est, singulorum titulorum summariarum expositiones (hunc vocis feníum, velis nolís, jam mihi concedere debès) in utem discipulorum component. Quid autem Te movet, Crispi, ut secundum Institutiones methodum finiendi partientique tandem aliquomodo ferre quæs credo, quod intelligis, studiosos sine talibus adjunctis cum fructu in Juris oceano non posse verfari, nisi, inquam, notiones rerum necessarias & summam doctrinæ est esse præsumeriint. Si jam in Institutionum libello, quem Caesar publicavit, elementa omnium capitum, quæ in Jure tractantur, extant, nihil intercédó, quominus utendum sit tuo consilio; atque itatim, ubi Institutiones percepi fuerint, integros Pandectarum Codicisque libros aggregi & ingenio memoriaque subigerè liceat. Quod si facile pars æquae totius Artis in Institutionibus Caesaris intrœcta manœrit, manifes tum est, carum rerum initia nihilò magis ignorari posse, quam que in Institutionum libellis ab Imperatore colocata sunt. Non exœptabìs, opinor, ut tibi demnéri, 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 titles[^62] (you must now willy-nilly concede to me this meaning of the word).

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

[^62]: See *Constitutio Deo auctore* § 12. *sed sufficiat per indices tantummodo et titulorum suptilitatem quaedam admonitoria eiu facere.* (But let it suffice to make notes thereon only by means of indices and explanations of titles.) See further *Constitutio Deo Auctor* § II, section 2.
nobilissima difficillimaque Juris capita sint, de quibus altum
in Institutionibus silentium; Nihil facilius erat, ni super-
vacuum & apud homines, quibus hae in numerato sunt,
ædiosum foret. Nihil est igitur, quod instar tim Te rursus
audio; sufficere in usum preparatoriae doctrina Institutiones
a Justinianno reliquias; non sufficiunt, inquam, Sed ad Pand-
dectas intelligendas, ejusmodi libellus æquè necellius est.
Præterea, inanis calumnia impingitur meo ad Institutiones
compendio, quasi id ageretur, ut juventutem per illud ab
ipsō Justinianno abduceremus. Nam meum Compendium
(non pudet hunc titulum præferre, licet alium speciosius
prætèxere poëfem) Auditoribus meis aliter uulius esse non
potest, quam si Institutiones Casareae juxta eas con-
tinuo legant candidamque methodum premant; ideo-
que tantum abeit, uti contemptus inde juventuti ad-
versus Autores Artis subnàci quæ sit, potius ut augeat co-
rum honorem venerationemque, dum à dictatis nostris ad
eos, tanquam ad Principales au toritates, continuo remit-
tuntur. Catervum, hoc mihi Sacratissimi Casarii manes
largientur, id etiam vos mihi, ut dicam, largièmini, non
effe faciendum his diebus, ut methodo, quam ille quon-
dam præscriptus, in omnibus ad amam præfeciæque inhæ-
reamus. Nam quod Ille primò omnium voluit, ut nesstu-
dis ultra semel fratem spatium in Institutionibus detinente-
tur, quæsò, quam hæc res hodie facultatem haberet. Fa-
tor, Institutiones semel frati spatio explicari posse: ve-
rum quis veltrum de ingenio memoriaque fua tantum fi-
ducia conceperit, ut una deambulatione, se argumenta
Institutionum ita possidere sentient, ut super illud funda-
mentum totam Digestorum molem adstruere posset; con-
didat. Accedat, quod nemo negare potest, expedire studio-
is, uti mutationes, quae universè Europæ moribus indi-
cipli
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most noble and most difficult chapters of law there are, about which there is complete silence in the Institutes. Nothing is easier if it were not unnecessary and boring for men to whom this information is common knowledge.

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

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

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).
De Ratione docendi & discendi

ciplinam Iuris invecta sunt, Iustiniani regulis admiscantur; Nullis aliquo Artium studiis meliore jure facryicum illud quam Jurisperitis applicari potest; Adolescentes in scholis multissimos fieri, qui nihil eorum qua in usu habemus, audient & discunt. Quae ratio solus sufficit ad probandum, quod Iustiniani compendium non refusat alium manuale eadem operar methodoque legendum. Jam porro id praeterea in objectionibus tuis mirari me subit, quod hac docendi discendique methodus incertitudinis in ratione studiorum arguebatur. Nam si, quod res est, dicere fas sit, non uno mihi experimento compertum est, maxime in Examinibus Candidatorum Iuris, eos, qui diversa a nobis viaa praecepte fere jactabant, in Colloquis & dissertatio-nibus Artis, adeo fluctuantes, ne dicam, ignorantem fundamentorum Iuris esse repertos, ut miferatione potius, quam diversa sententiae invidiis convitioque digni judiciiarentur. Enimvero si nihil alid descendendumque uideremus, quam hujusmodi compendia brevisbus verbis in formam systematici, ordine tamen Caerario redacta, metuendum est, ne non licencios ads quae audita, sicut alia, Crufo, obiectio tua dicitabat, fierent studii. Sed quid tibi vis, ergone credis, ita nos Compendiis deletari, ut in his Iustinianno auditores omnem suas laores ordiri atque consumere velimus? ut periculum sit, ne ad horum exemplum orationem styliumque contrabant & exhauniat? Ego vero, antequam studiis, de Iuris scientia eujve compendio cogitent, ita eos omnino animos inducere volo, ut lectione omnino autem corundemque imitatione & adhucius styli exercitiis amanitatem ingenii ubertatemque orationis iia compropent, ut in habitum illis abeat, atque deinceps, ubi jus student & hac ipfa compendia tractant, ne illa quidem amoeniora penitus illos 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.

[AS] Now, if we were to argue that nothing must be learned and taught other than compendia of this sort which have been reduced in brief terms into the form of a system while, however, maintaining the order of the *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.

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 *Differentiius*, 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. *Caesius auditores non volumus vetere tam frivolo quam ridiculo cognomine dupondios appellari sed Justinianos novos nuncupari*. (And we do not want the students of this [first year] to be called by the old nick name *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 *Digressiones*. 
27  Juris, Dialogus.

varietate querere fuadeo. Adde, quod & ante dixi, compendia illa systematum, elle tantum indices, secundum quos textus Juris, quibus nihil uberius, nihil amoenius, inquiri & legi possunt atque etiam omnino debent. Quae ratio facit, ut in Pseudois, inquam, absoluta necessaria sit hæc preparatio paratislant, eti nihil Justiniani Institutionibus addere velles; quidem manifestum est, non modo universum methodum in illis esse difficilem & obscuram, verum etiam singulos titulos sine directione compendiui alicujus methodici, neque perdici neque doceri possèque. Quamobrem Caesar ipse difertel voluit, ejus generis indices & summam capitum delinhibi, quas utique breves atque censibus esse debere, negotii ipsius natura latis indicat, nec metuit Imperator illud praetextum corrupendæ eruditionis & eloquentiae periculum. Ex his credo, iam presumi possè, quid ad illam objectioinem, quæ per hanc methodum praedici volebas communicationem Juris cum literaturâ humaniore, fit respondendum. Non contineri in hoc genere compendiorum observationes digressionesque Historicas & literarias fatemur, impediri prohiberique negamus; nec unquam efferamus hortari studiosos ad hanc conjunctionem varia Eruditionis cum Arte Justiniana. Denique, nihil magis de eo laboramus, quod tu etiam, Cruis, præcipue difficultatis loco ponebas; sic licet, his neotericis Institutionum imitantibus, non preferre Themadem suam faciem nativam, sed ejus formam cultu adicitio corrumpi. Profiteor equidem, si per hæc compendia fieret, ut Ars nostra terminis, quos vocant, exoticae impletur licentiaque finiendii partiendoque scholasticâ in aliam transferat speciem, me tam alienum ab illis futurum, quam cuquam Themidos amantissimo esse conféntaneum sit. Ideoque curatiissimâ id operam dedi, ne quid tale meo quidem com-
Add also what I said previously namely that these compendiary systems are only indices, pointers in accordance with which the texts of the law – and nothing is richer and more elegant than these texts – can be investigated and read, and indeed so it ought to be.

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

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

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

pendio objectari poscit, adeo ut religio mihi fucrit, ullas in eo ponere definitiones aut divisiones, quae non aut e verbis, aut e mente fententiaque legum evidenter colligi poterat. Fuit, inquam, religio; nam superstitio non debui dicere, qualem fuisset futurum ego quidem arbitrator, sinihil ejusmodi collocare coluisse, nisi quod totidem verbis a Iustiniano veteribusce Iurisconsultis prescriptum estet; tametf ignore si non potefis, literatissimos superiores ei Doctores, Cujacium, Duarenum, Donelium alioque Juris antiqui e tamintinati cultores severissimos candem infinitelle viam, quam in nobis tam inique animadvertitis. Dum, sicilicet, proprietates rerum ab veteribus fusae expositasque semper in finiendi parte indique formam redactas succinctissim positionibus enuntiant atque declarant, quod omnium Artium, quae ab antiquis ad nos profecta sunt, magistris fe-cissi videamus.

CRUSIUS; si, quemadmodum Tu, inquit, Bökelmann, compendii tui ulterioris commendare te narras, ita vulgo aut a majori parte haberetur, non erat quod dispendi quicquam in illis esse situm exstingamremus. Sed per communia facra telegor, an non Auditores tu, tam frequentes aqua notabile, in illa Compendii disciplinâ proram atque puppim studiorum fuorum colocant, feque percepis illis, egregios esse Iurisconsultos arbitrentur, neque de ipsius antiquae jurisprudentiae libris evolvendis examinandisque curam ullam suscipiant, an non hæc res ad summum doière Iuridice ættrimum pertineat, adeoque an immortalis compendiarium illud institutum, veluti caufa corruptæ jurisprudentiae, vituperetur. Quod si Tu, sicut nobis sedet consilium, devotam Themidì juventutem, ad ipsa vetuete Artis penetratio deduceres, si exemplo praecis, ipsa veterum reponsa commentariaque, sicut a 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 end 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.
29 Iuris, Dialogus.
deformi illâ, quam habemus, epitome reliquit sunt, idoneâ
methodo legere, examinare, conferre inter se, itaque immo-
maris, dum plane penitulique intelligerentur, aut si non
praeberrrent se intelligendas, veros sensus emendandi conju-
cituris indagare. Equidem, si quod res est, fateri vis, eo
modo, quid amplissimum Juricenfultis nomen requireret,
& quid ibi deesset, eti jam vettra compendiu tenerent,
agnituros esse crediderim; denique, res ipsa compelleret eos
veram proficiendi viam innitère, neque celfare, donec uni-
versum jus antiquum in memorie potelatem redegisset;
neque nos profècto pro Juricenfultis habemus itaque no-
men illud venerabile pònuique adscriberemus, qui sìriem
quandam definitionem, divisionem itaque abharentes necio
quas, ac heri nudaevs tertius natas questiones excipere at-
taque se solvere possent; ne de alis, qui nec id ipsum didice-
brint, cum dedecoris publici confessione loqar. Einimvero si
compendius abolitis, tam egregium mutati confili fructum
capere liceret, credo, tibi iphi nullam visum iri caufam,
quae nobis ad invenuita illâ &cinaeana compendia, pe-
ntentiamque pulcherrimi confili, redeundum foret.

BOKELMANNUS: Si nihil aliud à mutatione pœni-
tentiaque tueri vos poterit, quam ille speratus sucefius,
credo fidem praetegio meo confituram. Quod si potes ani-
um inducere, ut res tibi proponas, sic ut exiftim, dabo
operam, ut intelligas, feriones tuos ahorrire abufi civilii,
plenerque vel ostentationis esse vel ineptiarum. Quod utri-
bii vel satem hifice viris Clarissimis persuadeam, necesse
erit animadvertamus, quomodo parata, quibus studis ex-
culta sit juvenus, quæ ad perciendam Iuris disciplinam
scholas nostras ingreditur, & an lanis hominibus conflutum
videri potist, cjiuimodi auditoribus committere fundamenta
juris paratilaria proprio marte diffenda; nihil autem illis

O O O O;

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 paratitlith but without any other assistance; and, moreover, to explain to them nothing
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exponere, quam ipsa veterum responda commentariosque, non quae ex illis faciiora, sed obscura, difficilia nodosque continentia vindice dignos. Tu quidem de qualitate humani ingenii nihil humile, nihil infra captum rerum maximarum prefumis; nec ego naturae sum accusator: sed ita de felicitate ingeniorum philosopharum, ut oculos animumque non advertas, ad eos, quibus cum res fit, nihil aliquid est quoniam splendide fugari. Non est hic locus de mihi incolam philosophorum praemium institutionis conficiendis queri; sed hoc palam est, novos Justinianaeos, qui se nobis offerunt, pleroque rudes esse politioris literaturae, rudes historiae & omnis Antiquitatis, rudes Graeca linguae & proprietatis elegantiacque Latine, ne dicam Philosophiae, praetertim morales. Nec ficio, quae te pervertitas agit, ut causam corrupta Jurisprudentiae, vel studii potius Juridici, (nam ipsum, opinor aequo adhuc integram esse quam suum) potius non prodideris ignorantiam Romanae Graecaeque linguae, quam usum preparatoria institutionis. Et quidem de Graeciae fermo facies prudenter, quod nullum verbum de ejus peritia in Juris studio requirendi protulisti, perinde ac fi nihil magis quam Suedice aut Laponice dialecticae notitia ad Juridicam Civita exercendam pertineret. Quod si paulo durius Munkero nostro, haec in parte, Delphos, elementarius Doctrin, operam navas, credo, non minus severe in contemptum Graecarum literarum, quam modo in compendiorn & systematum Auctores invectus fuisses. Nunc autus es Licinimum Rufinum, Ulpianum, Caii, Pauli fragmenta, Codicumque Theodorianum memorare; Graecum Jus & Basilicos thesauri, qui quibus tot tantique valoris cimelia viri Graecae docti eruerunt, atque adhuc invitigare possunt, tristi, ne dicam pudendo, silentio praeteriifi. Neque te agnoisco, Crus, tam superbum eruditionis vulgare cenorem &
but the responses and commentaries of the ancients, not those of them that are comparatively easy but the obscure, the difficult and knotty problems requiring attention. You indeed assume that there is nothing lacking about the quality of human intelligence⁷⁰, nothing unable to comprehend supreme concepts. Now I do not cavil at nature but to philosophise thus about the fruitfulness of intelligence so that you do not turn your eyes and attention to the actual persons with whom we are concerned, is nothing other than splendide nugari [to talk highfaluting nonsense]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 student⁷², just as if it was no more relevant to legal criticism than a knowledge of Swedish or Lappish dialects. But if after you had been recently created a doctor you had assisted our friend Munker in Delft for a little longer in this regard, I believe you would have inveighed no less severely against the contempt for Greek literature than now you do against the authors of compendia and systems. Now you have dared to mention Licinius Rufus, the fragments of Ulpian, Gaius and Paul and the Theodosian Code, but you passed over in a sad, or should I say a shameful, silence Greek law and the treasure house of the Basilica from which scholars who know Greek, have dug out many jewels of great value and can still discover them. And I do not see you, Crusius, as the proud censor of common knowledge

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

⁷¹ In the 17th century, the contemporary disdain for mediaeval scholasticism and the methods of the Schoolmen was often expressed by the phrase nugae scholasticorum ('the useless trifles of the Schoolmen').

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".
& exactorem criticos, fine ulla Graecarum literarum notitia. Tametit Graecos Jurisconsultos basilicamque paraphrasin contentus sit omittere, vel Interpretibus fidere, quod in re critica fimus, quam tutum arque decorum sit; tamen, inquam hujus illudii, quod laudas, profetio, qua ratione potest alienari ab illa parte Juris Justinianaei, quod totum dolum Graecae compositum est? denique in antiquis latinos- rum scriptis, quos unquam fine mediocre Graecae literarum peritiae feliciter in exercenda Crisi versatus est, aut Criticum se profiteri sufinuit? Sed mittamus Graci permittamurque non tantum Accursiani, sed etiam criticis pace tua dice- re; græca sunt, legi non possunt, quoties se nobis obtule- rint; vel si criticam ne haeftenus quidem omittere placeat, imitemur Illum, qui cum in Ulpiano legisset haec verba, *pros epos*, fagacitate vere criticæ, monuit legendum esse, ita; pro se poscit. Sed revertamur ad institutum, Contem- plare multum, quos, Cruus, adolecantes, vix tantum Latinae doctos, ut animi fuiseta, quod factis est, efferreque- ant, *Philosophia* & antiquitatis & Historiae Latinae igna- nos; adone te praecopetus amor inquituti tu tenet, ut his cum aliquo fructu eruditisillos & difficillimos antiqui juris commentarios exponi possit statas? Nofi & experi- ris, fieri non possit, totum uti *corpus Iuris* auditoribus suis illustres; obscuriora & ardua quaeque, sine dubio excerpensa sunt, ut digna Interpretis ope, digna publice vocis officio videantur. In his te adolecentes sita, sicur dixi, preparatos cum valido profectu verfari, siccine Iureconsultos inde fieri possit credas? Non dices, opinor; sed in tuis au-ditoribus suppleeetilem humanioris literaturae prist, eredo, requieres. Quid facies igitur illis, qui non habent eam nec adferre possunt, quemadmodum *decimus* quique non re- peritur, qui mediocriter, neque censeimus, qui ut deber, hac
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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 paraphrase 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 αὐθεντικῶς73 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 epos (according to the word) in Ulpian, with his true critical sagacity, recommended that it be read as pro se poscit74 (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.

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73 For αὐθεντικῶς reading αὐθεντικῶς. 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.

74 Clearly the great man, whose identity was known to Huber's readers, (but is not yet known to me) being unable to handle the Greek προς ἐπος = 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.
De Racione docendi & discendi

hace parte sit instructus. Non inculebis tamen illis compendia, domi legant, si velint; Professor altius spiret, Illiglorum & notarum enigmata, Ille mala interpunctiones emendare ac interpolare, glossas variaque lectiones a textu genuino separare, luxata restituere, vitia sanare, plebs vi-
ta atque Senatusconsulta concinnare; fugitiva retrahere loci-
que suis reddere doceat. Hae enim visagere Professorum, 
hace tradere fectatoribus suis jubes. Mihi vero quid inceptus 
quid fanis hominibus indigius videri queat, nullo modo ap-
paret; siquidem nec adolescentes ita, sicut diximus, in-
stituti quicquam ex is rebus percpere, nec si queant, ulla 
inde fructus ad eos redundare potest. Noli putare, me effe 
sum, qui spernam vel reprehendam instituti illustratones; 
sej quod haze Professoribus doceri vis adolescentes, an-
tequam paratitall totius juris ab illis percepta fuerat, superat 
ommem flultitiam; ignoscendae siquid res esty & scapham, 
scapham. Nee quisquam fanis ratione praelitus ferre potens 
Antecefores hace rudibus animis incitantem, atque eos qui 
Compendia talibus praecibunt corrupta juris prudentiae eos 
peragentes. Quid vultis tandem agamus cum ipsis, qui ni-
hil quam latini fermonis & fenius communis intellectum 
habent? ut remittamus eos in scholas atque ad Parentes; 
an ut detineamus immani sumptu in Academias, ut enigmata, 
quae tu dice? an potius, ut ejusmodi nonnun 
Jurus in illos transferamus, per quam de causis responde-
re, civee regere collis operamque foro navare possint? 
Atque hoc est in potellate compendiorum nostrorum, 
quasi tenet memoria, dictissim judicio, probare po-
test legis, ut nos dicimus Audite nostros, hi 
non ineptis praeit ingenii ca que divi, praeflare possunt 
& feliciter omni die praeftant. Non est quod mihi credas 
asfirmanti, specta Viros Clarissimos & disciplina mea pro-
du-
You will not, however, press upon them compendia which they may read at home, if they wish. Let the professor aspire to greater things. Let him teach the riddles of sigla and notae. Let him teach them how to emend and how to interpolate faulty punctuation, to distinguish glosses and variant readings from the genuine text, to restore dislocations and to emend corruptions, to reconcile plebiscites and senatus consulta, to retrieve fugitive texts and restore them to their correct positions. For this is what you wish professors to do, this is what you bid them to hand on to their disciples. But it is in no way clear to me what can be more senseless, what more unworthy of intelligent men. If indeed young men are taught as we have described, they cannot gain anything from this teaching and, if they could, no benefit would redound to them from it. Do not think that I am one who spurns or finds fault with that system of teaching but the fact that you want young students to be taught this by the professors before they have grasped an outline (paratitla) of the law as a whole exceeds all stupidity. With respect, this is the position, I am calling a spade a spade. No-one endowed with any intelligence can accept professors teaching this to immature minds and then accuse of corrupting jurisprudence those who prescribe compendia for these students.

Finally, what do you wish us to do with those who have nothing other than Latin conversation and knowledge of everyday meanings? Should we send them back to the schools and to their parents? Or should we keep them at great expense in our universities so that they may learn the enigmas, which is what you are saying? Or should we rather provide them with such knowledge of the law by means of which they may be able to give legal opinions on cases, to advise a client and to perform diligently their task in court? For our compendia make this possible. He who has committed a compendium to memory knows the difference between the different actions; he can provide the relevant legal texts, as we train our students to do. Those endowed with some intelligence can perform the tasks that I have mentioned and do perform them daily with great success. It is not that you should take what I say on trust. Look at the eminent men produced by my teaching.

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 scapham, 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 Belgicæque repubricas spar-
fos, & aude negare, Compendiariam Institutionem esse effi-
cacorem ad utilitatem publicam, illâ tuorum figlorum, in-
terpunctionum & conjecturarum demonstratione. Quam
quidem ego nunquam, ut tu facis de methodo nostra, con-
tempsi, vituperavi; fed, quod toties repeti, sequi debere
paratitkarem Institutionem, fientio, fiadeo, contendo.
Nec credo, quenquam adeo bona mentis inopem fore, qui
non mihi putias, quam tibi haec parte fidem fit habiturus.
Infiare te quidem, atque hoc unum minus incepte, in hac re,
intelligo, postquam illa compendiariam in Academias & Au-
ditoria Juridica introducita est, juventutem in ea subsistere,
nihil aliud fibi proponere, nec ulterior provehere studiorum
suum curas. Hoc igitur te queri, te incusare & exprobra-
re juventutem nostra, etiam verò Professoribus, t i qui Au-
ditores te talis foce diax praebent, oportebat; non etiam
detomare contrà, quod nemo sapiens, aut juris prudens o-
mittendum putat, neque contundere Pandečias sine com-
pendio paratitlari esse docendas. Non ignoro, plerique
Juri deditos, ut studia & ingenia sunt, tantum temporis in
haec compendiosa totius Juris doétrinae confunere, uti per
fortunas suas integrum illis non fit, alius deinde fetus in-
gredì novoque cursu de ultima coronà denuo certare. Quod
profecto non hujus methodi, fed hominum & seculis esse vi-
tium plurquam manifestum est. Eoque vires eloquentia &
autoritatis vestrae, Cruïs, intendere debuitis, urgeneroñ
juvenes perfecte eruditionis amore novaque diffendi cupi-
ditate inflammarentur, non ut precipites darentur in cujus-
modi laborem, quo sparsa tantum infinitate lectione me-
memoriam impleant, neque praecipitis ullis regulisque universis
forment frumentque judicii restitutinem, quod innullis in-
nixum fundamentis vagà legum notitìa diffuere, sùaque

P p p p

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

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

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

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

simet intentione frustrari necesse sit. Quod si alter utrum à Juris studio absente oporteat, vel criticam subtilitatem, vel summam universt juris notitiam, & si facultatem non habet utraque methodus, quà conjungatur; age, videamus, utra minore cum incomodo publico adhiberi negligique possit. Ecompedias & syntematis, ita ut à nobis propo-
nuntur & explicantur, palam eft, haberiposse jurisprudentiam, eo cum fructu copiisque, ut ad cauas agendas, scri-
benda consilia judicandique munus sufficere posse, atque sufficiat; clarissimis atque vivis exemplis argumentum undi-
que praebentibus. Vellri nullis compendiis imbuti univer-
sum quidem Artis scientiam, qua subnixi prompte & expedi-
dite in foro hominumque societate verfentur, nunquam perciptunt; argututiones quasdam, observationesque rerum
ad ulum nihil pertinentium, serupulos vulgarum lection-
um coniecturalique plerunque superfluos movent jactan-
tique, & omnino talem fibi doctrinam comparant, que su-

pervacuam alienamque à communi usui vitæque subtilita-
tem, ut tibi verba tua reddam, præterre videatur. Deni-
que, sic ego, sic omnes, qui jurisprudentiam magis in re-
rum gravitate, quam in verborum captatione constringere cre-
dunt in animum inducimus; neminem sine compendiaris

totius Juris intelligentià valde promteque Jurifconsulturn
effice posse; nec aliter sapientissimos antiquitatis & hujus, &
superiores feculi Juris Interpretés exitimássè videmus. Quod
fi tu ille rationibus necum tibi perfluani pateris, dunt-
xat hoc admire, singuli ut suo sensu abundant, & sine
detractatione, sine convitic quoque hóno publico funolas
manus vocisque miniflerum commodet; necaliusul cor-
rupta jurisprudentia, neque compendiá primæinstitutiónis,

ut discendia juventutis probroser accutet.

Crusius: Ego quidem luculique, sicut volutas, dispu-
tan-
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. Noordt’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 nou ac vita, subtilitatem 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.)
Juris, Dialogus.

tantem te Bökelmann confectus sum, tametfī plus è verbis meis, quam in iis erat, deduxeris. Nam si recte animum illis advertisēs, non id mihi confilium fuisset, colligere potuisses, ut utrum compendiorum, sicut à Te, sicut ab aliis homibus claris ulurpantur, veluti causiam corrupte Eloquentia traducerem; sed festinationem nihil quam Compendia quærēntium in dicendo, nihil aliud in docendo praebentium infectatus sum. Quid autem? cenfēs faciamus aliquando finem hujus altercationis & rogemus Huberum ut & ille suffragium iūnum edere animique sententiam & experientiæ exemplum declarare velit; forte an medium aliquod confilium, periculis seu veris fītis utrimque vacuum, ab illo suppedietetur. Recte; meherele, regerebat Bökelmannus: Nisi enim respondendi vices ab illo mihi commodatas penitus intercipere & consumo velim, tempus est, ut desistam; quod eō jam proclivius accidit, quod tu, latere male teēto, abstēdis, & plus in alium auxilio quam in propriis viribus fœi collocare videris.

HUBERUS. Ego vero, si plura, de compendiis & systematibus Juris in medium proferre vellem, postquam vos in utramque partem copiosisflime hoc argumentum exéctis, mihi fīsi vobisque gravis & ineptè verbofus habere. Nolite à me aliud expécētare, nisi, ut simpliciter exponam; quê fit ratio methodusque institutionis, quam juventuti, eius fœi adnómitus fīm, impertior; atque exinde, quam partem vestræ contentionis ego probem vel improbem, si res tanti videtur, collingendum relinquam. Enum vero non possum fītis laudare nobilēm Crucīs indignationem adversus pravum seculi nostrī miorem, festinandi studia juventutis nihilque iis quam Compendiarum Systematum libellos exponendi. Sed hēc longa querela nulloque bonā nobis iterānda. Permittite mihi, ut repetītā prōriorum temp.
argued your case, as you wished, even if you have read more into my words than was in them. For if you had rightly attended to them you would have been able to gather that it was not my intention to traduce the use of compendia as employed by you and by other well-known men, as the cause of corrupt rhetoric, but I was inveighing against the superficiality of those who look for nothing other than compendia in learning and those who prescribe nothing other than compendia in teaching. What then? I think that we should now make an end to this argument and ask Huber if he would be pleased to cast his vote and tell us what he thinks and what he has found by experience and perhaps whether some compromise solution, free from the dangers, whether real or imagined on both sides, can be supplied by him.”

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

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

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

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

porum memoriam, diversas docendi discendique juris rationes vobiscum recensam, atque exinde, quomodo ad hanc methodum, quâ nunc utimur, perventum sit, denique ex omnium viarum comparatione, quæ praefantissima sit, animadvertamus. Primo omnium ante Justiniani tempora, ut ipse narrat, cum ad studium Juris abiolvendum quadriennium omnino definitum esset, ipsis se ferret, ut e vicies centenis versum millibus, in quos libri de jure scripti, erant distincti, studioxis vix sexaginta millia proponerentur, reliquis omnibus tanquam ab usu remotis, penitus neglectis, atque ex illo ipso Compendio, adhuc non pauculo super-racula praeteribantur, quod erat Compendium Compendii. Imperator deinde novâ Juris epitome ex duobus librorum millibus composita, methodum studendi hoc modo dispersitus esset, ut omnium quorum librorum institutio quinquennii spatio absolveretur, initio ab Institutionum libellis facto, monitoque, ut ad reliquis libros parati tla quidem praeficerentur, vel ipse leges è latino in Graecum quibus verset attentur, commentarios autem facere ne liceret Postea Caesar Leo Philosophus Compendii Justinianae fecit alud breviarum, in quo seceltas leges & Constitutiones é corpore Justinianae vertit in Graecum fermonem, eti non ubique nimium tam religiosè obserueret, quam Justinianae voluerat. Atque ex hoc basilico Compendio, latis ample tamen, rursus idem Leo fecit epitomen, opus meris definitionibus & regulis costans, prater alia fere, fve manualia, quae Constantinus Harmenopolus, Michael Attaliota, Michael Psellus, Antiochus Basilamon aliquae plures in notitia Basilicorum à Suarezio recensis, ipse quoque rursus Leo nius filius Imperator Constantinus Porphyrogenneter publicaverunt, licet & peculiare Compendium Novellarum editi Julius Patricius Exconsul & Anteexsor Constantii.
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 80, when a period of four years was absolutely the limit for completing the study of law, it was customary that of the two million lines comprising the books written on law81, 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 πόδας (word by word), 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 πόδας (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 tricies centena extendebat, nihil aliud nisi sex tantum modo libros a voce magistri studiavi accepit. The Latin text wrongly reads vicies centena for tricies centena.
Iuris, Dialogus.

nopolitanus; è quibus omnibus fatis consuet, quæ fuerit inde à tempore Justiniani veterum Graecorum ratio docentis dicendi Juris; videlicet, incipere à Compendiis, atque exinde ad Excerpta basilica, demique progradi ad universum corpus Justiniani: nec eos ita exstimaverit, dispenderium id esse doctrinæ juris, si nò quidem quæstions quæ uxor regna-

iàm sustinet, sed quæ nonnulla sustinent, verba sunt Harmonopuli, si pulchriora, & utiliora maximeque necessaria in libro manuali colligerent. Imo ipat ex codem Harmonopuli catedriique superfluis, id eos egisse, uti, quæ à tempore Justiniani ad fiam ætatem plus annis quingentis evenerant mutationes additioneque legalis disciplinaris, earum in suis epítomis notitiam studiósis impertirentur. Quod rursum való observari adversus eos, qui his diebus Artem Juris contra-
nominari violarique clamabant, si quando aliquid hodiernis Juris manualibus è moribus institutiisque sequentium temporum mißeri adiungique sentient. Græci Imperatores, & Jurisconsulti, utcumque sucecssores Justiniani in codem Imperio, minime religiosis duxerunt, Illius Juris prudentiam ad ufum fui temporis accommodare; inept Registro fore cren-
ciderunt, si comendia & manualia fuerant, quibus adolescentibus summis Juris positiones tradabant, perinde componi suiuisent, ac si Justinianus adiuecsoe vípere nihilque ab ejus ætate suiuisent innovarum. Nos vero post alios sexcentos & quod excedit annos, extincto Justiniani Imperio, qui justus haud aliter, quam ad suppleendas legis domesticas cujusque populi receptus, non audebimus juventutis nostræ manualis praeferebure, in quibus eos admoneamus, quid de iure vetusto moribus hodiernis observarum aut loci? Sed pergamus. Dum ita Græci Juris scientiam suum moribus & institutis aptatam excelebant, in Occid. cum Imperio leges Romanæ exulabant & ignorabantur; donec:

Pppp 3

Lotha-
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, τὰ καλλίστα χρειῶθι τε καὶ ἀνακαίνιστα συντεκμόντες ἐν προχείρῳ βιβλῳ συντάττουν (if they were to collect the more noble texts, the more useful and especially the essentials in a manual). Indeed, it is clear from that same Harmenopulus and from the other writers who survive that they did so in order that they might share with their students by means of their epitomes the knowledge of the changes and additions to the legal discipline which had come about from the time of Justinian to their own age – a period of more than 500 years. Again, I would like people to be on guard against those who clamour that these days the knowledge of law is being contaminated and violated whenever they see that something from later times has been included and added to present day legal manuals. The Greek emperors and jurists, as being in one way or another the successors to Justinian in the same empire, thought it in no ways disrespectful to adapt his jurisprudence to the needs of their own time, and they would have thought that they were being absurd if they had composed the compendia and manuals from which they taught young people the propositions of law as if Justinian were still alive and as if nothing new had been introduced since his day. But now, forsooth, after another six hundred or more years, and after Justinian’s empire has ceased to exist, shall we who received his law only to supplement the indigenous law of our various peoples, not dare to prescribe for our young students manuals in which we inform them what of the ancient law is or is not observed in present day customs?

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

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

Lothario Saxone: Imperatore, quasi postliminio studium ejus infauraretur. In his initiis, prima quidem ingeniorum occupationis fuit eaque sola libris Justiniani evolvere, dare operam, ut intelligenter, diversis libros legemque inter se conferre, dissidentia conciliare, posterioraque cum prioribus conjungere; cujus rei specimen Irnerius in Excerptis Authenticis perdit Codicem spargendis audax & nobile dedit. Secundum haec principia progresse sunt homines studiose ad proponendas Auditoribus suis Summas, ut loquebantur haud abfurdē, librorum Juris, quae nihil aliud fuerent quam patatula, quae Justinianus appellat græche corrupto vocabulo, idque potissimum ad Institutiones atque Codicem, ut Placentius & Aso praeventur. Ita enim exilimabant, Codicem potentius quam Pandectas iis, qui Institutiones perceperant, eft praelegenderum, quia recentius in illo jus eft uſusque in foro certioris & frequenteris, quam gratia Novellarum argumenta singulis in Codice Rubricis Irnerius ille subjecerat; quod illorum institutum ad formandos judices caufarumque Patronos, id eft, validos Jurisconsultos, non eft, ut magnopere improbaretur, utcunque deinceps alter viſum fuerat pofteritati. Juxta summas pro tyronibus Artis, in ulterum profectione scribant glossas, quae sunt breves interpretationes legum, secundum ordinem verborum, in quo genere facile principem locum tenuit Accursius. Fuerat, qui intentiore pra aliis cura jus Romanum fleuerent ad trituras forem, cuius rei præcipuus Aurelius Durandus ille, dicitus pater Præceptae, laudatur. Potest cum glossandae materia consumpta summarumeque diæse eft, uide retur, fecuti Interpretis ingenti apparatu ad commentarios in omnem juris libris legemque scribendos se contulerunt; ipreto jam reprimatoque Justiniani pra.cepto, quod priores, summis atque glossis contenti, cum illâ Caesaris edicto exaeque 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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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 commenting 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 sue partes operam Arti utilissimam navarunt, emendando corrupta Juris antiqui loca; quod tamen neminem cum aliquo laudis succedisse videmus aggressum, quam qui copiam librorum veterum, maxime Florentini Pandectae habuisset, aut ubi conjecturis utendum videre tur, qui longo docendi scribendique usu litterisque tam Graecis quam Latinis culti famam autoretemque insignem adepti forent, non ignoro fieri putuisse et aliquando contigisse, uti qui neutrum horum subsidiorum facultatem habe rent, tamen felici quodam conjecturam nodum alicujus loci detextissent atque solvissent: cujus rei speciem Dominicus Baudius Jurisconfultus minimi equidem Validus, dedisse, quando Grotius ab eo monitum se fatetur, apud Ulpianum int. 1. §. 45. : Unde Vi, pro passidem, legendum est: posset: præter quem locum ego non admodum recordor, Grotium in lectionis recepta mutationibus, quoti nivis lauream; tametsi illum doctrinæ partem merito inter gravissima Juris confulti officia reputabat.

Hoc faciant, adolens Themidis Cujaciarius,

Ingentique bono nomine nata Fabri
canebat ipse, cum juvenis eius flores alpigeret Infiniatio,

nec ultim Alcibiades, ut referre Plutarchus, magistro
gaudianti, sse corrigeundo Hymeno parem cedisse, Ne tu,

igitur fuit ultimus, 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 & abolitus, judicioque multaretione continuatique tradatione rerum, in quibus verfaturo, subaeo limatoque: si quidem non modo callere, sed etiam judicare suam Artem, & probare, quod ab Artis tuecconditoriibus extant relictum, sine dubio ad summum, ut auctoritatissim, ita scientiæ peritissimque faustigium pertingit.

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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\(^{87}\), or who, when they decided to use conjecture, had acquired an outstanding reputation and authority in both Greek and Latin literature from long training and practice in teaching and writing. I am not unaware that it could happen and sometimes has happened that those who had expertise in neither of these skills, nevertheless by a happy conjecture, had identified and solved the knot in some text. An example of this is provided by Dominicus Baudius, a rather second-rate jurist. Grotius admits that he was advised by him, that in Ulpian’s text in D.43.16.1.45 *possedit* should be read for *possides*\(^{88}\) (sic). Apart from this instance, I do not recollect at all that Grotius\(^{89}\) sought to make his name by changing the received reading, even although he thought that this aspect of teaching is rightly one of the most important duties of a jurist:

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

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\(^{87}\) 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 *possedit*. On his debt to Baudius Grotius wrote p 178:

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

(omiss 9 lines)

Non alii autem quam ei qui possidet, interdictum unde vi competere. Legendum possedit, 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 *possedit* (he is in possession) must be read.)

\(^{89}\) The 1684 text, p 70, reads: *prae ter quam locum non monet Grotium in universa flor rum sparsione ad unum Justiniani libros, ulam lectionis ab omnibus receptae mutationem, adstruxisse; cum eam doctrinam 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 Spario ad jus Justinianum* (Naples, 1777), (and are part of ten lines composed by Grotius).

\(^{90}\) See Plutarch’s *Aloihiades*, § 7.
Iuris, Dialogus.

intelligo Antonium Fabrum ad hoc institutum se contulisse natum, annos viginti quatuor, neque manuscriptis infru- chum, nec etiam magnopere subnium collatione veterem monumentorum, quae lectionis suo tempore recepta fideum facere potuerint. Enimvero non adefuntor Bachovio, qui cum elementer loquitur, eum appellat hominem corrup-
pended jurisprudentiae natum; tametis Wissenbachius nofier hoc nimir avide convitum arripiert, auditoresque fuos a lectione conjecturam ejus graviter dehortari sit folius. Id
tamen exstimo, emendationes ejus esse plerasque non nec-
cellarias, atque ita comparatas, ut ab alios, sic ut ipse fate-
tur in praesumptione sua, refelli non nsequeant. In hac autem
ego sum hærefi & libenter rogatus tibi, in fluctuationibus juri-
dicis esse duas feras anchoras, quibus non sit utendum, nisi
extrema necessitate cogente: sunt autem ha me judicio,
confessio antimonii & mutatio lectionis Florentinae. Sunt
qui hodie modos tollendi difficultates legum appellant viam
Regiam; sed quibus Artis fuerit honos & integritas cordis cu-
rague est, non poeunt alteri arbitrami, quam hane esse
viam militarem solvendi nodos gladio, decus autem Artis
prostituendi ludibrio & ipsam dilacerandi. Nimir hae acer-
ba dicit Crufius aurius accidebant, quam ut diutius ea silen-
tio tranmittere poftet. Acqui ego, mi Hubere, modo non au-
debam prasumere, ait, quod nimir amertam jam profiteris, esse te a-
verso animo ab illa parte studii, quod inde a renatis literis ve-
ras jurisprudentiae delicias fecit, & clarissima nomina supe-
rioris secundi eternae posteritatis admirationi fecerat. Imo
vero, replicabat ille, nemo praecarius de illo genere, nemò ma-
gnificentius de auctoribus, quorum tu laudem demonstras 
sen-
tit. Ita enim exstimo & semper arbitratus sum, Professionem
studii Juris criticci, quod in emendandis mutandique legum
dictis confilfit (ita ut imum verbo) habendam esse profugio &

Q q q q

quasi
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 εὐχομαι εἶναι (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,
42

De Ratione docendi & discendi
quasi complemento doctrinae legalis, fere, sic ut Censora
fuit habitu, respectu Magistratuum Romanorum. Sed ut
optima quæque pêlîmo modo corrumpuntur, ita nihil exi-
tiofius artis juridicae, quam tæmertias & luxuria Crûsos essè
mihi videtur. Nam reliqua docendi vitia, sive in methodo
praeposuerâ, sive in conciliandi pigrîtia, sive in ipsa senten-
tiarum perverstitate confissent, ipsos Artis libros intacîtos re-
linquant, Critica male exercita leges ipsas corrumpit & fà-
crum Juris corpus violat ac imminuit. Ne vero huicmodi
infinitâ oratione praefantissimum institutum malignè à me
puces arrodi, dicam, quod pace tua fiat, quid in vestro,
Crûs, instituto potissimum mihi dîpliceat. Primum atque
precipuum id telle puta, quod occupavi dicere, vos prima
docendi juris rudimenta ponere in emendationibus, nec
aliam credere januam famæ patère, quam fì recepsas pro-
bataque ab antiquissimis codicibus lectiones fôlicietitis ac in-
vertatis. Tametâ quid ego de antiquis Codicibus loquar;
cum falsis confict, non habere nos alid antiquitatis ven-
ratióne commendatum, de Pandoûis saltem, nîs quod ex-
tat, Florentiae vos, inquam, adolecentum, qui fe vobis
committunt, initia talibus conjectûris earumque subtilìfii-
mis probatiónibus occupatis, anteqnam terminos & regulas
artis universalis methodica institutione, quam penitus impro-
batis, perceperint, quà re nihil inutílis & à verâ docendi
discendique ratione alienius essè poteít. Ex quorum genere
non eft mirum nafcì tales Juris criticos, quales illud vetus
dictum notat, emendandis legibus nemenem se dedere, nîs
qui de legibus nihil intelligat; quod equidem si de omnibus,
qui in hae provinciâ laurateam quellevent, interpretati sint,
injuriam falsamque essè non negaverim. Enimvero, si quis
in indagandis legum fœnibus eiûsmodi quid reperiat, quàe
temulentó fœd elegantis ingenii Baudio occurrît, in laudato
modo
as it were, the fulfilment of legal learning, almost like the office of Censor with
guard to the Roman magistrates. But as all excellence is corrupted by excess, so
nothing seems to me to be more pernicious for legal science than the temerity
and excess of a critic. For the other faults in teaching whether they consist in a
disorganised order, or a sloppy co-ordination of legal texts or in actually wrong
opinions, leave the actual books of the law untouched. Criticism, badly applied,
destroys the actual laws, violates and diminishes the sacred body of the law. Lest
you should think that a most outstanding practice is being spitefully sniped at by
me in a vague speech of this kind, let me say, with your permission, Crusius,
what particularly displeases me in your practice. Consider that, first and foremost,
is what I have been busy stating, namely that you begin teaching the first
elements of law by making emendations and that you believe that the only door
open to fame is if you disturb and upset the readings received and supported by
the oldest manuscripts. Irrespective of what I say about the old manuscripts
generally it is agreed that, at least regarding the Pandects, we do not have anything
else endorsed by the authority of antiquity other than what exists in Florence.

You, I say, fill up the first lectures of the young men who entrust themselves
to you, with such conjectures and the most subtle proofs thereof, before they
have learned the terms and rules of the subject as a whole, by that methodical
teaching which you utterly denigrate. Nothing is more useless than this, nothing
can be further from the true method of teaching and learning. It is not surprising
that from that kind of teaching and learning we get such criticism of the law as
was noted in that old maxim, ‘the only one who devotes himself to emending
the law, is one who understands nothing of the law’. If this was said of all who
have sought honour in this field, I would not deny that it is injurious and false.

[A10] For, if anyone in investigating the meaning of the law fell on something of
that nature as happened in the case of the drunken but highly intelligent Baudius,
in the text from Ulpian’s commentary, which has just been cited,*†

*† Tametsi quid . . . Florentiae.

97 Cf. Böckelmann’s *Compendium Praefatio* p [6 ff] where he discusses the flaws in teaching under the
headings “without order, without limits and without reason”.
98 D.43.16.1.43. See p 40.
modo Ulpiani responso, bene sc res habet & feliciter! ac-
clamationibus. Nec minus si quid simile vobis haefir, ap-
plaudemus & gratulabimus, Ipsì quoque non minus gratan-
ter, vobiscum, si quid occurrat ejus generis, communi-
caturi.

Tu vero, ( interrumpere Crustus ) fatis infolenter, düm
præ te fers admiragîonem. Crîcos, utum ejus & studioresque au-
ctoresque nîmis adspersanter babes, ut nec beneficium in Ar-
tem, quod fater, collatam, sine convitio emendatoris com-
morare potueris. Mi Crußi; Huberus subridens; noli in te di-
ætum putare quam gelusius, quod de Badio minime profecto por-
semissis excidit: eß tu quoque, sic noti minus inter nos, gaudea
hac parte morum prîci Catonis, quam toties sibi Baudius
ultrœ apud amicos adscribit. Sed nec ego Baudii contum-
liam neque tâm, facillime Crußi, quod quoque
habui, quam quod ab alius fæpe notatum est, ejus-
modi latus ingeniorum, felicioresque divinationes & amena
crîcos libentius inter pocula vel à poculis, quam inter oc-
cupationes succedere congregatas. Forstian inde contra-
ctum est, quod mihi sc potius animo feter, libros juris
evolvere, ut inde regulas & exemplarorum agendarum col-
ligam, imitarique cupiam Antonii Mornacii inter alios
multos instigatum, qui rarus erat in Doctoribus Accurcia-
nis & Bartolissis, rarus in novitiis Interpretibus commu-
nibilique sententiis inter fe comparandis; ëby siip Juris cor-
porii incumbebat, ipfias leges memorâ judicioque fubigebat,
& tamen idem rarus in emendationibus consâraque juris an-
tiqui; unam hanc, pulcherrimamque facultatem acquisite-
rat, quibuslibet factorum speciebus applicare textus legum;
exactè singulis convenientes, omniaque ad usum humane
societatis referre; neque minus tamen idem eloquentiâ om-
nique literarum cultu excellebat, suaque scripta talibus ubi-

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

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

“My dear Crusius”, said HUBER with a smile, “don’t think that this was said against you, μητι χολωθης (don’t be angry)⁹⁹ and don’t think that what I said and, in no way μησικοκακοντι (resentfully) about Baudius, was said against you. Even if, for we know each other well, you rejoice in this aspect of the customs of Cato the Elder which Baudius so often voluntarily ascribed to himself among his friends. But, I did not intend an insult to Baudius nor did I have your φιλεταιρι (friendship) in mind, good-natured Crusius, other than to say what has often been noted by others namely that in this kind of intellectual game the more witty and happier guesses and pleasentries 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 μητι χολωθης see Homer Iliad IX.33. ἡ θεμις ἐπτείν. ἢνας, ἀφραδε, σο δε μη τη 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 ἀρετὴ σοι πρὸς μοχῆσομαι ἔφασκοντι, but has the right to speak his mind.
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que decoravit elogius. Nisi me vehementer opinio fallit, 
hac ratione Iurisconsulti officium melius impetetur, quam 
perpetuis finemque contendendi non habentibus emendandi 
conjecturus. Maxime, quando ita conjecturalis illa Crisii ex-
cectetur, ut propria opiniones vestras de juris controversiis 
adjuvetis, rationesque adversantium & obstantiae legum argu-
menta refellatis; quod quidem loco sedundo animadver-
tere cupiebam. Nam si toleranda fine manucripitis et emen-
dandi licentia, duntaxat tam evidens esse debet, ut minus 
facile refelli quam adfutri & approbari posset: quod de tali-
bus, quæ tuendis opinionibus, in quibus Interpretes discre-
partant, adhibentur, nullo modo licet adfirmare; cuius rei 
luculentam speciminam dedit Antonius Faber, dantur hodieque 
similia. Constituimus inde ab initio de singularibus inter 
nos discrepantiis haud agere; quanquam tua de articulo se:
Lege 101. n. de verb. obl. sententia, pro obligatoryi legendum 
esse obligare, huic loco nimis pulchre conveniebat. Vidimus & 
Salmasium de mutuo cum Jurisprudentia disputantem eodem 
genere pugnandi utiim; neque dubium, quin hac licenti 
valeat, quilibet Artis imperitiissimus idem jus sibi in 
Inquinamentum, quod in aliis fave notistiae scriptores exercerent, 
breviarii arrogantur. Quid dico, anticipat celebreque diversis 
auctoris sententia in partes rapit! aperta via eft & patula 
porta, quam videmus, adscribendi conditoribus Artis senten-
tias ab sequo bonoque alienis libris, Republicae infeetas plae-
neque filter. Dicam, & emendandi facro artificio distantes 
faciam Jurisconsultos, nullam cedem mortis penam mut-
andum esse, nisi quod more latronis alto confidio animique 
praedestinatione commissa fuerit; in rixâ quas fiant homi-
cidiae, subitus animi motibus, etiè culto, sicè, gladio ex-
tra ordinem leniore, quam capitis supplicio adiicientia. Er-
gos fas sit, Lapithas & Centauros convivia fortuitis rixis 
&
classical] expressions. Unless I am very wrong, by this method he fulfilled his duties as jurist better than by continuously and never-endingly disputing about conjectural emendations, especially when that conjectured decision is exercised in such a way as to support your own opinions on some legal controversy, and refute the reasoning of those who oppose you and any contrary legal arguments. This indeed I wanted to note in the second place. For if the freedom to emend without manuscripts is to be allowed, the emendation ought to be at least so patent that it can less easily be refuted than it can be constructed and approved. It is in no way permissible to approve this regarding those texts which are used in defending opinions where the interpreters differ. Antonius Faber provided splendid examples of this and similar examples are provided today. We decided from the beginning not to argue about individual points where we differ. However, your opinion regarding fragment, or lex D.45.1.101, that one should read obligare for obligari, illustrates this argument exceedingly well. We also see that Salmasius when disputing with the jurists on mutuum (the loan for consumption) used the same kind of attack and there is no doubt that, if this freedom becomes established, each and every one, however ignorant of legal science, will soon arrogance 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 (ἀδίκως) contrary to the spirit of law.

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

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

101 See D.45.1.101. Modestinus libro quarto de 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 Marii 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 (Disputat. 1.17) but rejects it. For a more detailed exposition of Noodt’s views on D.48.8.1.3, see Probabilia 4.8 (1691). Here he crosses swords with Huber. In the passage cited here on pp 44-45 Huber is clearly speaking ironically, and certainly does not support the arguments he raises.

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

&c promiscua crude cruentata fine metu mortis celebrare: qui rapido furore fodalium sanguinem duellis hauriunt, nihil amplius ultiorem gladium metuent. Quin tu, si iucundus prætextu certificauerturis obtinebit, aliunde probe, ordinarii fuerint poemæ eximendos, qui subliter cupiditate accesserent res alienas aboluerunt: Qui matremfamilias alienenl improves libidine motus corrupit, eum expresse leguit Julii functione non teneri: neque Textus dearunt, e quibus mutatis lectioibus hac calaque posito evincere, si Lex Cornelia violentis hominum affectibus coque violentioribus, quia subitis, in atrocissimi criminis tenderata ignocit, aut, si hac sententia fagacitate criticâ legibus inferri poterft.

Necio, ad illa CRUSIUS, quorum haec ultima spectant, nec imaginari possit, quod ad stabiliendam opinionem, ut mihi videtur, inaudita, articulum ulla veterris Jurisprudentiae vellet immutatum. Possitque idem singularibus & exquisitis perfunarum rixarumque circumstantias judici mitiganda poena causam dari, fateor, ut ad Alcium me legere memini, de puero, qui fortuitâ irá collucorum fum cultro percussérat. Verum si quis inde colligendum putet, homicidia quotlibet habito rixandis studiis gladiis admissa, miitore quam capitis supplicio adscendi, ne ille parum incolumitate generis humani confüleret, quod alium esse non posset, si violenti affectus rigidis poenarum frenis a facinoribus non cohierentur. Cetera tua, Mi Hubere, nunc quidem præterea, quis enim finis contentionum! Dicere aliquo, quam inficeros fæpe præbeant, qui Auctoribus noftris furentias, de quibus illi neominiarunt quidem, adstringe malunt, quam levius manus voculce aut literae aliquando unus substrætione, vel additione, vel mutatione tamum veteribus senium Artique bonorem Q. Q. 3 conci-
and indiscriminate killing. Those who, in a sudden fury, draw the blood of their companions in a duel will no longer fear the avenging sword. Certainly, if someone maintains this on the pretext of some critic’s authority, you may prove from somewhere else that those who steal another’s property, when inflamed by a sudden desire, must be exonerated from the statutory penalty for theft. You may say that he who rapes another man’s wife, moved by an unforeseen lust, is not liable to the express sanction of the *Lex Julia*. For, if in the rash fury of a most atrocious crime, the *Lex Cornelia* pardons men’s violent emotions, and they are the more violent for being unforeseen, and if this opinion can be imposed on the law by sagacious criticism, there are no lack of texts from which by changing the reading you can prove this and other things.”

To this CRUSIUS replied: “I do not know at what this last statement is directed nor can I imagine who, in order to establish an opinion which seems to me to be unheard of, would wish one article of the old jurisprudence to be changed. I indeed admit that there can be reason for mitigating a penalty in singular and specially selected cases of persons and of brawls, as I remember reading in Alciatus\(^{105}\) 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

\(^{105}\) Alciatus *Dispunctiones*, 1.17.
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concilium malunt: Sed his ego minime retardabor, nihil-que fecus Crinum juridicam, favelibus Mufis, dum spiritus hos reger artus, alacer exercerbo, neque morabor;

Si livor obtrectare curam voluerit;
Donec seculum criminis sui pudeat.

Colliganus igitur velas, regerebat HUBERUS, pro-pinquo portu; neque libet mihi reciprocare ferram, a qua
Tu manum generoso contemptu amovisti. Unum addam;
æquum me cenfere, ne vos folos effe, quos æquus amavit
Jupiter, reputare in animum inducatis; omnes autem qui in
exercendis emendationibus fœ conficiendos non praebent;
quid de fœnisbus legum sit, per sipere non posse. Sed ma-
um de tabulâ, ubi addidero, me fœiquum effe in adolefcentia
se¢am hominum, qui varie eruditionibus liquorem non tim-
èti leuiter sed imbus, tamen in correctionibus legum ven-
ditandis auditoribus suis non praeverunt: Vinnius, Mat-
theus, Whiffenbachius, moti, sit ficio, rationibus a me pri-
dem expolitit, tum vero hac inprimis; quod Ætis compert-
atum habeant, eos, quibus hac precipua Cristos proce$io
arritet, ab omnibus systematicæ doctrinâ, denique ab omnibus,
quæ civilem prudentiam tradunt, disciplinis alienos averto-
que esse; cujus Ætis habuimus ? nunc Salmasium, quem
fatis conflatis, cum alia hujus generis, tum divinum Grotii
de jure pacis & bellorum inolenter adsperrari, atque ad
omnem politicam civilemque doctrinam tantum non nau-
feare confuevisse; quod & alius, si non omnibus eumque
instituti rigidis cultoribus evenire notabiliter animadverti-
mus, eundem contemptus Salmasi fructus in succeflu de-
fensionis Regeæ confitiit haud omnino gloriosus. Præcep-
tores illi me feci arbitrabantur, officii efl efl i, facere juris-
consultos, id eff, homines qui de quolibet factum consulti
respondere, cavere, scribere possent; quas boni Juriscons-
ulti
for the subject. But I shall in no way be impeded by these considerations, and notwithstanding, while life shall rule these limbs, I shall, with the help of the Muses, keenly practice judicial criticism and I shall not be deterred.

If envy wishes to carp at my careful work

Until our age is ashamed of its accusations."\(^{106}\)

“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 τὸν παντὸς (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 kind\(^{107}\) 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 *respondsum* (legal opinion), advise on legal transactions and draft documents, which are the attributes of a good

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

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

fulti esse partes, ut olim Cicero tradidit, ita hodieque facultates eadem illud nomen atque munus implent, a cujus gravitate cos, qui folis verbis & syllabis inherent, mirifice videbant esse alienos. Enimvero non debeo preterire, Wissenbachium nostrum fuisset maximum sui temporis Crinitum, idque ei haecfìe à preceptore suo Mattheo Seniore, Groningeni; sed prorius alio genere Crifos, ac illud eft, quod in pagis & notarum enigmatis occupatur. Tenebat homines clariflimos immodica confuetudo demonstrandi navos juris, vel potius, ut loquantur, detegendi flagitia Triboniani, errores veternum Juris magistrorum, omnique in honesti, absurdi, falsi notae, ut ipsius videbatur, deformia passim indagandi, in locis communes redigendi atque exagitandi in auditoris & in libris suis. Habet hae Facultas speciem libertatis neque vulgare famae lenocinium; satis vellicit aniïm esse Juris Interpretibus, ipsos Artis sue Conditores vocare sub cenfuram; ideoque res hae admodum late patet, ut ingentes libri cenfurae Juris Roman. extrent in lucem dati. Ego nunquam aliter de hac parte Crifos senli quam de Antinomii & emendationibus; non utendum illis, nisi extrema cogente necessitate. Non puto facilegnum, reprehendere Justinianum, vel antiquos Justitiae facerotes, quales se merito appellari poterat credabant, sed hoc affectare gloriamque exinde captare, sicut facere videntur, qui numerum Juris nevorum tam immani augent, alieniflimum ab officio boni Interpretis esse videatur. Nefcio, quâ mea simplicitate fiat, ut judicium meum à judicio communi, quo jus Romanum nititur, admodum raro deflecat. ideoque dedi toto biennio in publicis lectionibus operam, ut demonstrarem, plerisque locis Juris nostri, quæ ut iniqua, iniformis, falsæ, absurdes traducuntur, sane senfui intelleccta, nihil ejusmodi continuare, 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, quisam jurisconsultus veri nominaretur, eum dicerem, qui legum et consuetudinis eius qua privati in civitate uterentur, et ad respondendum et ad scribendum ad cavendum pertius esset.} (But if the question were to arise as to who should truly be called a jurist, I would say, he who is knowledgeable as to the laws and customs which private citizens use in the state, in order to give legal opinions, to draft documents and to advise on legal transactions.) See too \textit{Oratio II} p 64.
De Ratione docendi & discendi

cujus à claris hominibus insimulantur. Et quam lector
num memoriam necio, an non aliquando cenfuam Cenfuare
 Juris Romani & Anticriticam hujus generis incorrupto
eruditorum judicio sim propositurus. Quae mea de criticā
studii Juridicī profissione sītentia, fatis abundeque
differuile videor. In historicīs similīumque veterum scrip-
tis, ubi nullās dogmata in humanā societāte stabilitā
traduntur, res non habet tantam aurācem, quanquam ego, si
in hoc ipso genere me continuissēm, experimenta profesśiō-
nis & fāme ab emendationibus prīma non cepissem, neque
tamen, si quae mihi oblata fuissent, abrupte averūs effe-
sem; quo pertinent exempla, quae modo mihi è differtā-
tionibus illis historicīs objicēbas. Quod ad sytemata com-
pendiosam universalis juris attinet, non dispresat institutī
mei ratio à communi omnium temporum consuetudine, nec
ab ipsis quod modo in hanc rem luculenter à Bokelmanno noptro
prolata fit in medium, modo à duobus scopulis diligenter
caveamus. Primo, ne studiosis compendias, siccā, jejūna
& arida proponamus, verum talia, quae gustum melioris
dōctrīne, simulque initium exhibere possint; tum vero, ut
adīdus hortamentis exempla preceamus, ne in his e-
lementibus subvertere se dēbere, nec possē praesumānt. Denique
nollem, mi Cruī, tantopere placuīcum tibi, ut rem ab o-
mni studiorum ordine judicioque remotissimam, cum atro-
ci invidiā secus agentium, tam factidienti oratione profecu-
tus effēs. Nec eīt, quod dicas, ut postremo definebas,
tec paucos notāre voluiīs nundinatores sānteśiume Ārtis,
gui Jurīs Docēre intra paucos mensēs percingēs impu-
denter fulcipiunt. Nam hi profecētī sunt pauci, nec, si
alias bene le haberet Ars Jurīs, horum causā, de corruptā
Jurīprudentiā quērii in mentem tibi venīfēt. Tu latē pa-
tentem errorem universalīmque vituperasti, qualēm vis
iliam
that are alleged by well-known scholars. I don’t know whether on the basis of these lectures I shall not some day propound a judgement on the ‘Judgement of Roman Laws’ and an *anticritica* of this kind with the correct opinion of learned men\(^\text{109}\). Let this opinion of mine about criticism in legal studies stand. I seem to have argued enough and more than enough. In historical and similar classical writings, where no body of tenets rooted in human society are being studied, the material does not need such *αναθεωρησις* (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\(^\text{110}\) 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

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

\(^{\text{110}}\) Cf The title to Albertus Rusius *Oratio de jejuna quorumdam et barbara iuris compendiaria*, 1659.
49

Iuris, Dialogus.

illam esse preparatoriam Compendii Institutionem. At vero
nollem illum altissimum, generofum illum spiritum, qui ad
instructam Juris disciplinam tanto cum impetu adiurgit,
inde reformationem sapienti, quo maxime obtento, refor-
minationem in se ipsum ruere oporteret.

Ego vero, CRUSIUS, actum agere nolo, & iremo-
vende sunt amplius ratione veltræ, quod in proclivi fo-
ret, hujus quidem colloqui odiun, scit vos intituitis,
jampridem me habet; aliis dabitur occasio; nunc ad alia
transeamus: Cavendum enim, ne materia novi diaolgii fu-
creat, neve reliquis convivis parum officioso longiore
secutū videamur.

Ille quidem, excipiebat Wijngardenius, fuis quoque fa-
bellis detinatur. Sed antequam digrediamur, ne plane
in hac scenâ esse videar, date mihi quoque lo-
cum, non dicendi sententiam, neque refellendi quicquam
à vobis dictum & disceptrum; sed rogandi te potissimum
Hubere, non quæ cauæ corruptæ sit jurisprudentiæ, nec,
an compendia sunt dispensa juventutis; sed quoniam me
favor studioforum, potius quam meritum eruditionis meæ
in partem aliquam docendi, seve indulitu seu communitiæ
Amphissimæ Facultatis juridice recepti, fæcere cuperem,
quœ potissimum ordine, quibus studendi gradibus adolescentes
mihi commissos ad Themidos sacrarium dedicarem. Poffin.
Quando autem Cll. Bökelmanni Crufique humanitas semper
ad illos aditum mibi præbet, Tui maxime consilii previ-
ptum ad exempli copiam mihi relinquui desiderarem. Intel-
lexi equidem genus universum institutum, quod in studio Ju-
ris excolendo probes atque commendes, sed opus est mihi
exacē magis & speciali descriptione, ac quasi manuductione
æ a carceribus ad metam, quod ajunt; Et si enim tuus ali-
quandiu fuerim Auditor, idoque ordinis quem feces, ra-
R r r r tio
is teaching by means of preparatory compendia. But I would not wish that ἄγηνορα
θυµόν (noble enthusiasm) which rises so strongly at the commencement of law
studies, to thereafter undergo a change for unless that enthusiasm is maintained
the change necessarily collapses in on itself.”

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

“Oh, indeed, they are also busy with their chit-chat” remarked
WIJNGAERDEN. “But before we depart, lest I clearly do not seem to have
κωφὸν πρόσωπον (a speaking part) in this play, give me too an opportunity, not
to voice my opinion nor to refute anything said and disputed by you, but to ask
you, particularly, Huber, not what are the causes of the corruption of jurisprudence nor whether compendia are a waste of young men’s time, but since
the favour of the students rather than the excellence of my learning has brought
me into some part in teaching, either because of the indulgence or the
connivance of the most honourable Faculty of Law, I would like to know in
what order preferably, and by what stages in their studies I may be able to lead
the young, entrusted to me, to the inner shrine of Themis. Moreover, since the
kindness of Professor Böckelmann and Professor Crusius always allows me to
approach them, I would like an outline of your programme in particular, to be
left for me as a model. I have indeed understood the overall nature of your
teaching practice, which you approve and recommend in working on the study
of the law, but I need a more exact and specific description and as it were a guide
from the starting gates to the winning post, as they say. For even although at one
stage I was a student of yours\textsuperscript{111} and so the logical method

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

tio mihi non plane ignotus esse queat, haud tamen dubito, quin longà discendi docendique experientia collemseris & fecreveris monita non tralatia, quæ in promícuo studioforum concursu proferre non solèbas, quaque mihi hanc discendi via primum ingredienti, multum conducere posse crederim.

Ergo Tu quoque, HUBERUS, in eodem veriserrone Wyngardeni, quo vulgus studiofortum tenetur? Eiusvero sápe mihi usus venit, ut adolescentes discendi cupidi privatim me adirent atque ad interiorem amicitiam aditum affecerant; haud alià grátia, quam ut peculiarem metodus secretamque viam sibi panderem atque monstrarem, per quam celerius & felicior eruditionis iter conficere posset. Respondere sum solitus, maximum quod illis suggere possem arcanum, esse laborem indefessum in eà vià, quam publice illis praeritam, pararent se diligenter; antequam ad audiendum venirent, ascultaret attente, notaret quod non lectione prœs audirent, cum quà repetere domi, conferrent cum fontibus legum, mandarentque memoria; ruribus offerrent se examini, quoties ocaatio foret; hoc agerent, ut tyrocinium suum paucis onerearent preceptis, attamen universe artis, eaque validissime sua facerent, et in causas fontesque rerum ubique penetrarent. Quando tamen ejusmodi summa cohortatione nonvideris esse contentus, utcumque nihil inutilati arcavie polliceri habeam, nolo tamen decfle facilatatem meam desiderio tuo, quod ex animo, veteris amicitiae disciplinaeque memore, proficiet, facile mihi perfuadeo. Cæterum, non est quod expectes ita Jurifconftultum à me formatum iri, sic tur Stoiçi suum sapientem, describunt, neque ut Cicero suum oratorem esse voluit, cui nihil defsit, qui quod sumnum est, quod nemo forfan unquam aditigatur, sit consecutus, nec à studiofor tantum laboris durique
of the order which you observe cannot be entirely unknown to me, nevertheless, I do not doubt that from long experience of learning and teaching, you have collected and distinguished your own private rulings which you were not accustomed to make known to the general body of students and which, I believe, could contribute much to me as I am first starting out on the path of teaching.”

Therefore HUBER answered: “Are you too, Wijngaerden, making the same mistake as the run of the mill students? For I have often found by experience that young students, desirous of learning, approached me privately and aspired to access to an inner circle of friendship. And this was for no other reason than that I should open up and show them my particular method and a secret path, by which they could more quickly and more successfully cover the road to learning. I usually answered that the greatest secret which I could suggest to them was unremitting toil on that road which I show them in my public lectures, namely that they should prepare themselves diligently, before coming to lectures, listen attentively, note what new material they hear for the first time, revise everything at home, check against the sources of law and commit everything to memory.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.
§1

Juris, Dialogus.

in femet imperii exigam, sicut alii plurquam heroico insti-
tuto faciunt, ut merito vix esse tanti, eruditum esse, inex-
periti arbitrentur. Agam civiliter, atque ita, ut adolefcent-
tes ne desperent effici posse, quod ipsis praeficibatur. Sic igi-
tur ego fascerim, Qui animum ad studium Juris applicat,
eum primo adniti dees, ut literas ac artes, sine quibus Ju-
risprudentia non potest valde percipi, mediocriter addicat.
Literas intelligo Latinas & Graecas, priores exactius &
cultius; alteras ita, ut scripta veterum, satem interpretis
ope distincte & cum ratione tractari possint; sub literarum
studio Historicum me complecti facile praeficetur: Artes
que ad Juris studium preparant requiro Logicam, etifi haec
pene jam obsoletar, atque Ethicam, Mathematicas artes
& Physicam, si quis addat, laudo, exigere non audeo; neque
politicam prae mitti sed potius comitari volo studium Juris;
de oratorit quasi quod nihil dixi; nam praecerta Rhetorica li-
terarum studio implicita sunt, Facultas scribendi habendi-
que orationes habere videtur omnium difficillima, ideoque in-
ter preparatoria non collocanda; sed alia in fortior exercitia in
hunc usum solito commendare; vera eloquentia ex omnium
rerum notitia exundat & exuberat, ideoque majorem po-
stitut eruditionem, quam ab adolefcentibus, qui neeum ju-
risprudentia maturi sunt, praefari possit. Plura de propai-
denticiis non dicam; nec enim dubium credo cuquam esse,
quin liberalia Literarum & Artium studio Juris praeit-
tenda sit; quomodo autem in illis fit verandum, a me
hoc quidem tempore non expectas ut editeram: nifi unum,
quod alii forsit omnium minime expectas ut editeram:
nifi unum, quod alii forsit omnium minime expectabant,
monendum videatur; adscribendas esse litteras & Artis fane,
priuquam leges aggregiari, sed tamen hec quoque locum
habere Terentianum illud, Ne quid nimis. Intelligi, 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. Ita est enim . . . , ex multa eruditione et plurimis artibus et omnium rerum scientia exundat et exuberat illa admirabilis eloquentia. (Thus it is that such admirable eloquence pours forth and overflows from great learning, very much skill and knowledge of all things.)
115 See Terence Andria, 1.1.34.
De Ratione docendi & discendi
fine offensâ Crucis, forte nec fine admiratione Bökelman-
ini tuisque id à me adfirmari. Quis enim non potius stimulum
ab hac parte quam sufﬂamen opus esse arbitretur? Certe fumi-
mulum multo magis esse necessarium juventuti, res ipfa lo-
quitur, noﬁque jam publice privatimque facto confelli funus.
Attamen generosis animis, qui philosophiae literarumve a-
more capsi se toto illis dedunt, ego modum imperare non
dubito; saltem haetenus, ne legale studium inchoare cun-
çitentur, ubi primum ingenio judicioque ad accipiendum Ju-
ris disciplinam maturi facti videantur; et si in Artibus aliis
humanitate literis nondum eo provecti sint, quo pervenire
poﬃunt & debent, qui harum laude confici atque cenferi
cupiunt. Ratio conﬁat ab experientia, quae sic fere me do-
cuir evenire, ut qui diu multumque philosophiae, literati-
æce historiæ immorantur, earum ameneitate vel facilitate eo
modo in sinu suo adhisciantur, ut cum ad Leges se conferunt,
earum studium patent esse tetricum & asperum, agreeqve ab
animis suis impetrare solent, ut earum disciplinam liben-
ter & alacriter saepeipiant: Nemo autem dicit aut proficit
invitus & relucrante nature ﬁex ingenio. Velim igitur, qui
studiofus Juris esse capi, idem agat, quod mihi Wissenba-
chius nolet auctor fuit, ut cum annum integrum in praep-
paratorius studis commoratus esset, Institutiones Justinia-
ni audirem atque deinceps in perciendis integra Artis e-
lementis perseverarem. In illo anno vellem studiofum meum
audere Logicam & Ethicam, ediscere compendium historiæ
univerals & dare operam, ut plane pleneque Suetonium
intelligeret, In quod plerique ad antiquitates Romanas &
Juridicas spectantia facilie ordine atque historico offeren fe
explicanda: Nam in omnibus vivam praeeptoris voce, si
copia situr, adhibendam esse non est ambigendum. Interim
in legendis aliis Historiæ antiquæcriptoribus vacuo tempore
without offending Crusius, but perhaps with some admiration from you and Böckelmann. For would one not think that in this respect there was rather need for the goad than for the brake. Certainly, it is self evident that the goad is much more necessary for young people and I have often admitted such both in public and in private. However, I do not hesitate to recommend a limit for those high-minded souls who, fascinated by love of philosophy and literature give themselves over entirely to them, at least to this extent that they should not hesitate to begin their legal studies; that is as soon as they seem to have become sufficiently mature in ability and judgment 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,
Iuris, Dialogus.

re pergendum; neque minus, in continuo styli exercitio, non modò lectione sed & imitatione veterum eloquentiae Aucltorum. Si qui sint, quorum ætas & ingénia non habent eam facultatem, ut uniús anni decursu his rebus mediocritet defungi possint, his, sēlicet, tantum temporis adiiciendum puta, quantum opus est ad capiendum talem profectum, qualis validíoribus intra annum spatióum contingere potest. Neque deorum, qui & de physica deque mathematicis codem anno primitias capere possint. Ubi vero studium Jurs annò fecundo inchoatum fuerit, nolo novum Justinianae ita fere toto solis legibus dedere, ut inchoata bonarum artium literarumque studia deferat, nec amplius ad se pertinere putet. Nihil aequo deletat quam varietas, nec est alia dignior studio phreo recreandì animi ratio, quam in amanitate doctrinae facilioris. Atque hanc viam, quæ consitit in continuatione studiorum primi anni, per omne tempus descendi juri, eo fidentius commendare fœleo, quod per eam non modo ad Artis Juridicae peritiam felicium perveni, sed & eloquentiae ac Historiarum professioni deinceps admodus, ci qualitercumque satisfacere viisum. In hoc autem præfato illa, diversæ rationi, quæ plures annos preparatorii studii prescribit: quod & notabile temporis compendium facit, cujus summa ratio consistat studiis, & quod illam aversionem, quà fere laborant, qui valde sunt philosophi & critici, antequam jus didicerunt, antevertit atque consumit. Porro ipsum Jurs studium hoc modo inprimis decurrendum exiliómo, ut id quodammodo duplex effe meminerint studiis. Primum certis gradibus confectum sufficit ad forenses exercitationes cum fructu fullcipiendas; alterum ad interiorem Juris antiqui notitiam & ejusmodi facultatem acquirandam pertinent, quæ ad Jus explicandum docendumque sufficit. Primum duobus intervallis abolvitur, Institutionibus atque

R r r 3 Pau-
progress must be made with reading other writers of ancient history, and also in continual practice in composing, not only by reading but also by imitating the eloquence of the ancient authors. If there are some students whose age and talents do not give them this ability, so that after the passage of one year they can only perform moderately well in these subjects, consider that they should be given as much extra time as is necessary to achieve such progress as the better students can achieve within the space of a year. And there will be no lack of those who, in the same year, can master the basics of physics and mathematics. Then, when the study of law is begun in the second year, I do not think that the new law student (novus Justinianaeus) 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, 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 Institutes and

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119 See Constitutio Omnem § 2.
120 See the Commentary, Chapter V.1.
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Pandectis. Institutiones velim bis tractari audiendo atque respondendo. Nam sola auditio nequaquam sufficit ad expromptam validamque Juris scientiam consequendam; primumque statim ingrequi qui serio vult proficere, non debet inutili vereundam superbiaque animi deterreri, quominus examini se quotidie committat. Juxta secundam auditionem, disputandi exercitium sedulo inchoandum & omni tempore, quod juri impendatur, continuandum cenfeco, cum nihil eo sit efficacius preparando animo, sermone, or ed publicas actiones, in quibus aliquando se Jurisconsulti exhibere atque prestante debent. Expositio & disceptatio fundamentorum Juris in hoc primo stadio non potest aliter regiri, quam secundum positiones comendii aliquii systematici, quia in re nihil addendum habeo, ad ea quae Bökelmannus notavit in hanc rem exacte differuit. Nam quia primus studii Juridici turfus adolescentes aptos reddere debet ad respondendum, cavendum, scribendum; quibus partibus officium Jurisconsulti novimus abfolvi; palam est, eodem modo nobis in hac via esse procedendum, quem Graecos tribus post Justinianum feculis tenuiisse modò probavimus, & quae in superiori disputatione luculenter scitque demonstrata est. Primâ decambulatione hujus itineris, quod ad Institutiones dirigitur, nihil aliud ab adolescentibus exigo, quam ut diciata Preceptoris sui memorid judicioque subiagant, eaque cum textu Justinianaeo Regulisque Juris & preceptis de verborum significatione professe accurateque conferant. Secunda auditione textus ceteros, qui est Pandectis & est Codice magni numero in explicandis Institutionibus adducuntur, inspicere, examinare, perpendere debent, quod nemo aliter, quam fudante cerebro, fat sic, praefabrit. Atque hic est annu interi juventus labor, accedente, quam dixi, continuatione studiorum liberaliorum & humaniorum. Sequente annum Pan-
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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 jurist121, it is clear that we must proceed along this route in the same way as we have just proved that the Greeks did three centuries after Justinian, and which has been clearly and knowledgeably expounded in our previous discussion. In the first stage of this route which is directed to the Institutes, I require nothing other from young students than that they should commit the lectures of their teacher to their memory and judgement and that they should simply and accurately compare them to the text of Justinian, and to the Regulae iuris (rules of law)122 and to the rules of De verborum significatione (on the meaning of terms)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

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

Pandectae impendere oportet, eodem præuncte methodo summarioe institutionis, quæ materiam omnem Artis definitionibus et partitionibus exhaurit, eisque decisiones questionum, tam quæ ad integritatem Artis antiquae, quam in primis, quæ in ufu rerum humanarum hoc seculo verfiantur, ex ipsis juris fontibus addit et innecht. Quia autem mea lic et ratio, Quam Artem aliquis omni vita sua tempore vult profiteri, quæ fortunam rerum suarum fulcire cupit, hanc eum prompte valideque scriere atque in habitum, quod Philosophi crebris aequibus fieri docent, convertere debere; censè, repetita praeeptione auditiantiaque & examinatione opus esse. Proinde biennio non minus in Digestis, eo modo transfigendum: Est enim Pandectae ego ita tradere foleo, ut quæ in Institutionibus exposita sunt, illic denuo per novas positiones non traëuntur aut explicentur, tamen annus utilis Academicus opus est ad summarium quinquaginta librorum interpretationem. Inter ea tamen temporis, opera danda est Studiose, ut non modo leges, e quibus positiones Juris probantur, addiduo intenteque perlegat seduloque inde, quæ ad intelligendam Artis doctrinam faciunt, colligat; sed & observationes ad illustrandum augendamque eam pertinentes, quarum materia gnavo scrutinato literarumque & philosophia perito deesse non potest, a notitia receptarum sententiarum segerget atque recondat. Quod autem omnium ego praestantium in hoc instituto confilioque meo esse comperiti, id est; quod qui in illo triennio, Institutionibus & Pandectis occupato, vacuum tempus evolvendis scriptoribus antiquis impedunt, inde jam Artis fuisse nari, sedgere & ad idem locos referre possunt omnia, quæ ad illustrandum jus Romanum in Philosophis, Oratòribus, Historicis atque Poëtis referriunt, quod facere non possunt, qui ad legendos antiquos fele totos conferunt, ante quem...
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.
56 De Ratione docendi & discendi

Artis, cui se potissimum dedere cupiunt, universam compositionem teneant. Quando enim in omnibus excelle multitudo rerum infinita & ingenii humani imbecillitas non patitur, optima ratio est, in una duntaxat scientia, quod summum est afficere, de ceteris excerpere, quod ad illam unam pertinat ornandam & illustrandam; hoc facere non potest, qui compendiariam Artis illius notitiam animo non praecipit; ideoque nec Jurisprudentiam ex antiquis augere & exponere poterit, nisi qui prius Arte cognita, fixavit terminos, quibus obvia quaelibet includere debeat. Triennio in Jure, quadriennio in Academië facabbruto, studiose, cui ratio temporis fui bene confluat, ad alterum finem se comparare debet, ut vel ad forum se conferat, cuius exercitationibus parem doctrinam adiupsci jam potuit acceperit; vel ut alterum Juris discendi stadium renovato studio ingrediatur. Pars equidem multa maxima finem Laborum in illo primo stadio ponit, nec aut ipsi cupiditate proficiendi, aut parentes summum prorogatim, ad alterum d curandum sufficere vel durare solent; nec ideo tamen posterius prior antevertendum esse quiquam recte atque ordine fuerit. Nam qui Jurisprudentiam forensem animo suo proponunt, his solis & totum jus antiquum in omni sua subtilitate critica tenere non expedit neque sufficit, opus est illis institutione moribus feculi adtemporata. Talis cum eloquentia Latinità, Graecphoni notitia, Philosohia ac Hultoria literisque reliqüe humanitatis conjunctâ, quam hac nostra methodus requirit & praebat, 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, tunc etiam esta mens cognitioe rerum gravissimorum justis orationibus eloquentiam exercere potest. Enimvero, si quis hae
they have a comprehensive view of the subject in which they chiefly desire to specialise. For since the amount of information available is infinite and since the weakness of the human mind does not allow one to excel in all things, the best plan is to aspire to the heights in only one field of knowledge and to select from the others what pertains to enhancing and illustrating the chosen field. He who does not have a compendiary knowledge of his subject in his head, cannot do this. And so, only he who has learned his subject and has established the bounds within which he ought to include material that comes to hand, will be able to enrich and refine his legal studies from the old writers. When four years have been spent thus on academic studies, of which three are on law, the student, for whom time is important, ought to ready himself for one of two careers, either he should proceed to the courts, for practice, for which he already has, or ought to have, acquired adequate learning, or he should, with further study, enter on the next stage in learning the law. Indeed, by far the great majority of students finish their studies at the end of that first stage and it is not usual that the students’ desire to continue, or the parents’ further financial support, suffices and extends to completing the second stage.

However, no one would rightly and properly argue that the second stage should precede the first. For, to have only a complete knowledge of ancient law in all its critical subtleties neither helps nor is sufficient for those who propose for themselves a legal career in the courts. They need instruction adapted to the customs of our day. Such a course, together with Latin rhetoric, a knowledge of things Greek and combined with philosophy, history and further humane literatures which this method of mine requires and provides, can produce, by the end of four years, a praiseworthy jurist, even one with adequate critical skill. That is provided, in the three-year legal course, he does not omit to add politics and the theory of public law to the learning of private law. Finally, even then a mind rich with knowledge of the most important requirements for a proper speech will be able to speak eloquently. Certainly, if anyone

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125 Cf. Veen Recht en Nut, pp 38-39, especially ft. 15, for Huber’s comment on his expenses on clothes. On p 39 Veen expounds Huber’s desires for an academic career. See also p 251, where in his Historia Vitae Huber writes: ’Schrjvens ontängen hebbende van mijn Vader (in 1655), dat hij begeerde mij te hebben gepromoveert, heb door missive van hem verkreegen, continuatie van mijn studien. (Having received a letter from my father, saying that he wanted me to graduate, I received a letter from him [enabling me] to continue my studies.) Huber senior had financial reasons why he wanted his son to finish his studies and start a career. See also two letters written to his father by Huber translated into Dutch and thus reproduced by Veen in ‘Observationes tumultuarum novissumarum’ in Pro Memorie, 3.1 (2001), p 148-153.
Iuris, Dialogus.

haec ita generose persequatur & impleat, ut nostra methodus dictabat, eum ego non dubitem, pari alacritate fladium altum, quod diximus, interioremque studii partem aggres-
surum: quod, videlicet, confissit in attentà lectione totius Juris antiqui, fuit à fuscianino nobis est reliquit, ejus-
que collatione cum reliquis eorum scriptorum, e quibus Caesar corpus suum collegit; que quidem hodiè perquam exiguo superlunt, fragmenta Caji, Pauli, Ulpiani, collatio
Rufini, Codex Theodosianus & Basilica Leonis. Quæ totum Jus complecterentur, abundantis huic instituto feri-
rent, eti nunc eadem fatis luculentam conferendi copiam præbeant. Debet etiam hic eti nur lectionis arque colla-
tionis universi juris fopus, ut quæ dictata boni & acquir in positionibus systematicis questionumque decisionibus apud
eras træctari folitis nondum perceputa sunt, hæc è recklibus integri corporis legum, etiam ubi de rebus ab usu hodierno
remotis agitur, sedulo conquiritur & ad loca summa, quæ
pride formata fuere, singula redigantur. Dum hoc autem
studiofus naviter agit, novimus aliter fieri non posse, quin
ubique incidat in ícrupulos & difficulates intricati simas,
quibus tamen resolvendis & amovendis indecifluram operam
navare debet. Interpretæs in hæ obturus viæ lucem afræt
præbent; sed ego tam n ita compri atque ita meis amisus
sudere soleo, ut eo modo textibus intricatis, etiam prodi-
sferatis aut damnatis, ut loquuntur, habitis, incumbant,
quasi nullus Interpretæ esset in mundo. Nam si prius interpre-
tationes varias confundere & expendere voluerint; in fin-
gulis paulò minus difficulitatis inventent ac in ipsa Lege re-
periunt, parumque aberit, quin idem illis eventurum sit, quod Patri Comico, qui consulti ebus Jurisconsulti, dif-
crepantibus, ita abibat ab illis, Fœcilitis, inquit, probe: In-
certior fum nunc multo quam dudum. Ubi vero Tu vires
Sfft
follows and completes this course as my method dictates, I do not doubt that he will attack with equal alacrity the second phase, which I have mentioned, namely the inner aspects of the subject, which, naturally, consists of a careful reading of the whole of ancient law, just as it was left to us by Justinian, and a comparison of that with what remains of the writers from whom the emperor gathered his *Corpus*. Indeed, today very scanty remains survive, fragments of Gaius, Paul, Ulpian, and the *Collatio* of Rufinus, the *Theodosian Code* and the *Basilica* of Leo. If these works were embracing the whole corpus of the law, they would serve this purpose better, but even now they provide a sufficiently rich source for comparison. [A12]

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

De Ratione docendi & discendi

ingenii judiciique tui expertus fueris, five inveneris, quod fatis tibi videatur, seu nihil expedieris, tempus rerit, ut Interpretus adeas, quo vel in tuis cogitationibus firmere, vel harum defectum ex corum commentariis suppleas. Heie vero suave jucundumque spectaculum praebeat, qui neglegit priore viam, quam per melicet appelletys systematicam, incontinenti hoc examen universi juris occupan: quando loca, que non intelligunt, inopiae doctrina juridica, continuo suis conjecturis, interpositionibus, additionibus, substructionibus, transpositionibus ac omni generem emendationum sese tam subtilium, ut uno spiritu diffliari posse, in suis intellectus sollicitant, cogunt, rapiunt. Plura Doctisse Wyngardeni, non habeo, quæ hæc horâ inter nos super hoc quæ fìt communicari posse. Dantur quidem & alia, quæ momentum in utraque studii viam non spernendum faciant; Sed cum in actu magis & demonstratione praebent quam in oratione constringere videantur, dabis veniam, heic ut subfitere nobis liceat. Wyngardenius novam parat infantiam.

Quando Böckelmannus, ut absumeret hos nìmis studiosos eremones, libellum proferebat, cui praefixus erat titulus talis, Ephemerides Eruditorum, gallice conscriptus. Ratio, instituti notior ef, quam ut eam pluribus exponi necesse sit. Verum Böckelmannus aperto libro incidit in hujusmodi titulum, Veurtrici Quaerela & opprobria, opera A. S. Med. Doctoris Amstelodam. rurfas alibi, Caro signis Mosai- zans, Autore N. Amenoel & idgenus alia; quæ auter ephemeridum illarum prolixo eloquio prosequatur. Ad hæc Böckelmannus, Nonne vobis indigna res videtur, hos homines, qui scribendis huius diaris Reipublce literarè dant operam, alia quidem illis inferere atque laudare nullius momenti scripta, rurfas alia magis fruges & solide eruditionis omittere vel frigide commendare, coque modo ar-
of your own intelligence and judgement, you will either have found what seems
good enough to you, or you will have found nothing and then it will be time to
go to the interpreters so that you may be confirmed in your surmises or you may
supply the necessary from their commentaries. Here indeed these provide us
with an agreeable and pleasant sight as, having neglected the former route, which
I allow you to call the systematic route, they immoderately busy themselves with
an examination of the whole law, for they are constantly worrying at the texts,
which they do not understand because of their lack of legal training, tearing at
them and pulling them this way and that, with their conjectures, punctuation,
additions, subtractions, transpositions and all kinds of emendations, ones which
are often so fragile that they can be blown away with one breath. [A13] Most
learned Wijngaerden, on this topic I do not have anything more to say which can
be shared between us at this time. There are, of course, other things which make
for significant moment in both ways of studying. But since they seem to consist
more in action and visible demonstration than in speecifying, you will grant me
permission to stop here.”

Wijngaerden was preparing to press on, when Böckelmann, in order to break
up these excessively academic discussions, produced a little book\textsuperscript{127} to which had
been affixed the title \textit{Ephemerides eruditorum} (\textit{Journal des Sçavans}), (originally)
written in French.\textsuperscript{128} The prevalence of this type of book is too well known to
need further explanation. But Böckelmann, opening the book, began with a title
of this kind \textit{Ventriculi querelae et opprobria, opera A.S. Med. Doctoris Amstelodam}.\textsuperscript{129}
Then again somewhere else \textit{Cartesius Mosaizans, Auctore N. Amerpoel}\textsuperscript{130} 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

\textsuperscript{127} The use of the title \textit{Ephemerides Eruditorum}, argues for the German version. See Chapter IX.
\textsuperscript{128} \textit{Gallice conscriptus}. This is part of the title of the \textit{Ephemerides Eruditorum} which in the 1665–1666 and
the 1671 editions reads \ldots \textit{Ephemendes Eruditorum \ldots Gallice primum editae}, \textit{Jam vero in Linguan Latiann}
\textit{versae}, \ldots
\textsuperscript{129} See “\textit{Ventriculi querelae et opprobria, opera A.S. [Bernardi Swalve] Med. Doctoris Amstelodami}” in the
in the Amsterdam edition.
\textsuperscript{130} See “\textit{Cartesius Mosaizans seu Evidens et facilis conciliato philosophiae Cartesii cum historia creationis primo
capite Geneseo per Mosem tradita}” Auctore N. [read J] Amerpoel in the \textit{Journal des Sçavans}, 30 August
Iuris, Dialogus.

bitros ferre meritorum atque fame eorum, qui nomen ali-
quod inter literatos affectant? Mihi certe res non toleranda
viderur, hujusmodi quoque nostrarum libros, quorum in-
scriptiones vobis praegi, & quos in his locis rarus lector
infectione dignatur, illuc ut opera consideratione literati
orbis digna commemorari, nec quicquam inepiarum Gal-
licarum omitt, quod fallendo aulicorum aulicarumque oti
fervat; interea commentationes hominum doctissimorum
in uraque Germania & alibi silentio damnari, vel frigidae
negligentique mentione, quasi quae legantur indignas, tan-
tum non ludibrio exponi: Neque sunt, quibus juftior hac
parte caufa fit indignationis, quique inquisius fint habiti,
quam Jurifconfulti. Ad hac Crucius; nolim, Bökelmanne
Clarilime, tam parvi animi querelam à te fero intelligere
emissam. Quid enim queso refero, tuum de Actionibus vel
ad Pandectas, meumque ad Legem, Si Paterfamilias,
commentarium ilium Ephemeridi infertum vel non fuiffe in-
fertum, magis quam fì Novellis hebdomadalibus, ut fit,
eorum nomina subjeéta fuiffent, aut non fuiffent. Nifi tu pu-
tes, multum intereffe, menftrui an hebdomadales fint falti,
de actis literatorum, an de Regum & Principum, de pacis
& bellis negotiis fint compositi; aut nisi putes, inviendum
effe Medicis & Artium Magiftris, quorum laudes in novel-
lis decantantur, prae aliis, qui modestia contenti famam ipsi
non faciant, aut fieri curant, sed expectant. Enim vero
non eft difficile è lectione Ephemeridum illarum animad-
vertere, conditores illarum ferre ex eorum effe gener, de
quibus Fabius scribit, parva facile. Sane jurisperitos adhuc
quidem inter eos fuiffe nulos, ipfe ephemerides manifesto
praefecerunt. Proinde faciant id quod fieri conuenatrum
eft, ut de rebus, quas non didicerunt, aut nihil, aut valde
parce tenuiterque loquantur. Et mea quidem auctoritas fi
S i f f e 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 Germany 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 *Dialogue*. For the summer semester of 1671, Böckelmann appears in the series as offering lectures on *jus actionum*. See Molhuysen *Bronnen Leidse Universiteit* III p 235*; Feenstra, Böckelmann, pp 141, 142.

132 In 1664, while still at the University of Heidelberg, Böckelmann produced his *Exercitationes ad Pandectas* containing 25 disputations concerning books 1-6 of the Digest. Böckelmann himself had acted as Praeses and it is 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 compendioso exhibens fundamenta et praeципias controversias quae in singulis titulis ocurrunt, 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 statum ostendunt*. (These are such as do little things easily and, carried along by their audacity, they immediately display their limits.)
De Ratione docendi & discendi

quid apud eos valeret, rogarem Virocordatissimos, ut Jurifconsul tumordinem ephemeredum fuarum memorialibus faetis eximerebat, singulorumque fato committerent, utrum faram hab. rent, an mererentur. Quod si tu in aliqve parte gloriae ponis, nomen tuum in illis diaris, cum amplo elo- gion cumque speciosa scrip tionis tuae historia confici, ita cen- tico; scribas cum in procinet su es edendi aliquem librum, tuo vel typographi nomine, ad compilatores egregii, quid pares emittere, que si libri tui summa, quid in eo praecipue ex- cerpi laudarique cupias, inprimis ipsas Ephemerides carum- que Scriptores fac aliquo sublimi charaeterae laudis adfagneras. Sic tibi nullam caufam fore polluceor hac parte Salvio & A- merpoelio similibufeque Heroibus invidendi. Nesio, rege- bat BORELMANNUS, quid ex meis verbis argumenti fum- feris, ut mea potius unius quam Jurifconsul torm communis caufa quellum me esse putares. Quod si torum hoegenus ti- bi contemnedum videtur, non habebis me tam confitarem adverfum, quam modo in caufa systematum & Cempediorum expertus es. Proinde facile patior, nihil esse commu- ne Jurifconsul tis, cum diaris & Novellis ilius eruditorum, nisi quid HUBERUS differtit. Ego vero diffentio, Ille, venerables Symmysae, nec ullo modo consilium duco, ut homines elegantibus ingenii & pari fama notos ordini no- tro inimicos reddamus. Nee enim ipsius ulciscendi ratio defec- fet, si intelligerent, nos de instituto suo tam inquitentire, quam vos in animos vestros inducere vultis. Credo, non amplius silentio nos omitterent, sed cum aliqve nota vel con- temptum argumento scripta nostra suis faetis immife rent, vel omittentes, que magno labore confitissent, si quid tibi forfitan abortivi foetu tuoque nomine minus decori excedisset, no- mine licet presco, tamen, illi hoc suis compilationibus, nomine tuo palam facto inferere non dubitarent. Nesio, an non de meis
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 τὐ νεωτοῦ (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 omittentes... dubitarent.

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

Digressionibus, quae continent observationes Juris Humaniores, incontinenti forte scriberent, eas idem fere esse cum Menagii Amoenatibus Iuris Civilis, eti liber ille mihi nunc quam vitus foret, atque materia utriusque scripti nihil omnium inter se commune haberet; fola tamen incriptio- nis liminitudo ad speciem veri sufficeret, ipso libros excutere nihil ad rem pertinere: Etii autem illa Digressionum meorum cum Menagii libris comparatio mihi forte pudenda vel pene tinda non foret, tamen ex ejusmodi relatione sim- pliciter facta imperito facile opinarentur, de praecipuis ob- servationibus meas debere Menagio, uteunque follici in pra- fatione monuissem, fove laudando conatus mei fove excu- fandae fletinatio sese, propriis stylo & cogitationibus elaborata esse, quae publici juris facerem. Caveamus igitur Viri Clarissimi, offendere vel irritare genus hominum, cui tam potens fæme infrumentum in promptu est. Videamus illas ephemerides in manibus omnium doctorum & indoctorum verfari, care vendi, cupide legi, ut fit in rebus novitare fui lectori bland entibus. Et quamquam vera solidaque exi- fematio virtutis & doctrinae ab ejusmodi suffragius non pendet, ideoque talia fecess quam mercare, publicata magnani- mino sperni possint; tamen si verum est, contemptu fæme plenumque etiam contenti virtutem, viri prudentis esse videtur, nulla publice approbationis adjumenta, præfertim adeo late patentia adspersari. Est fane Jurisprudentia maxime ad gravitatem fæveritatemque doctrinae comparata, ideoque Gallis & rebus autoriibus, qui philosophia, mathematicis & amoeniori doctrinâ potissimum, ut appararet, delectantur, minus placuit, nec apta vitæ fuit ad augendum 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 Civilis\(^{136}\), even although I had never seen that book and the material of both books has nothing in common. Only a similarity of the titles would suffice as a justification for the statement, to examine the actual texts would be irrelevant. Moreover, even although a comparison of my Digressiones with Menagius’ work would perhaps not be to my shame, and discredit, nevertheless from a simply made comparison of that kind, the uninformed might easily conclude that I owe my major observations to Menagius, even although in my preface\(^{137}\) I had specifically stated that whether my attempts were to be praised or my haste excused, it was a working out, in my own style, of my own thoughts, as I had formulated them in my lectures, which I have published. Let us therefore, dear colleagues, be careful not to offend or irritate a group of men who have at hand so powerful a means to make or break a reputation. We see that those journals are passed round in the hands of the learned and the unlearned, are sold at a high price and are eagerly read as happens in the case of information which appeals to the reader by virtue of its novelty. And although a true and sound evaluation of merit and teaching does not depend on votes of this kind and so such possibly undeserved publications can be spurned with pride; nevertheless, if it is true that ‘contempt for reputation is generally contempt for virtue’\(^{138}\) it seems to be the part of a wise man not to spurn the aid of public approval, especially when so widespread. And, indeed, legal writing is specially composed for weighty and serious instruction and so it does not appeal to those French writers των νεωτέρων (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 o nolite videbaris 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 excusatione sublevetur, nec solius ingenii periculo expositur 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 Ratione docendi & defendi

siturum. Germanorum, ingeniis propria magis est Juris-
prudentia Belgique secundum illos aequae familiaris. Hi de-
fectum, quem Bokelmannus in Gallis arguit, forsitam supe-
bleunt, ordinemque nostrum pro parte aliquae literatiae or-
bis, habere non gravabuntur, atque, si juvat & refert, in
ipso suis diariis nihil magis obliviscuntur. Ego quidem hac
gratia liberenter illis utor, quod eis per compendium cire
licet, quibus Auctoris studia nitantur. Favendum est in-
genius feculi nec solis mortuus tendens magistri, neque de-
scet esse tam faetidosos, ut quae maximo labore clari homi-
nes, aut qui incalceferae cupiunt, opera doctrinae compo-
sueunt, ea non modo legere, sed ne argumenta quidem
summaque librorum cognoscere dignemur. Nolim igitur
contendere, ut ordo nostrer, quae interdicto ab hac fenera
Reipubl. literarum excludatur, neque saine etiam ambre
muto minus, ut ratio nostrum habeatur. Facile patior, au-
etores uti arbitrino suo, duntaxat, ne faciant Criticas gene-
rales, sed ut simplicitate narrationis, quae est proripa dia-
riis & novellis, contenti, abstoneant omni judicio omnique
criti: hanc enim integra cuitque scripsis lectionis publi-
caque afferimatione reliquere oportebat. Quod quidem eo
magis requiritur necessarium est, quo difficulius evitatur; si-
quidem observare licet, aliquos id terno in præfationibus
uis pollicitos, in progressu relationum calore scribendi ab-
reptos nihil minus praestitisse aetiamnum preefrare. Scribant
igitur, CRUSIUS, argumenta librorum fuerunt & amiant
elogia, qui volent pacantque fideles imaginariis. Ego ma-
luerim, homines rogent, cur CRUSIUS non comparat proce-
ribus pernixtus achiuis, quam ut elogia rationesque me-
orum qualiumque scripsum, juxta tot dignas pariter in-
dignasque reverentia potestatis chartas, comparentur atque
cenianunt. Non defecerat adhuc materia dialogorum, sed
reli-
Jurisprudence is more suited to the talents of the Germans and, next to them, is equally natural to the Dutch. These people will perhaps provide the lack which Böckelmann finds in the French, and will not be reluctant to regard our profession as some part of the world of letters and they will not forget in their papers what pleases and is relevant. I, personally, am grateful to them for this reason, that thanks to them one can learn as if through a compendium, about the authors who are relevant to one’s own studies. 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 noch bevinde dat hij allegereet auteuren, ende die refuteert zonder dat hij se gelezen heeft. See van den Bergh Noodt, p. 56. ft. 90 and Veen’s article on Stolte’s Breskman p 383 ft. 9.
63 Iuris, Dialogus.
reliqui convivæ Bökelmanni, qui magis verecundiā nos interpellandi, quam sua sponte in alio recessu amicissimi horti subliterant, tandem affluabant, ut nobis valedicerent, hospitique gratis actis, in urbem se reciperent, quod & à nobis, pośt aliquot ultimæ civilitatis complementa mutuoque amicitiae conterationes, factum.
Böckelmann’s other guests who had stood around in another part of his most pleasant garden, more from embarrassment at interrupting us than voluntarily, now at length came up to us so that they might say farewell to us and, having thanked their host, should return to the city. [A14] This was also done by us after some final courtesies and mutual protestations of friendship.