Ulric Huber (1636-1694) : 'De ratione juris docendi & discendi diatribe per modum dialogi : nonnullis aucta paralipomenois' : with a translation and commentary
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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 seriarum estivarum calamo effusum vobisque promissum serius exhibeo, quia rursus eum, mutato consilio, abjeceram; ut sit, ea que cum voluptate scripsisses, absoluta minus placere. Sed quia postquam ejus illa praevia pollicitatione ummis innotuerat, alienique a meo consilio sermones de eo cadebantur, si nsi non esse integrum mibi, supprimere editionem: nihilque potius esse credidi, quam ostendere, nihil in eo a nobis actum esse, nisi ut sententiam, de re ad utilitatem vestram pertinentem, juxta alios innocuâ libertate dicearem. Si argumentum presumere vultis, est heic Colloquium in horto Clarissimi Bökelmanni apud Lugdunum Bataviam ante complures annos habitum; cui occasione dedit ejus Colleca Cruvius vir egregius, qui fatis acrioratione Compendia juris civilis in privatis scholis adhiberi solitatem stabatur, eorumque loco studiosos, inde statim ab ingressu auditorii, legere totum juss antiquum obviasque difficultatem et enigmata conferendo, conciliando, emendando, interpungendo, omnique alio criticae artis instrumento solvere volebat. Quas res Bökelmannus nominât ab illis, qui prius universum jus paratitari invido prompte valideque didicerissent, tentari suadebat. Rationes eorum diversis vicibus commutatas agitataeque, non sine portionibus aliquando.
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 Leidse Universiteit III, p 342), it was decided to hold a convivium piscinolium extraordinare ad quod Nobil. D. Böckelmannus praelium sumum concessit, ibique celebratum (a fish lunch party outside the city for which purpose the noble professor Böckelmann made his property available and it was held there.) Is this the occasion of the Dialogus? See the Chapter VII.

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

PRÆFATIO.

jocisque, sicut erant homines liberi oris animique, salva
tamen dignitate, videbitis, & de meritis singularum exi-
slamabilis. Me quoque tandem vocaverunt in partes, nec
aliud à me dicitum, nisi quod rationes docendi discendique
juris variar, inde à Juttiniani ævo recensuerim, atque ex-
inde, que mihi prestantisima videretur, collegerim; de-
nique usum absurumque criticæ, quam vocant, in jurispru-
dentia demonstravérim. Postremo, rogante Hadriano Wijn-
gardenio, qui nobis aderat, atque tum scholas domesticas
Lugduni habere instituēbat, totum studii juridici cursum,
sicut ego illum studiosis præundum censeo, simplici oratio-
nis filo dimensionem. Donec Böckelmannus prolato epheme-
ridum literarum libello, has disceptationes abrupsit, ea-
que occasione de insituto illorum diariorum sed novellarum
paucis inter nos actum. Non ignore quam exigua laudis
redobsimentum a patrociniio Compendiorum sit expectandum,
et si nemo paulo prudentior usi ilorum abstineat, impri re-
prehendunt, sepe contentius utantur, nihil tamen profici
ci maxime cuncta illorum vitia, quique illus sumnum studi-
diorum collocant, frene vituperes, tam non decrunt, qui
dignationem nefcio quam, fiscet, in compendia deriva-
bunt. At vos legite sultis, & nostrum sequimini, quod hic
dabitur, consilium. Sì ullum fèverori leges vosbe prescribent,
qui methodum discendi hoc pretex tum verumt, nullum sa-
tis cie, praebunt, quodcum bujas gravitate veroque fru-
ètu conferri possideatur.
with jibes and jokes, as befits men of free speech and free thought, but
nevertheless maintaining their dignity, and you will evaluate the merits of each
argument. At length they also called me in to take sides, but I said nothing except
to review the various methods of teaching and learning Law, from the time of
Justinian and then conclude with what seemed best to me. Finally I pointed out
the merits and demerits of the art of criticism, as it is called, regarding
jurisprudence. Eventually, at the request of Adrianus Wijngaerden, who was with
us and had himself already begun to give private lessons in Leiden, I spelled out,
in a straightforward statement, the whole course of legal studies, just as I reckon
they should be undertaken by students. Until length Böckelmann, producing
a booklet containing learned newsletters, interrupted this debate and so, on that
occasion we briefly discussed the practice of those journals or news-sheets.

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

*† Non ignoror... posse videatur.

5 See pp 46-58.
6 Böckelmann produced a copy of the Journal des Šçavans. 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 sibi, ut cum ad Artes studiorum facultateque doctrinæ opus est Antœcfloribus in scholis illustribus atque in Academis, adeo pauci ad eam rem administrandam idonei reperiantur, quique reperti sunt tam rarum auditorum Mecennatumque expectationi satis faciant; maximè, cum, ut hodiè res sunt, Academicae functiones si bæ Paulo felicis traslatæ, nec honoribus suis neque commodis, quibus, ut ajunt, aluntur artes, carere videantur; adeoque parum ab sit, quin id praestent, quod olim Marco Tullio in summâ vetorum suffie legimus, ut in otio cum dignitate vitam sibi transigere liceret. Verum hæ rationes non faciunt, ut difficile sit, re diligentius expendiæ, causæ reddere, quæ Professiones Academicae tam paucos habeant sibi pares, à quibus cum aliquo gloriae publicæque approbationis fructu exerceantur. Nam primo omnium, ex immensæ multitudine adolescentium, qui ad capiendum ingenii cultum mittuntur in Academias, fatis conflat, essè paucissimos, quos aquus eæ usque Jupiter amaverit, ut ingenio memoriamque valeant ad ejusmodi apparatum eruditionis acquirendum, quem ad docendas artes literarum sècimus esse necessàrium. Quorum autem ingenia quandoque suffecerint, horum voluntatem fere ab ea studii intentione, fine qua excellens doctrina haberí nequit, remotam essè videmus. Ut autem sint, quibus & naturæ vis & patientia laboris adeat, his plerumque fortunæ rationes, sive angustæ sive hilarioris, negant tantam longam difcendi moram, ut ad arduum docendi munus,
It often occurs to me, most excellent students, to wonder how it comes about that when there is need of professors for our illustrious schools\(^1\) 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\(^2\). 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\(^3\) 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 *Illumes 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 non est*, (leisure without the liberal arts is death). Compare also Cicero *Pro Sestio* § 45 (98) *Id quod est praestantissimum maximeque optabile omnibus 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.
De Ratione docendi & discendi

nus, per legítimos studiorum gradus mature scere queant. Denique ex iis, quibus omnes hæ opportunitates conflict tam generis copiam faciunt, bona pars, vel fato, vel Judicis aut opiniones errore deflectunt à viâ rectâ seque itineri committunt, quo nunquam ad verum doctrinæ facarum eniti atque penetrare posuunt. Id autem sepe mirari súbit, quod, cum omnis difficultas in perceptione memoriae rerum, quæ in singulis diçiplinæ traduntur, confiteretur videat, in ordine modoque discendi atque docendi tanta varietas & confusio ac inde proficiendi impedimentum, bonis mentibus objiciatur. Cum hæ de re non ita prædum, quod ad Jurisprudentiam attineret, inter aliquot Juris Studiofus or-ta effet disputation, laudantibus, ut fit, singulis suorum Preceptorum rationes, impetus me cepit, idque tum præ me tuli, fore ut in scriptum redigerem, meisque Audito-ribus traderem, argumenta Colloquii, quod olim multi cum Johanne Frederico Bökelmanno & Geor­gio Cumrado Crusio Antecessoribus Luduno Batavis, super hoc ipso negotio intercesserant. Cum Bökelmanno familiariter Heidelberga in honestissimâ studiorum aëmulatione jucundoque amicitia commercio vixeram. Crusius in Academiæ Franci­queranâ Wissenbachio nostro operam dederat, dum ego illic rudimenta Professionis Historiae deponerem. Atque deinceps arctior inter nos confusiudo invaserat, cum ad accipiendum doctrinæ titulum in Franekeranam ille sè con­tulisset. Digreñus eram feriis æflonis in Batavos, nec committendum putabam, quin Lugdunum ad homines a­­micitiæ tam Vetriciæ candidoque visitaram. Peraçto apud Bökelmannum primi congressus officio, multus inter nos fermo de rebus antiquæ jucundissimæque consuetudinis Pa­latine fuerat; donec Crusii interventus ad promissu de re­bus obvïs coloquia témenem avertit. Quæ tandem in­­terrum-
teaching. Finally, of those, where all those favourable conditions provide the means for so honourable a plan, a good number are turned aside from the straight road, either by fate or by an error of judgement or expectations, and they commit themselves to a course by which they can never mount up to and penetrate the inner sanctuary of knowledge. But it often enters one's mind to wonder, when the only difficulty seems to consist in perceiving and remembering the facts which are taught in individual disciplines, that such great variations and confusion in the order and method of learning and teaching and hence obstacles to making progress are put in the way of the motivated students. Since, not very long ago, a discussion arose among certain law students on this very question with reference to legal studies, with individual students quoting the methods of their professors, as it happened, the urge seized me (and I kept the idea before me) to reduce to writing and present to my students the arguments raised in a conversation which had previously taken place on this very topic involving me, as well as Johann Friedrich Böckelmann and Georgius Conradus Crusius, both professors at Leiden.

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

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

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

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

terrupens Bökelmannus; sunt, inquit, amici aliquot suaviores, vestriisque, ni fallor, moribus egregie convenientes, qui prandium mihi apud puccionam meam condixerunt, Rogo, comites vos & convivas, & si libet, confabulones praebetis. Annuentibus nobis, rhedam ejus penitentiam, quam habebat more beatorum hominum, contendimus, brevique itinerem villam ejus urbanae ad antiquum Rheni litteratum ingressi, convivas illic, scapha recens aviectos offendi mus. Inter quos, praece Wijngardenium Auditorum olim meum, neminem mihi notum reperiebam. De apparatu & tralatitiis epularum solennibus fabuliffe nihil referam; sed mensis sublatis, animisque a fedentarii fatigatione, per hortum ambulando, recreatis, accidit, ut nobis quatuor, nam Wijngardenius se adunxerat; sub platano quadam confidenti bus, fermiss per amages ad inquisitionem de statu Academiarum studiique iuridici modo methodice deduceretur. De statu Academiae frequentiisque fidenter illi & magnificè loqui, nec obscura mirari se meas rationes, quae fecissent, ut tant illufrti theatro me subduxissent; tametsi, ut erat hominum candor & liberalitas, videre volebant, eo factum est, ut ipsius locus tanti honoris & emolumenti patuisset. Inde Crucius de meis Digestionibus, quas superiores anno de Praelectionibus ad Institutiones Justinianeas exciperit, incipere; probabat earum institutum, et si nonnulla viuum mihi effic in illis collocare, quae ab ipius sententiis judicioque abhorrescent; de quibus indicavit, se per literas mecum agere constituisse, nisi nunc faciendum mihi videtur, ut coram de illis familiariter dicoeptaremus. Ego non recerue; sed Bökelmannus & Wijngardenius intercedebant, eo quod iste locus, & congruus ad disputaciones de opinionibus juris, sententiisque discrepantibus parum idoneus neque factus & institutus videtur. Atqui, regerebat Crucius, L1112 non
A Dialogue on the Method of Teaching and Learning Law

BOCKELMANN interrupted and said: “I have some agreeable friends who are, unless I am mistaken, very congenial to you. They have engaged themselves to lunch with me at my riverside garden. I ask both of you, if you please, to give us the benefit of your company and conversation”. When we agreed, we climbed into his sprung travelling carriage which, being a prosperous citizen, he kept available and after a short ride we entered his country house on the banks of the old Rhine and met up with our fellow guests who had recently been conveyed there by boat. Among them I found no one known to me except Wijngaerden, a former student of mine. I shall say nothing about the table setting or the formal courses of the banquet or the conversation but when the tables were cleared and, being tired of sitting, we were refreshing our minds by a stroll through the garden it happened that while the four of us (for Wijngaerden had joined us) were settling at the foot of a certain plane tree, the conversation developed in a roundabout way into an in-depth discussion about the state of the universities and the manner and method of studying law.

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

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

7 See Feenstra Böckelmann, p 145, where it is related that Pagenstecher says that he saw Böckelmann arrive for his public lectures in a coach with two horses.
8 See Chapter V.3. Wijngaerden had registered at the University of Franeker on 1st February 1666. See Postma and van Sluis Auditorium Academiae Franekerensis, p 195.
9 Plato’s Phaedrus takes place under a plane tree by the banks of the Iliissus. ὁράς ὑν εκείνη τὴν ὑψηλοτάτην πλατάνον: (Do you see that very tall plane tree?). So too in Cicero’s De Oratore. See 'The Dialogue as a genre' Commentary p 000.
10 During the period 1575-1600, 2725 students enrolled at the University of Leiden, 1626-1650, 11,076; 1651-1675, 9,940. (See for these figures Colenbrander, Herkomste, p 292.) Otterspeer, W, groepsportrek met dame, deel I, p 259 mentions 836 students for 1679. Between 1650 and 1675 ± 280 were law students. Thus it would appear that by the time of the dialogue the numbers were actually declining. Further, on 8th February 1676, Böckelmann concluded his term (1675-1676) as rector with an Oratio de foelici statu Academiae Leidensis. See Ahsmann-Feenstra BGNR Leiden, p 60, no. 28; Feenstra Böckelmann p 143.
11 On the death of Adriaan Beeckerts van Thienen on 5th September 1669, his chair at Leiden was offered first to Matthaeus III and, on his turning down the offer, to Ulric Huber. He too refused. Böckelmann was appointed to the chair on the 8th November 1670. Crusius was appointed professor of law on 20 November 1670, as successor to Stephanus Marchant (d. 1670). See Bonnen Leidse Universiteit III, p 245.
12 Huber is here referring to his Digressiones Justinianae, quibus varia et praeertim humaniora juris continetur. Franeker, 1670. See Praefatio to the 1688 edition. Feenstra BGNR Franeker, p 51 f. no. 139-143, and Chapter VI.2.2.
13 The Dialogue supposedly took place in 1671, although the first edition of the text only appeared in 1684. The reference here is to Huber’s Praelectiones ad Institutiones Justinianae (lectures on Justinian’s
non erat, quod scholasticas argumentationes de magistralibus controversiis aut profundis legum sensibus ac antinomisiis, expectaretis. Neque meum, nec Huberti ingenium animique voluntas ad eujmodi contentiones, hoc praeferim tempore convivatis jucunditatis inclinabat. Sed agite, quando ita videtur, discrepantis nostris, eti humanioribus atque ad litteras politiores spectantibus abstineamus; de communibus tamen studiis colloqui nihil vetat; quid enim potius fit, quod siub hac platano, quae mihi ad dialogos literatos confecta videtur, agamus, non venit in mentem. Nihil abnuere ceteri.

Quare Cursus, Haud facile dixerim, mi Hubere, pergite!, quam mihi volupe fuerit, animadvertere est tuis Digressionibus, te non effe ex corum numero, qui systemata nobis & compendia Jurisprudentiae, quae nihil quam toto dem dispensia sanctissime artis sunt, omni die obtrudunt & secundum ea juventutem sibi commissam instituunt an corrum-punt. Verum id mihi praefer expectionem accidisse fateor, quod in omnibus quatuor libris observationum illarum humaniorum, non incidi in ulsum specieae emendandi textus vitiosus Juris nostrir; cum tu ignorare non possis, dari adhuc plurima loca, quae in turpibus scripturae mendis hærent; & videmur jure quodam nostro expectare, dum Tu illud studium criscos juridiciæ jam pene situ & equalore obstrum & oblitteratum, inter paucos alios excolas, atque in uum honoremque pristinum reducas. Cujuis institutis propopitique nulla me vestigia in hifice tuis Digressionibus, quae nihil alid esse, quam Observationes Juris Humaniores, utipè quidem eas appellati, continent, reperisse, non potui quin agere ferrem. Necio enim quid taciti argumenti hocce tuum de criticis filentium, in tali operae, praèfere verse videatur, non effe tibi consilium, hanc docendi juris viam insuffere, 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 Digestae, 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 Digestae of yours, which contains almost nothing other than Literary Observations on the Law, as you yourself have entitled it, I found no trace of such a plan or proposition. For I do not know what tacit argument this silence of yours on textual criticism in such a work is presenting, except that it is not your plan to institute this method of teaching law, which consists in the emending of corrupt texts by means of an examination of all the texts of ancient jurisprudence.

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

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

15 In the second part of the Digestae which was added in the 1688 edition, and is not linked to the Institutes, textual criticism does feature, eg Pars. II, lib. I cap. xxiv, p 551.
emendatione textuum depravatorum definit, ac ita nobis antiquam Artem nitori suo genuino integritatique restituit. Nam si hoc in iis meditationibus, quae pertinenteud politio-
res literas cum Iurisprudentia conjungendas, faciendum non putasti, quando & ubi fas sit hoc a te prætitori, mihi quidem sperare difficile est. Eaque res tanto minus expe-
ctata mihi contingit, quod jam olim, cum adhuc in genere Historico verfarere, criticis emendandi conatibus non absti-
nueris, siquidem recordor, te in differentiationibus, quas edii-
disti de Temporibus ante Cyrum observasì, nec non corre-
xisse vitia in locis quibusdam Diodori Siculi atque Orosii,
quae nec cum ipsis nec cum aliis incorruptis rerum gestarum
monumentis convenire judicabas. Deinde vero cunctis bonis
mentis amatoribus optimæ fœi fædum extulisse videbaris, in
oratione, quam habuisti, cum ex Eloquentia et Història-
rum Cathedrâ solemniter in Iuridicam transtres. Id enim
unice in univerfa Oratìone illâ agere videris, ut conjunctio-
nem politioris criticæque literaturæ cum Juris prudentia, lu-
diosis inculcare. Proinde gaudeo, hanc occasionem mihi ob-
latae esse, quæ confilio hujus occasionem de te ipso cognoc-
cerem, sperans futurum, ut quidvis potius quam inuiti
adè praecari mutationem in causâ tibi fuuisse intelligam.

Dux res sunt, ita regerebam, Clarisse Crucis, ad quas
responsum debeo; Prima quod tibi mihique gratularis, me
potius edidisse Digestiones à Praelectionibus Inuiamianis,
quae sistematicum Institutionis Imperatoris, Compen-
dium; Alteram, quod in Digestionibus meis ipse tuam
de criticis observationibus, quæ huc operi in primis con-
venire viderentur, fesellern. Quamquam autem conten-
tus esse poteram ãe laude, quam mihi in invidiam syste-
tum & compendiorum adéripitifi, habeo tamen rationes,
quæ nec hac in parte tibi penitus adfèntiri possim vel de-
beam.
and which thus restores for us this ancient science to its true splendour and integrity. For if you did not think that this should be done in those thoughts which concern classical literature to be joined to jurisprudence, it is difficult for me indeed to envisage when and where it will be right for this to be expected from you. I was quite expecting this to feature, because previously, when you were still involved with historical studies, you did not refrain from attempts at critical emendation. If indeed I remember rightly in the dissertations that you published De Temporibus ante Cyrum (On the times before Cyrus)\textsuperscript{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.\textsuperscript{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.”

\textsuperscript{16} The Tractatus de Temporibus ante Cyrum first appeared in Huber’s De genuine aetate Assyriorum et nigro Medonum disputations 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.

\textsuperscript{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 Franekeræ curn ex ordinaria Eloquentiae et Historiarum cathedra solemniter in Juridicam deducetur, ex historia iuris romanii utriusque studii conjunctionem exhibebat. See the Commentary Chapter IV.3., Feenstra BGNR Franeker, pp 49–50, nos. 133 and 134.
De Ratione docendi & discendi.

beam. Paranti de hoc instituto sententiam meam pluribus verbis exponere, Bokelmannus, comprehensa leniter manu meæ, Quin tu, mi Hubere, quod ad hoc caput attinget, inquit, huc homini cede tuas partes; nam id ego meliori iure vindicare mihi debeo, ad cujus invidiam vel contemptum, hæc orationis Crufianæ pars, si quid inde contemptus invidiæque potest ori, in primis redundat. Novimus nos inter nos Crufius & ego, atque libertatem oris animique ejus, utpote Zufanienfis ego vicinus Westphalus, & jam Colleger familiariique amicus tam bene perficat habeo, ut nec ego cauam irascendi habeam, quod coram instituta mea vituperat, nec ille sit ægre laturus; si pari libertate rationes ejus referam; libentius id Te communi amico praetere & arbitro facturus, quam si cum solo ipso vel seorlim apud ignotos aut minus intelligentes faciendum foret. Aequum Bokelmannus petere videbatur, ideoque & cum defidero meo censi respondendi Crufio transi; endum putavi, donec illi de compendiiis & fytematibus absoluisset, id unum stipulatus, ut quam æquitatem animi praecoeret Bokelmannus, hanc utque in orationis progressu fideliter praefaret, Utroque blando cum risu annuente.

Si quid mihi, pergit Bokelmannus, sucecfendum hæ causâ foret, non immerito queri possem, Ipsos jam pridem nimis odioflos in vulgus rumores & pene jam in diæterium abuiffe, compendium Bokelmanni nihil esse quam dispundium, forte an etiam conquererer, nisi eventus me compendiumque meum absolveret, omnemque dolendi causam publici aplauus frequentiæque gloria præcideret; nam fas eft, opinor, magnifice loqui adversus contemnentes & columnnas invidentium compelsere jaciantiæ? nec scio, an non brevi continuo auditorum meorum flagitationibus, de compendio meo typis publicis evulgando, morem gerere de-
As I was preparing to expound and expand my views on this practice, BÖCKELMANN, pressing my hand gently, said “Why do not you, friend Huber, surrender your rôle as far as this topic goes to me? For it is I who have the greater right to defend myself, as this part of Crusius’ speech is in particular overflowing with envy and contempt of me, if indeed any contempt and envy can arise therefrom. Crusius and I know each other, as he is a man from Zutphen and I am a neighbour from Westphalia and for some time a colleague and close friend\textsuperscript{18}, I know his frankness of word and thought so well that I have no cause for anger because he finds fault to my face with my practice, nor will he be resentful if I rebut his arguments with equal frankness. I shall do this more freely with you, a mutual friend, being present and acting as arbitrator, than if it had to be done with Crusius alone or somewhat apart in front of ignorant or less understanding persons.”

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

BÖCKELMANN began. “If there were anything in this case which should anger me, I could not unjustly complain that already exceedingly hateful rumours have been spread among the common herd and it has now almost developed into an epigram that “Böckelmann’s compendium (epitome) is nothing other than a dispendium (squandering)”\textsuperscript{19}. Perhaps I would also have grounds for complaint if the outcome did not clear me and my compendium\textsuperscript{20}, and if the glory of public approbation and support did not remove all cause of my grievance. For it is right, I think, to speak proudly against those who speak contemptuously and to suppress with high praise the calumny of the envious. And I rather think that within a short time I ought to gratify my students’ continuous demands that I publish my compendium in print.

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

\textsuperscript{19} For further comment on Compendium and Dispendium see the Commentary Chapter V.1.3.2 and Böckelmann’s Praefatio to his Compendium p[23].

\textsuperscript{20} According to Ahsmann-Feenstra BGNR Leiden, p 61, no. 32, the first edition of Böckelmann’s Compendium Institutionum Justiniani was published in Leiden by Felix Lopez in 1679. It was very popular and was followed by numerous other editions. However at the time our Dialogue is supposed to have taken place (July or August 1671) it could only have been in draft form and used in private lessons. This tends to argue against the 1671 date. Böckelmann is here talking of publishing shortly. However, it will be remembered that the Dialogue was first published in 1684, and by then the Compendium was certainly in print.
Iuris, Dialogus.

debean. Sed adhuc quidem Crucis doctissime, de compendiis & institutione methodica Juris, quatumur nihil quam dicta peremptoria, summaque inrissionum & scommata percepta, nec falsis dicernere potui, fitne vobis propositum, omne genus compendiorum & syntagmatum eliminare, vel an in meo libello sit, quod disiplieat & quod adseverioris disciplinæ legem emendatum cupiatis. Quod si placet, ut hac quaestionem defungamur, faciendum tibi cenfeo, ut de hoc genere totam animi tuum tentiam & quo pacto in docenda juventute procedendum putes, exponas. Cum enim Tu Aetoris, ego Rei partes sustiner videor, non habet resf cultivatem, ut defendendì rationes incantur, antequam litis intentio apte, certo, clare peracta & absoluta fuerit, fiquidem hæce tres proponenda intentionis suæ virtutes à systematicis nostris accepimus. Dein ego, sicur potero, contradictionis vices peragam litemque eo modo apud hœce duos, si videbitur, arbitros contreflabimur.

Quando res eo deducta est, ajebat Cruusius, age, non displieic conditioni, quid enim iunctius, aut facilius mihi, quam agere caufam, quæ tantopere ad animum meum pertinet, & eloquii apud amiciissimos homines, quod jam olim me coquit & verfa sub peñore fìxum! Nihil enim minus agitur in hac discepcione, quam de causis corruptæ jurisprudentiae, quam ego principem maximeque in oculos incumbentem hanc compendiariam docendi rationem effè, non verear profiteri. Credo, non vocabitis in controversiam, Artis nostræ gloriam à patrum nostrorum memoria velhémenter esse diminutam. Quis enim nostrum fine dolore animi potest comparare nominam studiaque eorum, qui superiori feculo jus illufrarat, cum his qui hodiæ familiarim inter jurisconsultos ducere creduntur? Vere dicere postfìm, Juris Artem his diebus nihil quam supervacuam atque alienam ab omni
But till now, dear Professor Crusius, I have received nothing [from you] but destructive remarks and the utmost derision and mocking concerning compendia and the systematic method of teaching law which we are using and I have not been able to decide properly whether it is your intention to eliminate all kinds of compendia and systems, or whether there is something in my little book which displeases you and which you want changed to a policy of more rigorous teaching? But if we decide to deal with this question, I think you must explain the whole of your view on this type of textbook and say how you think one must go about teaching youth. Then, since you are assuming the rôle of plaintiff and I am upholding that of defendant, the situation will not arise where the case for the defence is begun before the indictment has been appropriately, specifically and clearly stated and brought to a conclusion, if indeed we have adopted from our authors of systems these three steps in a proposed indictment. Thereafter I shall, as best as I can, raise the counter arguments and, if it seems good to you, we shall in that way submit the case to these two arbitrators."

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

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21 Cf. Ennius (BC 239-169):

_O Titus! Si quid ego adhuero, curamve levasse,
Quae nunc te coquit, et versat in pectore fixo
Eiquidem est pretii?_

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

These words from Ennius' _Annales_, 10.340, were addressed by a shepherd to Titus Quinctius 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; Alshmann-Feenstra BGNR Leiden, p 178, no. 427.

23 Cf. Noodt’s inaugural oration p 616, _... cur, ubi priora temporae nominibus tot excellentium jurisconsultorum inculcarunt, nostrum potissimum obscurum aequo ignobile, vix paucorum lumine et gloria illustret._ (Why, when earlier times were celebrated by the names of so many eminent jurists, are our times in particular dark and undistinguished, and illuminated by the light and glory of only a few?)
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omni non solum elegantia doctrinâque, sed & à communi ufu preferre subtilitatem. Quam nobilissimae disciplinae contumeliam non utique ipfius ineptia, sed inficiatione adsequentiue ego quidem imputandam cenfio. Quid enim ciff, quod impeditire nos ad candum Artis perfectionem eniti, modo eadem contentione viaque procederemus? At nunc studioi juris beatos fæ valdeque eruditos credunt, si brevia, qua venditatur, Artis compendia vix animo comprehenderint, & definitionum partitionumque summæ & actionum solennia carmina memoria mandaverint, artemque omnium principem & latē diffusam in angustas tabellas pauccasque & fœpæ ineptas quaestiones coarctaverint. Interim si quis siglorum & notarum ænigmata, si interpunctiones, si Glossas, si varias lectiones judicet atque discernat, si lacunas librorum juris legumque suppleat, si vitia, infecta, luxata detergent & reftuat, si Leges, plebscitâ, Senatus Consulta, formulaque actionum connexion & fugitiva retrahat, id omne nimis anxiæ fudderque diligentia efficacipitantur. Nec ita vulgus tantum imperite juventutis per inertiam aut ignorantiam, sed etiam Profeffores ipse mercedes aut ambitio-ne frequentiss auditorii in traniverium aguntur, ut nihil pen-san habcant, animos juvenili credulitate fluxos atque obnoxios corrupere, pulcherrimamque artem subvertere & parentum vota frustrari. Hi sunt, quib satis esse jactare, si vel binas quotidae horas studioi libris incumbant; Id enim spatium temporis sufficere abolvendo penflo quotidiano, quod illis & compendio preceptoris sui secundum ordinem lectionum privatum injungitur. Quid denique frequentius auditor, quam viam illam veterem ac regiam, asperam & præruptam, etiam obcuram & multis anfractibus detortam, coequelongam ac molestam effe; illam à paucis, quamquam sedulis atque ingeniosis vix multâ lucubratione & immerito labore vincii.
not only from any elegance and learning but also from everyday practice. I indeed think that the contumely heaped upon our most noble discipline is certainly not to be attributed to its inherent triviality but to the blameworthy ignorance of those who do not comprehend it. For what is there which prevents our working our way up to that same perfection of our discipline as our predecessors, provided we proceed with the same rigour and along the same path. But nowadays students of law believe they are fortunate and truly learned if they have barely mastered brief (for it is as such that they are recommended) compendia on the subject and have committed to memory the main points of definitions and partitions and the set formulae of actions, and have compressed the chief of all sciences and one with an extensive compass into a few small notes, together with often silly questions. Meanwhile, if anyone were to critically examine and distinguish between the enigmas of sigla and marks, punctuation, glosses and variant readings, if anyone were to fill in the lacunae in the books of law and in the individual fragments, if anyone were to identify and restore faults, omissions and misplacements, if anyone were to reconcile laws, plebiscites, senatus consulta and the formulae of actions, and recover the missing words, this is all considered to be excessively solicitous and stupid diligence.

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

24 Cf. Noodt’s inaugural oration p 616 . . . videri supervacuam atque alienam ab omni non solum doctrina atque elegantia sed a communi quoque non ac vita, subtilitatem 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 eruditos beatosque existimant, si quae brevia Artis compendia vix comprehenderint; et definitionum ac partitionum actionumque solemnia carmina memoriae mandaverint; Attemque late porrectum, in angustas tabellas, pascasque et saepe ineptas quaestiones coarctaverint. (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 mercedes et ambitione frequentis audienti adeo transversi aparur: ut nihil pensi habeant . . . animos juvenilis sedulitiate fluxos atque ahoicios corrupere, in primis parentum vota et republicae subsidia frustrari. . . . (But many professors, either from laizes or ignorance or the hope of gain or the desire for well attended classes, are so perverse that they think it of no importance . . . to corrupt the unstable and impressionable minds of the credulous youth, in particular to frustrate the desires of the parents and the interest of the state.)
Iuris, Dialogus.

vinci. Manc autem compendiariam, planam, simplicem, rectam, omnibus patere, ac ne fognibis quidem recordibusque inviam aut infraferabilem esse, eaque ad jurisprudentiam brevissime certissimeque perveniri. Ego vero censeo, plures illa nostrai vidi praeceliam scientiam obtinuisse, quam qui vulgarem & compendiariam inicere, qui etiam tum mihi, cum in Portum fium pervenerunt ac spera confecti sunt, naufragium fecisse videntur. Scilicet, fallit ambiguitas vocabuli; ea felsatio dicitur, ea mora est, & quod compendium vocatur, Sapientia damnun est. Quod sitantoperé Compendia expetant, ea privatim legant & habeant Studiosi; Antecessores publicè privatimque altius sprent; & positis his in Institutionum narratione totius operis sive ossibus sive membris, post deinde apta & diligent & accurata Pantaerarum & Codicis interpretatione, tanquam nervis ac thoris masculum illum prudentiae vigorem constringant pariter atque intendant. Verum quia plorosque penitus tam praefantis disciplinæ, cæ re angustiæ inclusa Jurisprudentia est; quæ quibus ipsi, quid tam eximiae disciplinae deinceps futurum arbitramini? Atque utinam exempla deesse huic tam juvo metui? Quid Livium imminuit præter Annæi Flori, quid Dionem Cassium, præter Xiphilini epitomen? St. Polybiunm, st Trogum Pompeium, stialos non contraxissent aut excerpissent Studiosi homines, fortissim integriss uteremur, neque in antiquarum rerum memoria tantus hiatus pateret. Eloquentiam videamus, quid eam perdidit, nonne compendiaria, per quam eloquentiae laudem affeçtant, qui nec dum benè loqui didicerunt? Quid multis ipsum Papianum, Paulum, Ulpiannum, quid abitu- lit aut accidit, nonne Compendiaria Justiniani? Quod si illa veterum extarent scripta, quantum ad rem literariam conferrent, quantum ad publicum, quis ignorare poterit; Mm mmm qui
On the other hand we hear that the road with compendia is smooth, simple and straight, open to all and not inaccessible and insuperable even for the lazy and unintelligent and by it one comes most quickly and surely to knowledge of the law. I indeed think that more men have achieved outstanding knowledge by my route than those who entered on the common compendiary route for they seem to me to have suffered shipwreck when they have come to their harbour and have achieved their hopes. But if it is the students who so greatly desire compendia, let them get them and read them privately. Let the professors aspire higher both in their public lectures and in their private lessons. And having set up as it were the skeleton or limbs of the whole work in a detailed exposition of the Institutes, let them then afterwards by an appropriate, careful and accurate interpretation of the Pandects and Codex, as it were the sinews and muscles bind together and at the same time extend the virile strength of legal science.

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

*† Scilicet . . . damnum est.
*† et positis . . . intendant.

28 See Böckelmann’s Praefatio to his Compendium passim; the Commentary Chapter V.1.3 and plates VIII and IX.
29 This passage from Scilicet to damnum est does not appear in the 1684 edition. Cf. Noodt p 621. Scilicet, fallit vos ambiguitas vocabuli, quae festinatio dicitur, mora est, quod compendium vocatur, sapientiae damnum est. (Indeed the ambiguity of words deceive you; what is called speed is delay, what is called a compendious summary is loss of wisdom.)
30 Cf. Noodt’s inaugural oration p 621 plane legat et habeat illa but Noodt advises the students (not the professors as here) to spirare altius (aspire higher).
31 The passage from et positis to intendant does not appear in the 1684 edition. But compare Noodt’s inaugural p 621 quin positis exarratione Institutionum totius operis sive ossibus sive membris, post deinde Pandectarum et Codicis lectione apta, diligente, accurata, tamquam nervis ac thoris, masculum illum prudentiae 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.
De Ratione docendi & descendī
qui intelligit, quantum potuerint erudita praefare ingenia, postquam illa Theodossiani Codicis, illa Licinii Rufini, Ulpiiani, Pauli, & Caii fragmenta luci restituta sunt. Hæc co pertinent, Viri Clarissimi, ut veras corrupta jurisprudentiae causas, simul quibus viis ea consecuta, his & florentem facile retineri & omnisam restituui posse, intelligatis. Atque hæc quidem summa fuit eorum, quæ Crufius, majore copia verborum pro instituto suo, difforebat.

Ad quæ Bokelmannus: Satis fecisti, inquit, Candidissime Crufi, postulationi nostræ neque mutatum controversiæ nostræ statum, ab eo, quod inde ab initio professus es, animadverto. Proinde hæc effo summa quaestiti nostræ, rectene Tu corruptæ collapsæque jurisprudentiae causæ adsignaveris hanc fyttematicam fœ quæ comprehendiarum institutionem, quæ nunc in Scholis Juridicis utimur, & cujus me sectatorem autoremque, denique, sic enim tibi placet. Reum effe profiteor, siquidem maleficium id opportet effe non tralatium, quod inertia, avaritia ac ambitionis macula deforme, corrumpenda jurisprudentiae causam praebuerit, ac etiamnum praefet. Denique, id animadverterendum erit, an ita faciendum sit, quemadmodum tu praecipisti, ut si quis omnino sibi necellarium putet eis modi compendium, quod definitiones partitionisque rerum, quæ sunt in Arte Juris, actionumque solennia tradat, illud sibi privatim habeat ac legat. Antecessores autem publice privatimque ne fæse ad tali demittant; nifi foritant, idque vix, in Institutionibus enarrandis. Ubi verò ad Pandectarum & Codicis interpretationem transierint, procul habitis id genus breviarior, ipsos veteres integros & illibatos aggregiantur. Ego ita exítimò tibiique consentio, Crufi, non effe perfectum Jurisconsultiæ, qui se veteribus, hoc est, iphis Pandectis & Principum Constitutionibus per se totiaque
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 formulæ for actions, he should acquire this for himself and read it privately. But the professors should not sink to such, either in public lectures or private lessons, except perhaps, and that only occasionally, in treating of the Institutes. But when they pass on to an exposition of the Pandects and the Codex, keeping that kind of summary at arms’ length, they should tackle the ancient writings in their entirety and undiminished.

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

Juris, Dialogus.

que legendis evolvendisque non dedat, sed nego id esse ten-
tandum, priusquam paratitlaris notitia omnium librorum Ju-
ris antiqui, exprompta memoria judicioque comprehen
dit, Nec arbitror ejus sententiae te fore, quasi Pandectae Princi-
puumque Constitutiones auditu primo ab adolescensibus & di-
ciplinæ juridicae ignaris intelligi posse finit. Nimis enim manife-
sta omnium qui jus didicerunt, quique medio in curiæ defece-
re, vel qui defunctoriæ id aliando inspexerunt, experientia
t e re futaret. Infinita rerum actionumque humanarum varietas
superans etiam Graecæ, nonden Latine Linguæ divitiis, fe-
cit, ut antiqui Artis hujus conitores, aliarum more discipli-
narum, nativos plurium verborum usus ad diversas abstræctae-
que significations transulerint. Quis fine eorum, ut vocan-
tur, Artis terminorum praviæ notitiæ, quibus referunt sunt ve-
terum nostrorum scriptæ, gravissimas & difficillimas eorum
commentationes intelligat, quæ species factarum ab illis
subtiliter involuteque subducat, si verba necundum singula
percipiat, memoria judicioque subigere, nonden explicare &
applicare posset. Nonne id perinde foret, ac si declama-ent (que te comparatio delecat) antequam Latine loqui
didicilent? Ne dicam eos, quibus summe rerum differenti-
æ, pertonarum necessitudines, obligationum vincula,
successionum judiciorumque ordo non innotuerunt, eos in-
tricatissimas de his rebus disputationes veteribus occurren-
tes nihil magis intellecturos, quam quilibet nostrumæ igni-
mator vel arcana mathematicum, quibus nunquam imbuti fure-
rimus, perciperet. Nefcio, quæ fit illa tua Cruss, aliorum-
que paucorum interpericis, ut omnibus in universum com-
pendius adeò fitis infestī, quibus nullum aequam ætas, nullus
aut eorum erudiendi juventutem carere se posse credi. Ipsè
Inflinianus jura populi Romani had altier et se tradi posse
judicavit, nisi primo levi ac simplici viæ, post dem de di-
M m m 2 gen-
to the reading and unravelling of the ancient writings, that is the actual Pandects and the Constitutions of the Emperors in their entirety, but I say that this is not to be attempted before a summarised knowledge of all the books of ancient law has been understood, and committed to memory for easy recall and assessment. And I do not think that you will be of the opinion that the Pandects and Constitutions of the Emperors can be understood at a first hearing by adolescents who are moreover ignorant of legal learning. For you would be refuted by the exceedingly clear experience of all those who have studied law but have dropped out in mid-course or who have at some time looked into it cursorily. The infinite variety of topics and of human actions, exceeding the riches of the Greek, much less of the Latin, language, brought it about that the ancient founders of this discipline, as was the custom in other disciplines, applied the original use of many words to different and abstract meanings. Without previous knowledge of the technical terms (termini Artis) as they are called, with which the writings of our ancient authors are packed who would understand their most weighty and very difficult treatises? Who could commit to memory and assessment, far less sort out and apply, the types of acts introduced subtly and obscurely by them, if he does not even understand individual words? Surely it would be (and I know you’ll like this comparison) just as if students were practising declamations before they had learned to speak Latin. Let me not say that those to whom the major classification of things, the relationships of persons, the bonds of obligations and the order of succession or of trials are unknown, will no more understand the intricate debates on these matters which occur in the old writers, than any one of us would appreciate the enigmas and secrets of mathematics in which we have never been steeped.

I do not understand this intemperate attitude of yours, Crusius, and of a few others. Why are you so hostile to all compendia in general? At no period ever did any teacher of young men believe that he could do without such. The great Justinian32 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

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

gentissimâ atque exactissimâ interpretatione singula comple-
ceretur. Quin cum prudentissimus Imperator commenta-
rios ad Pandectas Codicemque sub falsi peñâ seribi vetuerit,
Paratilla tamen, id eft, singularum titulorum summas &
compendia, quibus non posle carere dicentes intelligebat,
illis suppetitari permittit: Contra quum vos, præcisus reje-
citique compendiis, tyrnes velstros ad ipfa, quæ vocat Ca-
far, immensa volumina commentanda producitis. Porro
quid ego hic de Aristotele, Cicerone, Quintiliano aliis-
que hominibus doctissimis auctoritates & testimonia profe-
ram, quid de hoc & superiori seculo narrem; cum nihil fit
manifestius, quam id egiffœ omnes à compendiis ut inciperent
alterque in ullâ studiorum disciplinâ facere solitum esse nemi-
nem. Tu adolefcentes nullis, inquam, preparatos initiis
gravislima juris antiqui volumina vis aggradì? Sic Me-
dicinae admovendos doce confeliim totos Hippocratem atque
Galenum evolvere; Philosophos Aristotelem atque Pla-
tonem edificare, Rhetorices Historiæve studiofos immenfà
veteris eloquentiae rerumque gestarum monumenta curari,
Sine dubio pari, qua nos, infamia dabis insignitos artifices
compendiorum Historiarum universalis & Systematum Rheto-
icorum. Nemo peius de politiore literaturâ meritus erit,
quam Ioannes Gerarius Vossius, qui de omnibus human-
noris doctrina partibus compendia atque systemata fecit,
etiam de Arte Historica, quam ante cum nemo in Artis
formam redigi posse praestumpsra. Tibi quoque Theologii
fæcæ doctrinæ corruptores videbuntur, qui compendiis &
Systematisbus rudium adolefcentum animos ad diffuam re-
rumrarum notitiam introducerunt atque etiamnum in eo-
dem instituto perfeverant. Quid mihi adverfus hanc neces-
fitatem de Livio, de Trogo, de Dio, de Polybio narras,
qua breviariis illi nobiles Autores interitum adijissent.
Quid
most diligent and precise interpretation. *Moreover, although that most sagacious emperor forbade, under the penalty for falsity, the writing of commentaries on the Pandects and Codex, nevertheless he permitted them to be provided with paratitla\textsuperscript{33}, that is summaries and compendia of the individual titles, for he realised that students could not do without these. Unlike you who, flatly refusing and rejecting compendia, lead your beginners to studying those “boundless”\textsuperscript{34} (as Justinian calls them) volumes.† Indeed, why should I here provide examples and evidence from Aristotle, Cicero, Quintilian and other most learned men? Why should I tell of this and the previous century? For nothing is more obvious than that everyone has used compendia as a beginning and that no one is accustomed to do otherwise in any programme of study. That’s why I say ‘Do you wish the young, without any initial preparation, to attack these most weighty volumes of the ancient law?’ Thus you would say, ‘Teach those who are to be trained in medicine right from the start to read Hippocrates and Galen in their entirety; teach philosophers to commit to memory Aristotle and Plato, and rhetoricians and students of history to examine in detail the boundless records of ancient rhetoric and ancient achievements.’\textsuperscript{35}

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

*† Quin cum . . . commentanda producitis.

\textsuperscript{33} See Constitutio Tanta § 21.

\textsuperscript{34} Latin immensa. Constitutio Omnem § 1, ex tam immensa legum multitudine (from such a boundless multitude of laws).

\textsuperscript{35} Cf Oratio IV pp 95–96 Quis logicam, quis physicam aut moralum scientiam ex ipso Aristotele adolescentibus hodie tradendam putant, quis Medicinam doceat in Academiis ex Hippocrate vel Galeno . . . (who would today consider teaching young men logic or physics or ethics from Aristotle? who in the Universities teaches medicine from Hippocrates or Galen . . .?)

\textsuperscript{36} This eminent scholar’s name is Gerardus Joannes Vossius, not Johannes Gerardus Vossius as in the text. See further Rademaker Life and Work of G.J. Vossius.
Iuris, Dialogus.

Quid habent simile Compendia, de quibus nos loquimur; kam iis, quibus antiqui Scriptores coarctati sunt? An nos Digesta Codicemque contrahimus, ita ut Livius à Floro Dion à Xipholino, Trogus à Justinio contra τε fuerint. Adeune Tu dividere necis compendia Notionum & regulorum; quibus percepis, Ars quacque facilis intelligi potest; ab epitomis, quibus ipsi libri angustà formà describuntur & exhibentur? Quanquam ego ne quidem studium faciendi tales epipomas damnare sutilissem, quibus fáspientia similis Viros intelligo utos esse, multique etiamnum maximo cum fructu utuntur.

Etiam, me aut omnia fallunt, aut omnina lectionis memoria definit in compendiariam rerum dictorumque notabilium, qua legendo audivi doneque percurrimus, intelligencem. Quam si meditando ruminandoque subaca, scripto comprehendam, verbiqueste suorum Auctorum expressa signataque fuerint; quae prefior efficaciorque proficiendi, animoque res pulcherrimas imprimendi methodus excogitari posset, ego quem non intelligo. Etiam vero judicium, quod in omnium rerum humanarum doctrinae generale longe maximi scimus esse momentum, hoc modo accerrine validissimeque exercetur & confirmatur. Quin etiam qui à fē lecta perceptaque alis tradere & incuclare cupiunt, si, quam memoria intellecutque complectuntur, ea in compendium dictions redigere fuisque auditoribus succincte ob oculos exhibere non possum, ut quoque disceptuli audita secum ipsi colligere & contrarīa recolare animoque recondere quaeant, neueri, quam res cædem latius explicare & ad usum applicare poterunt: Adeoque si qui in eo preceptores auditorisque gloriām ponunt, quod compendiarii non sunt; cædem operi licet, ad docendum dictionemque, pene dixeram, ineptos fœ fateantur. Ego quidem nihil prius studiós, qui valde...
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What do the compendia about which we are talking have in common with those summaries into which the ancient writers were compressed? Do we summarise the Digest and the Codex just as Livy was summarised by Florus, Dio by Xiphilinus and Trogus by Justinus? Do you not know how to distinguish the compendia of concepts and rules, by learning which a discipline can be more easily understood, from epitomes, where those actual books are copied and presented in an abridged form? Although I, for my part, would not even condemn the work of creating such epitomes and I know that wise men have used them and many even now use them with the greatest benefit.

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

*† Etenim... putaverint (p 16).

37 The following lengthy passage (marked * to †, Etenim me aut omnia fallunt, (p 13) to supprimendum perdendumque putaverint (p 16) which was absent from the 1684 edition but which was added to the 1688 edition, is taken almost entirely from Huber’s Specimen philosophiae civilis, 1686. This passage was repeated in its entirety in Huber’s Opera Minora (1746) in the Praefatio p[78] to the reprint of Institutionis Republicae Liber Singularis (see Feenstra BGNR Franeker, nos 219-220, pp 75-76). However, a section of 22 lines, pp [8–9], is omitted. It comes between orationis utebatur and Minrum est equidem. See p 14. Veen, in his footnote 63 (p 159) to his Exercitia says that this passage is adopted from the 1684 edition of the Dialogus. It actually does not feature in the 1684 edition. A careful collation of texts, however, suggests that it was first written for the Specimen in 1686. Later, in 1688, sentences and a paragraph relevant to Aristotelianism and Cartesianism were removed and the rest, with a linking sentence or two, was inserted into the 1688 Dialogus. In the Dialogus Huber is putting his own words into Böckelmann’s mouth and the Specimen provides evidence of this.
De Ratione docendi & descendi

peremptorique, ut ita loquer, difficere volun, auctorem, quam compendia facere scrip tongum, qui pleniore manu res ipsa se cura necessarias trahant. Horatius, si unquam aliter homo quipam fapiens rationem putavit, idem moner, Quicquid praecipies est brevis, inquit, nec metuit doctrinæ

iterilitatem, Namque ubi cito dicta percepit animi dilute, tunc omne supervacuum pleno de poëtore manat, ut idem atque frater. Quin doctissimos homines, maximos esse

compendiorum, neque majores ullos, quam qui libri condon

in his, bibilothææ ambulantæ vocantur, oportet, argumentumque praetantia hujus instituti vel maxime præbet, quod ab omni antiquitate, quanto quisque minus ineptus fapien<i>ta</i>eque videtur esse confutatorioris, tanto majorem in dicendo scribendoque compendii habet rationem, ut olim Lacones & Homericus Neitor, qui nec regi aliud magis licet, compendio sed efficacissimo rationis uteratur. Quaod autem, Optime Cruïs, ab eujmodi Epitomis, insignium aliquot

scriptorum edades lacunæque, summo cum orbis literati detrimenio, caufam accepisse quieris, an auguraris, Mirum est equidem, hanc rationem non modo non deterruitve ver

teres a compendii eujmodi faciendo & publicandi, sed coïdem etiam, tot secularum experientiâ, talem inde psfetem oriri non fuīfæ convic tons. Nam ut aliarum artium historia rumque epitomatores antiquos silentio praeteream, inter Jurisconsultus ipsosque gravissimæ sapientiae conditoriæ non modo Hermesianum epiftomas scriptiæ conflat, verum etiam, t Paulum inter auctores Pandeartam antefignanum Alfeni Vari quadranginta libros Digestorum in epitomen re deßiæ, idemque Isvolum facie de libris decem Labeo nis posteriorum, inscriptiones excerptom in Digestis loquuntur; que tamen iphæ opera principalia postquam erant ex cerpta, nihilominus salva integraque ad atatem utque Ju

ftiniani,
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who stoutly and resolutely, if I may say so, wish to learn, to make summaries of the writers who deal over lengthily with material that it is necessary for them to know. Horace\(^{38}\), (indeed expressing the opinion of all wise men) gave the same advice ‘Let whatever you teach’, he said, ‘be brief’ and he did not fear that his words would fall on stony ground. For, as he himself avers, ‘when impressionable minds grasp what is said concisely then everything that is unnecessary runs off from the full mind’. For it is right that the most learned scholars should be the greatest workers with compendia, and none more than those who are called βιβλιοθηκαί ἔμπνευσις (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 παρά μεν ἄλλα μάλα λέγεις (few words but spoke very clearly)\(^{39}\). Concerning your complaint, most excellent Crusius, or your guess, that the destruction of the works of certain outstanding writers or the gaps therein, a great loss to the world of letters, is caused by epitomes of this kind, is it not indeed amazing that this reasoning not only did not deter the ancients from composing and publishing epitomes of this sort but that these same ancients, with the experience of so many generations behind them, were not convinced that so great a bane arose therefrom? Now, to pass over in silence the ancient epitomisers of the other arts and of history, it is agreed that among the jurists and the actual founders of our most venerable jurisprudence not only Hermogenian wrote epitomes but also Paul, one of the chief sources of the Pandects, is said to have reduced the 40 books of Alphenus Varus’ Digest to one epitome; and Javolenus did the same for the 10 books of Labeo’s Posteriores, as is evident from the inscriptions to the fragments in the Digest. And we see that these original works, after they were epitomised, nonetheless survived unharmed and intact, right until

\(^{38}\) Horace Ars Poetica 335 et seq.

Qui quidquid 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 Compendium Institutionum Iustiniani, Amsterdam, 1710, at the end of his introductory Methodus Institutionum Imp. Iustiniani, [p 14]. Huber cited them in the Praefatio i.e. address to the students, in the Positiones Iuris 1682 and also in the Praefatio of the Institutionis Reipublicae Liber Singularis; see Feenstra BGNR Franeker p 67, nos 191-196.

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

fliniiani, qui omnia supprexerat, ut volunt, per annos quad-
tringentos & amplius, ex iisdem titulis capitum in Pandet-
etis, remanississe videmus. Quanquam si authenticae scripto-
ribus compendiis instituto praejudicari poterat, id ab
ejusmodi metuendum sufflet epistomatoribus, qui doctrinâ
laudabat universa opinione veteres illos prolxioreseque au-
tores, quos contrahebant, omnium hominum reputatione
superabant. Ego vero nihil errare me putem, si Labeonis &
Alfeni Vari scripta ab usu temporum Pauli & Iavoleni
remotoria, ex quo à tantis viris contracta in oculos homi-
num reducita sunt, frequentius libentiusque à studiois,
quam prius, lecta fuisset dixer. Vulgaria quidem ingenia
folis epitomis ut contenta fuerint, neminem tamen, cui
studia ad animum pertinerent, extitisse credo, qui non è
lectione compendiis ad ipsa veterum illorum majoraque
scripta videnda & exploranda inflammaretur. Neque fane
quod Hilligerus & Vinnius Donellium nostrum, alius Thua-
num, feiplum Mezerayus, alique multi alios hodieque
contraxerunt, ullum adhuc periculum imaginari possit,
quo ipsi Autores illi è manibus hominum doctorum excu-
tantur minorique pretii, quam alias unquam, habeantur.
Quin si quem id genus scriptorum compendia, diffendi
voluptate afficiunt, aliter evenire non potest, quam ut,
qui praefiantiam operum illorum, quasi per tranfennam vi-
derint, in ipsa ufque penetralia intimoque receps & lati-
fundia progresd & exspatriati velit. Ceterum, quod inter
antiquos aliquot praecipui scriptores, quorum adhuc integra
compendia extant, (Iuris heic alia ratio est) grave de-
trimentum passi sunt, id ipse epitomis accepto ferendum
esse credam, ubi quae causâ populos omnes nationesque in
Europeâ sedibus suos excivit, urbesque & regiones ita evertit
ac immutavit, ut plerumque ne nomina quidem superfint,
hanc.
the days of Justinian who suppressed, as they say, all the writings of jurists of the past 400 and more years. However, if the use of compendia was prejudicial to the original writers, surely the same fear would have threatened these epitomisers who in the opinion of all men far exceed in learning and generally acknowledged merit those ancient and more prolix writers whom they epitomised. I would think I would in no way be wrong if I were to say that the writings of Labeo and Alfenus Varus which were comparatively unrelated to the practice of the times of Paul and Javolenus, by whom they were excerpted and re-introduced to scholars, were thereafter read more often and more readily by students than previously.

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

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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 Civiis, 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 Heedensdage Rechtgeleertheyt (1686) in the Begijnen der Rechtende (1684). See Veen Exempts, p 142 ff; ibid Recht en Nut p 183 ff; Feenstra BGNR Franeker p 75, nos 219-221; p 76, nos 222-224; p 94, no 290; p 73, nos 209–210.
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hanc ad libros manuscripts abolendos minusendoque apud gentes barbaricas, jure belli in humana divinaque omnia grasiantes, non sufficisse cognovero; aut si alii Auctores, quorum nulla suere compendia, clementius habitos esse magisque integros, ad nos pervenisse, compertum est; fide eadem belli clade cuncta fuerint involuta, fide Christiani veteres religiosae infest gentilis sapientiae monumentis, quod belli incendium evaserat, id imprudenti zelo piæque intertemperie supprimendum perendumque putaverint. Ne Justiniani quidem Caesaris propitium in Corpore Juris contrahendo tam mihi reprehensione dignum quam necessarium fuisset videtur, si in modo contractionis reæeiam tenuisset. Nifi tu putes Iulii quoque Dictatoris consilium eadem notæ censoria prosequendum, quod ille Romani juris, suam tum magnitudine laborantis, compendium publicare decreverat. Ego vero magis Hubero nostro adfende-rim, qui in oratione, quam modo laudabas, inaugurali, non putat effe nefas iracdi Mari Bruto, quod nimirum crudel est vitii odio & improberà fettinione faluberrimi conatns fru-ctum humano generi studioque Juris intercipient videatur. Etenim quanto cultius Justiniano Iulii Caesaris ingenium, quanto melior & docetor Triboniano fuist Tebatius, quan-to beatiora florentis Romae quam jacentis & à Gothis opprime-sæ tempora, tanto concinnius ac eruditius Iuliano præ Justiniano compendium extitit. Verum, te arbitro, Crusi, est quod gratulemur Iulii Caesaris manibus qui pro amore, dorm infamium fatum, quod clarissimi nominis memoriam compendii juris titulo non dehonestavit.

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

And not even the Emperor Justinian’s plan to abridge the body of law seems to me to have been deserving of censure but needful, if only he had kept to the right track in his policy of abridging. Unless you think that, because the dictator, Julius Caesar, had decreed that there should be provided a Compendium of Roman law which even then was suffering from its great bulk, his proposal should be marked with the same ignominy. Truly, I rather support our friend Huber here, for in his inaugural address which you have just cited, he expresses the view that it is not wrong to vent one’s anger on Marcus Brutus for, because of an excessively simplistic hatred of servitude and unfortunate haste, he is 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

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

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

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

me nolle dixi, ut Anteceflorès illis explicandis operam detain, Studiosi vero quominus ea domi haberent legerentque, non interceñi.

Bene recordor, ait, Bōkelmannus, cum tu modo, indignabundus; Quod si tantopere compendii despectata, aejbas, studiòsi, habèant ea privatim acutanunt, ut libet. Non obscurè significans, gratiorem tibi fore studiorum viam, quà fine compendii, tanquam bonè mentis remoris, veteres iplos incontinenti aggregarentur. Et sic, noli dissimulare, Crucis, qui fètām tuam sequuntur, de nostra methodo fentiant ac in vulgus opinantur; meum Compendium, dicunt simpliciter, esse dispendium studiorum, quod tu wōgenepian fugiens felicet, damnum esse dicebas. Sedulo id agunt, ut studiofam juventutem ex auditorio meo, tanquam è Scylla vel charybdis, ut in Cebesis tabulà fenex ille facit, qui pueris vitam ingredientibus rectam viam prænuntiat, quà ad veram sapientiam pervenire queant. Sed bene habet, quod rationes veltræ ad cælì communì abhorrēnt & prejudicio generis humani damnantur; nec minus primo intuitu, quam experientià docente, liquent in hoc esse comparate, uti rudès & infirmos animos studiosorum multitudine ac varietate rerum onerent; duorumque alterum, aut deserta studiorum efficiant, aut cum magnì labore ferius ad id perducant, ad quod leviores vià duæti, maturius perduci potuissent, ut sapientissimus Imperator de hac ipsta institutionis discrepantia loquitur. Idque te ipsum Crucis, non putò negaturum, quin tibi sic eveniat; quando fatis confatat, te hanc ipsam ob causam, duntaxat in Institutionibus, eàdem vià definitionum atque partitionum, velis nolis, procedere cogi, alioquin omnibus à primo limine defecturus auditorium tuum. Adeone vero facilis tibi videtur hæc compendiorum doctrina, tam humilis, ut Professóris. 

N n n n n rìc
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I said that I did not want professors to devote their efforts to expounding compendia, but I have not protested against students having them and reading them at home.”

BÖCKELMANN replied: “I remember perfectly well that just now, full of indignation, you said: ‘If students are so greatly delighted by compendia, let them get them and read them privately, as it pleases them.’ You were clearly showing that in your eyes it would be a more acceptable course for students were they to approach the old authorities directly without compendia, as if these were an impediment to the right attitude. And so it is. Don’t pretend, Crusius, that those who conform to your school do not have their views about my methods and do not voice them openly. They baldly say *meum compendium esse dispendium studiorum* (that my compendium is a waste of study time).* You, seeking to avoid *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 Cebe’s 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 lead 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

* † Quod tu... dicebas.

...numerous commentators thereon, which led to great waste of trials and to general confusion. So much so, indeed, that Julius Caesar, among his special concerns for organising the State, reckoned that this disease was to be cured only by a great and bold remedy. Indeed, he had decreed that of the infinite mass of laws and arguments, all those that were unnecessary were to be set side and all the most excellent were to be put together in a few books, as was done many generations thereafter by Justinian. Had not Caesar’s unfortunate and, in this respect, undoubtedly inauspicious death befallen him, he would have achieved this within a few months with incredible benefit to posterity. As for me indeed, Brutus, enjoy your moral stance and as much as you like, blame the Ides of March on the Roman people. However, you considered your own immortal reputation rather than the benefit of the world, . . .

Oh, how would legal science have benefited from the wonderful service of the Great Dictator! How much more cultivated was the talent of Gaius Caesar than that of Justinian (may his most imperial spirit pardon me). How much better and more learned was Sulpicius than Tribonian. How unlike to some Dorotheus or Theophilus were Scaevola and Trebatius, how much more blessed were the times when Rome was flourishing than when it was laid low and oppressed by the Goths. How much more elegant, better-structured and more learned (the force of Truth wrests the admission from me) would Julius Caesar’s *Compendium* have been by comparison with that of Justinian!‡

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

45 On the use of *dispendium* and *damnum* in connection with learning from compendia see commentary, Chapter V.1.3.2. This clause from *quod tu... dicebas* did not appear in 1684, allowing the paragraph to read more logically without the intrusion of ‘You . . . less’. This is probably an addition made as a result of Noodt’s use of the term *damnum* in his inaugural oration *Conscripta Jurisprudentia* (p 621).

46 Cf. *Constitutio Tanta*, § 11.

47 See the Series Lectionum of February 1671 and of September 1671 (*Molhuysen Bromen 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.
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rīx vocis officio non indiga vel indigna sit? Miferet me conditionis tuae, qui, licet invitus ad tam humile scholae ministerium, ex parte saltem eaque infima te demittere sis coactus; quod tamen ante nos, quotquot iurisprudentiae claros & admirabiles posteritati fecit, gnaverit inquituerunt. Denique, non possum fatus mirari, qui sit, ut in re tam obviā, tam prostrātā virī undique docērīm tam rarō satisfacere possum expectioni desiderioque studiorum juventutis, cujus quidem judicium universae conspirantis, in hoc genere nullo modo spernendum esse, communis famæ experimentis jam pridem abunde compertum est. Sed mittamus judicia studiorum, quanquam his arbitrīs parum abstēnt, quin sitēt fata fortunæque Professōrum; compendia ipsā, sit placet eorumque in dolench consideremus, an ea tantum facilitatem vilitatemque prae se ferant, ut Professōribus indignum sit, ea privatim adolescentibus interpretari. Nam de publicis prælectionibus concedo tibi, non esse faciendum, ut in iis compendia, vel sytemata, vel quicquam, prater antiqua juris monumenta, celebretur. Verum non tātā, ut olim vocabantur, summæ institutiones, quibus privatim excrecemus adolescentēs, breviarum, sic ut vox for nat, esse debent, paucaque dictis universi juris fundamenta complēti regulāque tradere, quibus judicium in difficiliaribus rerum argumentis controversiāque regatur. Quod nec sine obscuritāte aliquā collocari, nec sine inducctione usu & exemplorum intelligi, nec omnino fine Interpretis ope conflitioque pericli potest, ut ego & Huberus & Winghamardius, & quicunque non gaudent insulae philiadia at communis via recedere, fateuntur; seīse inquam, non modo tempore, continua laboris intentione, fundamentales Institutionum Pandectarumque regulas & regulam rerum, quibus instruēti leges ipsas 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 *breviaria* (abridgements) just as the word implies and ought in a few words to embrace the basic principles of all law and to convey the rules by which justice is regulated in more difficult arguments and controversies. Even this cannot be done properly; it cannot be understood, without introducing usages and examples and, in short, it cannot be achieved without the aid and advice of a teacher, as Huber, Wijngaerden and I, as well as those who do not, because of foolish self-love, take pleasure in abandoning the common practice, will admit. They acknowledge that in no short time and with continual mental effort they learned well and soundly the fundamental rules of the *Institutes* and the *Pandects* and the κριτηρια (means to judge cases), and having mastered that, they could read the actual laws with profit.

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48 Cf. p 1 where those sentiments are voiced by Huber.
bene valideque didicisse. Non quod ego, vel quisquam
sanus homo studiosos tum grandis temporis ipatric ab iphis
legibus liberilique veteris prudentia exclutos velimus. Po-
positiones compendiorum vel imprimis ad hoc comparatae sint
opertae, ut indices legum praefent perpetuoque studiosos
ad fontes remittant, ne quicquam de principis juris crede-
re in animos inducant, nisi quod est Textibus iphis clare fo-
lideque probatum videant. Qui verò in id sedulò incum-
bit, ut summarias positiones illas Artis universalis, cum le-
gibus allegatis quotidian conserat eaque judicio distinguat me-
rorisque infigat, hunc ego non unius alteriusve horae ipat-
tio sed magnà parte diei noctisque vix possè defungi certus
& expertus sum. Quod velim, habeas, Crassì, ad famìum
fromma tuum, quo me, felicet, insignitum velòisti, nec
enim me fugit, quid hac de re in invidiâm facilis patis,
quam iuxta auctò fuistem studiosis, bene habere, si
vel binas ternasve singulis diebus horas studis privatissim
que compendio impenderent. Hac, felicet, est mollis illa
Bocelmanni disciplina, quâ juvenatis affectum fibi fre-
quentiamque conciliat, ut invidia criminatur. Sic est ratio
mea, Crassì, res hominemque civili considerare & expendere
judicio, consilia machinalique adhibere, quibus exitum
cuique negotio convenientem sperare liceat, non earna
non suppena, infinita, sublimia loci, non quarrere vias
in terris fecundum signa fiserum, ubi lapides monumenta-
que ob oculos extant, non inculcare studiosis grandia,
magna dicta, sed uti caélâ & inania rebus, demique non Her-
culis coturnos aptare pueris, quod tu in oratione modo
eflus, si quis unquam alias, fecis videris, Id agens, ut
quì recerter studia legum attingunt, mole doctrinae, quam
portare non posjunt, ut Juttianus ait, obviam, repudiatis cum fupercilio primâ eruditionis elementis, quibus
NNNN

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\textsuperscript{49}; 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’\textsuperscript{50} since with your arrogance the basic elements of the initial study are swept away. It is these elements which underpin and support the

\textsuperscript{49} Cf. Huber in the address to the students (\textit{Praefatio, in fin.}) to the \textit{Positiones}.

\textsuperscript{50} Cf. \textit{Constitutio Tinta} § 11.
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juvenes suffulte possint graviors & perfecliora scita legum suffrentare, ut iterum fanctissimus Cæsar.

Incendebatur Bökelmannus, quando Crusius, Næsu, inquit, in simpulo, quod ajunt, fluétus excitat, & nescio, quo pæco, parum abeat, 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 fuere, simul unoque spiritu effiuvii; nec omnii, Tu, quæ modo in hanc rem à me dixisti, responsonibus tuis confecisti. Concessi ego, si memoiristi, Antecedentes in Institutionibus explicandis non male facturos, si prima Juris fundamenta per definitiones divinioneque exquerentur; in Pandectis non arbitrabar id expedire. Quod antequam latius profequar, non possum silensio præterire, quod Tu compendiariæ Institutioni veltrae specieum Imperatoris authoritatis feutum jam tertium praetendis, quæ paratilla quæ secundum libros fuos componi permittit Justinianus, veltrae foret Compendia. Scito, quando fie in animum inducis, errareque vehementer. Erudire te potuit Johannes Leunclavius (in prologo de prisco paratitlorum usu ad Collectionem Constitutionum Ecclesiasticarum Balsamonis) qui mentem Justiniani de ratione docendi Juris per paratitla, docet hanc effe, ut licet, quemvis ad titulum adnotare, que alii in Titulis ac locis illum ad titulum pertinentia referantur. Hic priscus sicut, germanumque paratitlorum usus. At vero quid ei simile traditum a nostris paratitlum hoc evo scriptroribus? ait Leunclavius, quorum tu videlicet errorem fequeris. Idem fænus à Cofla Vir solo Cujaciao minor (in summariis ad ix. prior. tit. lib. 1. decretal.) idem Carolus Annibal Fabrottus. (in not. ad d. Consit. Ecclesiæf.) qui Cujacium, quid paratitla sint, ignorasse non dubitab adfirmare, quod
students ‘so that they can undertake the weightier and more perfect knowledge of the law’, to cite the Emperor\textsuperscript{51} yet again.”

Böckelmann was getting worked up when CRUSIUS said “Certainly, you are stirring up a storm in a teacup, as they say\textsuperscript{52} and I do not know why you almost seem to require me to defend a case of Majestas violata (treason) before the tribunal of Justinian himself. But, oh Great Patron of not-Great compendia, I have not blurted out at one time and in one breath everything that was in my mind with regard to your systems, nor have you, in your answers, covered everything that was just now said by me in this regard. I did concede, if you remember, that professors, when explaining the Institutes, would do well, in teaching the basics of law, to follow a system of definitions and divisions. I do not think this is advantageous in the case of the Pandects. [A2] *But before I proceed further, I cannot pass over in silence the fact that now for the third time\textsuperscript{53} you extend the specious shield of imperial authority over your method of teaching by compendia, as if the paratitla which Justinian allowed to be composed for his books were your compendia. Know well that when you suppose thus, you are mightily wrong. Johannes Leunclavius could teach you. See his views about the original use of paratitla in the prologue to the Collection of Ecclesiastical Constitutions by Balsamo. Leunclavius says that the following was Justinian’s intention on the method of teaching law by paratitla, namely that it was permissible for anyone to add notes to a title referring to those places in other titles and fragments which are found to pertain to that particular chapter. This indeed was the primary and true use of paratitla. “But what similar to that has been produced by our contemporary writers of paratitla?”, asks Leunclavius, and you indeed seem to be following their error. Likewise Janus da Costa, a man second only to Cujacius, says the same (in his summaries of the first nine titles of Book I of the Decretals), as does Carolus Annibal Fabrotus (in his notes on the said ecclesiastical constitutions). He does not hesitate to declare that Cujacius did not know what paratitla were and this opinion the learned scholar

\[\textit{Quod antequam . . . velle videbaris (p 22).}\]

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

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

\textsuperscript{53} Crusius is arguing that Böckelmann is here for the third time justifying his compendium on the basis of Justinian’s paratitla. The first time he makes this assertion is on pp 11 and 12, the second on p 17.
21

Iuris, Dialogus.

Aegidius Menagius Vir Cl. ad omnes qui Paratitla scripserunt, extendere non dubitat. Quare definies Imperatorii praecipit autoriitatem tam humile institutum, cujus te laudatorem profiteris, docendi jus est compendiiis, extolle re praenioique non suo exornare. Bene habet, replicare Bokelmannus, quod me cum Budaeo, cum Cypacio, cum tot eruditissimis etiam in ipso genere politioris literatura, hominibus, comparare suftines, in non pudenda infertia, quid paratitla Juftiniano significent. Verum si meopositis in harerone non pateris auctoritatiibus, ego me tuis nihil magnis obligatum fentio, quominus ipsel mes oculis, quid apud Justinianum paratitla fent, percipiam. Verba Cæfaris haec sunt, Sufficiat, per indices tantummodo & titulorum subtilitatem, quae in nostris nuncupantur, quaeam admonitatoria ejus facere in praefat. Digest. Interdict Imperator commentarios fieri, permittit facere singulorum indices caputum, subtilitatem titulorum, admonitoria quaedam. Nihil me omnia & fenius ipsel communisfallunt, Indices titulatorum nihil sunt aliud, quam breves rerum declarationes, quæ singulis capitibus tractantur, neque simplices indicinae, sed etiam admonitoria, quid res singulae sibi velint, idque per subtilitatem verborum, hoc est, teneum levemque expositionem, quam proprie subtilitatem esse non ignoras. Quo pacto summaria nostra compendiaque melius & expressius designarentur, expecto dum ratione vel auctoritate probes. Imo nec hoc velim obliviscari, ut haec verba tuis juribus fugitivis, hoc est, e fede tua remotis, quorums annotationes paratitla vis esse, tam bene convenire doccas, quam nofris ea summariis sive Compendiis, exacte convenire probavi. Quod autem ad vocem attinet, can, sive notare velis, quod præter vel quod juxta titulos adjicitur, quod utrumque prepositionis significatio præfert: Nunn 3 in
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Aegidius Menagius does not hesitate to extend to all who wrote *paratitla*. And so why do you not cease to extol, on the authority of an imperial order, and embellish with someone else’s commendation, so humble a practice, as teaching law by compendia, which you claim to eulogise?"

"It is good", replied BÖCKELMANN, "that you continue to compare me with Budaeus, with Cujacius and with so many men who are also most learned in polite literature itself, and also pardonably ignorant of what *paratitla* meant to Justinian. But if you do not allow me to cleave to the opposing authorities, I feel that I am in no way bound to your authorities in that I myself perceive with my own eyes what *paratitla* are in Justinian. The emperor’s words are as follows: ‘Let it suffice to make certain comments on it [the *Digest*] by means only of indices and clarifying notes (*subtilitatem*) on the titles. These are called *παρατίτλα* (*paratitla*).’ See the preface on the purpose and plan of the *Digest*55. The emperor forbade commentaries to be written, but he permitted indices to be made of individual sections, also clarifying notes to the titles together with certain comments. Unless I am totally mistaken and even common sense deserts me, the indices to titles are nothing but short statements of the material which is treated in the individual sections; they are not mere listings but also comments as required by the individual topics and this is done by fine definitions of words, that is by a precise and uncomplicated explanation which you are well aware is the strict meaning of *subtilitas*. I am waiting until you prove by reason or authority by which term our summaries and compendia would be better and more clearly described. On the other hand I would not like you to forget this so that you may teach that these words conform to those ‘fugitive’ laws of yours, that is those removed from their proper places, which notes you consider to be *paratitla*, just as well as those I have proved precisely conform to our summaries or compendia. But however, as regards that word *παρατίτλα* (*paratitla*) I shall not quibble if you wish to indicate that it means that which is joined to a title in addition (*praeter*) or which is added alongside (*juxta*); the significance of the prefix *παρά* allows of

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

55 The reference here is to the *Constitutio Deo Auctore* § 12 the words of which have been reproduced almost verbatim. The same sentiment is expressed, but in slightly different words in *Constitutio Tinta* § 21.
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in non magno discrimine ponam. Ego vero, Crusiust, nullo modo id agebam, ut de vocis hujus notatione litigarem: sed utrovis modo eam interpretari velis, mihi ad rem ipsam progresi fatius videtur. Nimis alte modo intonabas, quando me contempti Cæsaris reum peragere velle videbaris. Quanquam ego Te Bökelmannae meliore jure, si non hoc totum ineptum est, laetæ dignitatis Cæsareae deferre possem. Nam si omnino libellus aliquid primæ institutionis ad inchoandam Juris disciplinam opus est, quæ vos agitat infamia, ut alium compendium quæratis, quam Cæsar ipse Justinianus composuit & Juventutis folicite commendavit? Quæ neget, hunc effe contemptum Cæsarei institutum, quæ neget fieri non posse, quin detrimentum studia tyronum capiant, si alius discendi principiis, quam ipsius Jurisprudentiae conditoris, imbuantur? Quid alium neoterici compendiorum Sualores & Autores agunt, quan ut pulchrum Academiam ipolient illo notabili honore, quem Justinianus tam magnifico illis imputat, cùm ait, Digni tanto honore tantaque reperti felicitate, ut & initium vobis & finis legum eruditionis, a voce principali procedat? Quam vero illud est, quod Studiosis hac perversa methodo eripit, quod qui Justinianum veteresque Juris Autores adliduo legunt, eorum dicta fentientiaque sibi familiares redditas, semper & ubique non modo in Scholis, sed etiam in foro laudare & allegare possint, multò certè luculentius & efficacius quam regulas itorurn compendiorum, quibus Æ vulgus Candidatorum, si dis placet, magnificare solent. Denique, certitudo fententiarii Juris non potest haberi ex hodiernis systematis, cum autores eorum alii ab aliiis ex alia mutuo differenti, & quod ex uno didiceristi, si ad alium te transferas, iterum fepe dediscendum sit. Ex adverso, qui folos veteres sectantur, quicquid didicerunt, immutabilia auttoritate ad
both meanings.”

CRUSIUS said: “But I was in no way concerned about arguing over the meaning of this word but which ever way you wish it to be understood, it seems to me better to proceed to the actual issue. Just now you sounded off mightily when you were trying to accuse me of denigrating the emperor.† Although, if it weren’t completely stupid, I could with more right accuse you, Böckelmann, of insulting the dignity of the emperor. For if there were at all any need for some beginner’s text-book to introduce the study of law56, what madness drives you to seek a compendium other than that which the emperor Justinian himself composed and solicitously commended to the young? Who will deny that this is contempt for the emperor’s instructions, who will deny that this cannot be done without the studies of beginners suffering harm if they are imbued with basic principles of learning other than those of the founder of the legal discipline, Justinian himself? [A3] What are the modern advocates and authors of compendia doing other than depriving the young university students of that distinguished honour which Justinian so magnificently ascribed to them when he said that they should enter on their studies ‘being found worthy of so great an honour and of such great happiness that both the beginning and end of your legal education proceeds from the mouth of the emperor’57. How valuable is that which is being stolen from students by this perverse method! For those who carefully read Justinian and the ancient legal writers can always and everywhere cite and adduce their statements and views, thus rendered familiar to them and they do so not only in the law schools but also in the court, and certainly much more authoritatively and effectively than they do the rules of those compendia on which the common herd of candidates, if they are lucky, are accustomed to pride themselves. In conclusion, certitude regarding legal opinion cannot be got from present day systems since the authors differ (δις δια πασωνων) one from the other and what you have learned from one, must often be unlearned again when you betake yourself to another. Conversely, those who assiduously follow only the ancient writers trust that whatever they have learned will with immutable authority continue steadfastly till their

56 This passage from ‘For if there were . . . ’ to ‘. . . commended to the young’ (Nam si omnino to juventuti sollicitate commendavit) and the following passage from ‘what are the modern . . . ? to ‘. . . they trust . . . ’ (Quid aliud neoteics to confidunt, p 23, are taken almost verbatim from Oratio IV p 90–91.
57 See Pro-oemium Imperatoriam majestatem § 3 in fin.
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extremam usque qene tam in doctrina scholarum usque vari
perseveraturum esse confidunt. Præterea, ex eo, quod Tu
ipse confusus & profusus es, illa compendia, styloscribenda
esse brevi atque conciso, fieri non potest, quin eorum, qui
talibus adfuecunt, ingenium atque oratio sterilitatem & nec-
cio quam contrahant ariditatem, per quam adolecuentes,
quos maxime decet ubertas & florida dicendi copia, dege-
nerant & corrumpuntur. Notum est etiam, qui Juris stu-
dium feliciter exercere solut, eos amanitates historicas
humanioresque literas, cum eo coniungere debebere, quem-
admodum fieri oportere Te ipsum sic & alios femper esse
refutariu & modo mihi contendenti ultrro esse largitum. In-
fuper, Ars ipsa juris e methodo pervertitur aliumque in-
duit habitum, quam à Juris conditoribus accept & quam
habere debet. Repletur novis Principiis terminis, ut
ajunt, semibarbaris atque fictitiiis definitionibus & parti-
tionibus in systema scholasticum deformatur, Quare fit, ut
studiis inde ab initio novis immixi fundamentis, in progre-
fit & in ipsa praxi rationes decidendi non tam ex limpidis
antiqui juris fontibus, quam ex lamis & lucinis, e pra-
ceptis regulisque systematicis petere conueientur. Qui
non abominetur hos compendiorum fructus & speci-
mina!

Respiranti Crufo, Mirari equidem liceat, Crufo, re-
pondet Bokelmannus; quod cum hae rationes tibigraves
validaeque videantur, in prima oratione tua nihil ejusmodi
mihiueris, fed abrupta severitate nihil quam nigrum theta,
compendiis inurendum putaveris; quo nihil omnium tem-
porum humanumque eruditorum exemplo, judicioque ma-
gis adversum poterat fingi. Unum, fateor, adjeceras,
quod me fugirefutellentem; Indignabundus, si quis omnino
compendiis delestatetur, ægre concelebras, ut ea priva-
tim


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extreme old age both in the teaching of the schools and in the practice of the court.

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

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

\textsuperscript{58} See Huber’s inaugural oration passim and the Dialogue p 51 ff. I cannot find evidence that Böckelmann endorsed this view. Rather the contrary if the Praefatio to his Compendium is any guide.

\textsuperscript{59} The metaphor of drawing knowledge of the law either from clear streams or from befouled and muddy puddles is presumably originally drawn from the \textit{Constitutio Omnem} § 2, where it is written of the Institutes that they are \textit{ab omnibus turbidis fontibus in unum liquidum stagnum convivatas} (drawn together from all their muddy sources into one clear lake.) A similar idea, \textit{mutatis mutandis}, is used elsewhere by Huber, e.g. in his Inaugural Oration p 115 and p 118 and by Böckelmann in the Praefatio to his Compendium. The metaphor also appears on p 46 of the 1684 edition.

\textsuperscript{60} The passage from ‘… it is inevitable …’ to ‘… from the precepts and rules of the systematists’ (\textit{fieri non potest to conseuerint}) is taken almost verbatim from Oratio IV, p 90.

\textsuperscript{61} \textit{θ} (theta) stands for \textit{θανατος} — death, condemnation, mark of censure. It was used by the Greeks on their voting tablets as a sign of death.
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tim habent legentque studio, ceterum juxta Pandectas atque in Codice nihil ejusmodi usurparent. Sicut in omni hac disputazione, Cursus, pro tuo potius quam pro communi rationis captu differis, ita nihil imprudentius, nihil ad discendi docendique juris ordine alienius adfirmari potuit, quam in Institutionum explicatione compendium Artis usui venire posse, in Pandectis & in Codice non esse ferendum. Quis non contra videt, si quis abhorrebeat ad novitias sytematiibus, eum quod ad Institutiones attinet, in promptu habere Justiniani compendium, quod Imperato- rem ad hunc ulum parali & preceptis ille juventuti, intel- leximus. In Pandectis autem & in Codice, cum seiret alia- quid esse necessarium, quod summae eorum librorum do- ctrinam exhiberet, industriam Professorum commitit, ut paratila, id est, singulorum titulorum summarias expositiones (hunc vocis fenfum, velis nolis, jam mihi concede- re debes) in ulum discipulorum componerent. Quid autem Te movet, Cursus, ut secundum Institutiones methodum finiendi partiendique tandem aliquando ferre queas? cre- do, quod intelligis, studiofos sine talibus adhumentis cum fructu in Juris oceano non posse verfari, nisi, inquam, no- tiones rerum necessarias & summae doctrinae exst. exa praefum- ferint. Si jam in Institutionum libello, quem Caesar publi- cavit, elementa omnium capitum, quæ in Jure tractantur, extant, nihil intercedo, quominus utendum sit tuo consi- lio; atque italim, ubi Institutiones percepserunt, integros Pandectarum Codicisque libros aggredi & ingenio memoriæque subigere liceat. Quod si facile pars aqua totius Artis in Institutionibus Caesaris intraacta manferit, manife- stum est, carum rerum initia nihil magis ignorari posse, quam que in Institutionum libellis ab Imperatore collocata sunt. Non expecrabis, opinor, ut tibi demontrem, quot nobi-
however they were to use nothing of this kind anywhere near the Pandects or in the case of the Codex. In this whole discussion, Crusius, you are arguing in defence of your own notions rather than for those of general understanding, and so nothing more ignorant, nothing more out of keeping with the system of learning and teaching law can possibly be said than that in explaining the Institutes a compendium on the subject can be used, but in the case of the Pandects and the Codex it is not to be tolerated. On the other hand, who does not see that, if someone strictly avoids these newfangled summaries, he has at hand as far as concerns the Institutes, Justinian’s compendium, which we know that the emperor prepared for this purpose and prescribed for young students. Furthermore, since he knew that in the case of the Pandects and the Codex something was necessary which would highlight the most important learning of these books, he entrusted to his hardworking professors the task of composing for the use of their students paratitla, that is summary explanations of the individual titles62 (you must now willy-nilly concede to me this meaning of the word).

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

62 See Constitutio Deo auctore § 12. sed sufficiat per indices tantummodo et titulorum suptilitatem quaedam admonitoria eius facere. (But let it suffice to make notes thereon only by means of indices and explanations of titles.) See further Constitutio Deo Auctor § II, section 2.
25

*Iuris, Dialogus.*

nobilissima difficillimaque Juris capita sunt, de quibus altum in *Institutionibus* silentiis; Nihil facilis est, nisi super-vacuum & apud homines, quibus hæc in numerato sunt, tædio sum foræt. Nihil est igitur, quod instatam Te rursum audio; sufficere in usum preparatoriae doctrina Institutiones à *Justiniano* relitæ; non sufficiunt, inquam, Sedad *Pandectas* intelligendas, ejusmodi libellus æquæ necessarius est. Praeterea, inanis calumnia impingitur meo ad Institutiones compendio, quasi id agetur, ut juvenutem per illud ab ipso *Justiniano* abduceremus. Nam meum Compendium (non pudet hunc titulum praerére, licet alius speciosius prætexte possum) Auditoribus meis alter ufu esse non potest, quam si Institutiones Caesareas juxta eas contiuous legant eandemque methodum premant; ideoque tantum abeat, uti contemptus inde juventuti adversus Autorum Artis subnafci quest, potius ut auget corum honorem venerationemque, dum a dictatis nostris ad eos, tanquam ad Principales auctoritates, continuo remittuntur. Ceterum, hoc mihi *Sacratissimi Caesaris* manes largientur, id etiam vos mihi, ut dicam, largiernini, non esse faciendum his diebus, ut methodo, quam ille quondam praescivit, in omnibus adamnulim praeceque inhaereramus. Nam quod Ille primò omnium voluit, ut sestudio ultra semelre spatio in Institutionibus detinerunt, quod, quam hæc res hodie facultatem haberet. Factor, Institutiones semelri spatio explicari posse; verum quis veletrum de ingenio memoriaque fuit tantum fiduciae conceperit, ut una deambulatione, se argumenta Institutionum ita possidere sientiat, ut super illud fundamentum totam Digesorum molim adiuvare sese posse confidat. Accedit, quod nemo negare potest, expeditestudio-sis, uti mutationes, que univefre Europæ moribus indi-
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 Institutes63, alleging that it was written in order to lead youth away from Justinian himself. For my compendium (and I am not ashamed to attach this title to it, although I could adorn it with another more glorious title) can only be of use to my students if they constantly read the imperial Institutes together with it, and apply the same method. There is no question of contempt for the authors of the law being implanted in the young students because of the compendium, rather it increases honour and veneration for them, since the students are constantly referred by our lessons to these authors as being the principal authorities. But the spirit of the most sacred emperor will grant me, as you also will grant me, as I would say, that these days we must not go about things in such a way that in every particular we stick precisely to the method which he formerly prescribed. For what he wished above all was that the students should not be detained more than a semester on the Institutes. I ask what chance do we have of this today? I admit, it is possible for the Institutes to be completed in a space of six months but which of you has conceived such great faith in his own ability and memory that in one brief run through he feels that he can confidently erect on its foundation the whole massive structure of the Pandects?

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

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63 Here, where Huber is using Böckelmann as the mouthpiece for his own ideas, he is ignoring the fact that Böckelmann’s Compendium was first published in 1679. See Ahsmann-Feenstra BGNR Leiden, pp 61-64, nos. 32-44. Moreover, the allegation that Böckelmann’s Compendium was written to lead students away from Justinian is clearly groundless as a glance at the text will reveal a plethora of marginal references to the Institutes, the Digest and the Codex. Further, at the end of the Praefatio to the Compendium Böckelmann writes . . . nec sati intelligi posse, nisi conjungatur cum Caesaris Justiniani Institutionibus et legibus passim ad marginem citatis et a nobis atque 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).
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ciplinam Iuris invecta sunt, Iustiniani regulis admiscantur; Nullis aliquin Artium studiis meliore jure fatorycum illud quam Jurisperitis applicari potest; Adolescentes in scholis fluitant, sibi quod nihil eorum quae in usu habemus, audint & discunt. Quae ratio sola sufficit ad probandum, quod Iustiniani compendium non refusat alius manuale eadem operae methodoque legendum. Jam porro id prae ceteris in objectionibus tuis mirari me subit, quod haec docendi descendique methodus incertitudinis in ratione studiorum argumentatur. Nam si, quod res est, dicere fas sit, non uno mihi experimento compertum est, maxime in Examinitus Candidatorum Iuris, eos, qui diversa à nobis via praecipue se jactabant, in Colloquis & dissertaticibus Artis, adeo fluctuantes, ne dicam, ignorantem fundamentorum Iuris esse repertos, ut miseratione potius, quam diversa sententia invidiis convitioque digni judicarentur. Enimverò si nihil alius descendendumque uidamremus, quam hujusmodi compendia brevibus verbis in formam systematicam, ordine tamen Cæfareo redacta, metuendum est, ne non ficcius atque aridis, fictis aliis, Crufi, objectio tua dictabat, ficient studii. Sed quid tibi vis, ergone credis, ita nos Compendii deletari, ut in his Iustinianaeos auditores omnem suas labores ordiri atque consumere velimus? ut periculum sit, ne ad horum exemplum orationem bylumque contrabant & exauriant? Ego vero, antequam studii, de Iuris scientia ejuvem compendio cogitent, ita eos omnino animos inducere volo, ut lectione bonorum aequorum corundemque imitatione & affidatis byli exercitiis amanitatem ingenii ubertatemque orationis ita comparent, ut in habitum illis abeat, atque deinceps, ubi jus studient & hæc ipfa compendia tractant, ne illa quidem amœniora 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'\(^{64}\) can be applied to no students of the humanities more rightfully than to law students. This argument alone suffices to prove that another manual to be read in the same way and using the same method does not supplant Justinian's *compendium*. Further, it now occurs to me to wonder that before all else in your objections, this method of teaching and learning is accused of lack of sound knowledge in the case of the students. For if, as I may rightly say is the case, I have found by more than one experience, and especially in examining students for the degree of candidate of law, that those who have hurled themselves headlong along a road, different to mine, have been found in seminars and legal dissertations to be so doubtful about, let me not say ignorant of, the foundations of law that they were judged to be worthy of pity rather than to be scorned and reproved because of their different opinions.

[A5] Now, if we were to argue that nothing must be learned and taught other than compendia of this sort which have been reduced in brief terms into the form of a system while, however, maintaining the order of the *Institutes*, should we have to fear not only that the students would become dry and arid\(^{65}\) (as, Crusius, your other objection alleged) but (as you wish and as you therefore believe) that we are so enamoured of compendia that we want our first year\(^{66}\) 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\(^{67}\) 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 *Differentiis*, p LVII, quotes the same extract.

\(^{65}\) Cf *Oratio IV* p 93.

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

\(^{67}\) See Huber’s references in the *Praefationes* to other works e.g. the *Digressiones*. 
27 Juris, Dialogus.

varietate querere fiadeo. Adde, quod & antea dixi, compendia illa systematum, esse tantum indices, secundum quos textus Juris, quibus nihil ulerius, nihil amœnius, inquiri & legi possunt atque etiam omnino debent. Qua ratio facit, ut in Pandæcis, inquam, absolutè necessaria sint hæc preparatio paratillarùs, eti nihil Iustiniæni Institutionibus addere velles; siquidem manifestum est, non modo univerfam methodum in illis esse difficilem & obscuram, verum etiam singulos titulos sine directione compendiæ alicujus methodici, neque perdici neque doceri possè; Quamobrem Caflæ ipse difterè voluit, ejus generis indices & summas capitum describi, quas utique breves atque concisas esse debere, negotii ipsius naturalis indicat, nec me-tuit Imperator illud prætextum corrumpedæ eruditionis & eloquentiae periculum. Ex his credo, jam præsumi possè, quid ad illam objectionem, quà per hanc methodum practi-di volebas communicationem Juris cum literaturà huma-niore, sit responseudum. Non contineri in hoc genere compendiorum observationes dugressionesque Historicæ & literariae fatemur, impediri prohiberique negamus; nec unquam effamus hortari studiosos ad hanc conjunctionem varie Eruditionis cum Arte Iustiniæâ. Denique, nihil magis de eo laboramus, quod tu etiam, Crucì, pre-cipuae difficultatis loco ponebas; siclicet, his neotericis Institutionum imitamentis, non preferre Themidem suam faciäm nativam, sed ejus formam cultu adicitio corrupti. Profiteor equidem, sì per hæc compendia fieret, ut Ars nostrâ terminis, quos vocant, exotica impletur licentia-que finiendi partiendiæ scholastica in alien tranferit speci-ciam, me tam alienum ab illis futurum, quam cuiquam Themidos amantissimo esse confântaneum sit. Ideoque curatiissime id operam dedi, ne quid tale neo quidem com-

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

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

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

68 This passage from ‘Finally we also nonetheless’ . . . to ‘we see has been done . . .' (Denique nihilomagis . . . fecisse videmus (p 28) is taken almost verbatim from Oratio IV, p 95.
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pendio objectari posset, adeò ut religio mihi fuerit, ullam in eo ponere definitiones aut divisiones, quae non aut verbis, aut è mente fententiaque legum evidenter colligi possent. Fuit, inquam, religio; nam superstitio non debui dicere, qualem fuisset futurum ego quidem arbitrator, sinihil ejusmodi collocare voluisset, nisi quod totidem verbiis à Justiniano veteribusque Iurisconsultis prescriptum esset; tamen illo ignorare non potestis, literisillos superiores xvi Doctores, Cujacium, Duarennum, Donellum aliosque Juris antiqui & intiminati cultores severissimos candom intitulat viam, quam in nobis tam inique animadvertitis. Dum, sicilect, proprietates rerum à veteribus fusæ expostitiasque semper in finiendo partiendoque formam redactas succinctis positionibus enuntiat atque declarat, quod omnium Aristotelis, quæ ab antiquis ad nos profecte sunt, magis etenim videmus.

CRUSIUS; si, quemadmodum Tu, inquit, Böckmann, compendii tui utrum studiose commendare te narras, ita vulgo aut à majori parte haberetur, non erat quod dispenderi quicquam in illis esse situm exstitimaremus. Sed per communia fecram te, qua Non Auditories tui, tam frequentes aequae notabiles, in illa Compendii disciplinae prorum atque puppim studiorum solum collocunt, tamen percepisse illis, egregios esse Iurisconsultos arbitrentur, neque de ipsis antiqua jurisprudentiae libris evolvendis examinandisque curam ullam fuçipiant, & an non hec res ad summum doctrinae Iuridice detrimentum pertineat, adeoque an immemento compendiarium illud institutum, veluti caute corrueris jurisprudentia, vituperetur. Quod si Tu, sicut nobis fecit consilium, devotam Themidis juventutem, ad ipsam vestitum Artis penetralia deduceres, si exemplo praeces, ipsa veterum respondit commentarique, sicut à Justiniano 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 jurisprudents; [A6] even although you cannot be unaware that the most liberally educated doctors of the last century, Cujacius, Duarenus and Donellus and other most rigorous teachers of the ancient and undefiled law established the same method which you so unfairly criticise in my case. Namely they state clearly with succinct propositions the peculiar nature of the material which the ancients expounded at length and did not always reduce to the form of defining and partitioning. This we see has been done by those who taught all the subjects which have come to us from antiquity.” [A7]

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

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

69 Cf Noodt, Compta Jurisprudentia, p 619.
Iuris, Dialogus.
deformi illâ, quam habemus, epitome reliquâ sunt, idoneâ methodo legère, examinare, conferre inter se, iisque immorari, dum plane penitulique intelligerunt, aut si non praebèrent se intelligendas, veros sensus eundam conjugationem indulgere. Evidem, si quod res est, fateri vis, eo modo, quod amplissimum Juridiconfultus nomen requirit, & quid debes sibi defensor, etiam vettra compendia teneant, agnituros esse crediderim; denique, res ipsa compelleretur eos veram proficiendi viam inisse: neque cellare, donec universum jus antiquum in memoriae potestatem redegerint, neque nos proferro pro Juridiconfultus habereumus ueste nomine illud venerabile, quum, ille dictus adscriberemus, qui fìeriuquam definitionem, divisionem ueste adhaerentes necio quas, ac huius modi tertiis natas quæsitiones excripere atque refutare posset; ne de alius, qui nec id ipsum didicerint, cum dedecoris publici confessione locuerit. Emus vero si compendius abolius, tam egregium mutati confilii fructum capere liceret, credo, tibi ipse nullam visum iri cañam, quare nobis ad invenuita illa &ciamena compendia, peñitentiamque pulcherrimi confilii, redeundum foret.

BOKELMANNUS: Si nihil aliud à mutatione peñitentiaque tueri vos poterit, quam ille speratus succedius, credo fidem præfægion meo constitutum. Quod si potes animum inducere, ut res tibi proponas, sicut exiunctum, dabo operam, ut intelligas, færmones tuo abhorreralubus civil él, plenosque vel ostentationis esse vel ineptiarum. Quod uti pri bi vel fætem hifice viris Clarissimis persuadem, necesse erit animadverteram, quomodo parata, quibus studis exculta sit juventus, quæ ad percipientum Iuris disciplinam scilicet nostras ingreditur, & an inanis hominibusconsilium videri pollit, ejusmodi auditoribus committere fundamenta juris paratillaria proprio marte diffusa; nihil autem illis

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

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

But so that I may persuade you or at least persuade these professors, it will be necessary that we take note of how the young people are prepared and by what studies they have been educated before they enter our schools in order to take up law studies and whether it can be deemed sensible by reasonable men to give students of this kind the task of studying the foundations of the law, even with paratith but without any other assistance; and, moreover, to explain to them nothing
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exponere, quam ipsa veterum responsum commentariosque, non quæ ex illis facilita, sed obscura, difficilia nodosque continentia vindice dignos. Tu quidem de qualitate humani ingenii nihil humile, nihil infra captum rerum maxima rum præfumis; nec ego naturæ sum accusator: sed ita de felicitate ingeniorum philosophari, ut oculos animumque non advertas, ad eos, quibus cum res sit, nihil alio eft quam splendide nugari. Non eft hic locus de miifteriâ Æcholurum primæque institutionis consuetudine queri; sed hoc palam eft, novos Justinianaeos, qui se nobis offerunt, plerisque rudes esse politioris litterarum, rudis historicis & omnis Antiquitatis, rudes Graecae linguae & proprietatis elegantiæque Latinæ, ne dicam Philosophie, præfertim moralis. Nec fecio, quæ te perverfitas agitet, ut causam corruptæ Jurisprudentiae, vel studii potius Juridici, (nam ipsam, opinor æque adhuc integram esse quam fiuidadum) potius non prodideris ignorantiam Romanae Graecæque linguæ, quam uiam praëparatoriam institutionis. Et quidem de Graeco fermonem facies prudenter, quod nullum verbum de ejus peritia in Juris studiis no requirendà protulitst, perinde ac si nihil magis quam Suédica aut Laponica dialectices notitia ad Juricim Crifin exercentam pertinent. Quod si Paulo durtius Munkero noftrum, hac in parte, Delfis, elementarius Doctorum, operam navatès; credo, non minus severè in contemptum Graecarum literarum, quam modo in compendiorum & fytematurn Auætores invectus fuifles. Nunc autus es Licinium Rufinum, Ulpiani, Caifi, Pauli fragmenta, Codicemque Theodorianum memorare; Gracum Jus & Basilicos thesauror, ë quibus tot tanti que valoris cimelia viri Graece docti eruerunt, atque adhuc invettigare poftulent, tristì, ne dicam pudendo, silentio præteriiffi. Neque tægnosco, Cruif, tam superbum eruditionis vulgate cenforem &
but the responses and commentaries of the ancients, not those of them that are comparatively easy but the obscure, the difficult and knotty problems requiring attention. You indeed assume that there is nothing lacking about the quality of human intelligence\textsuperscript{70}, nothing unable to comprehend supreme concepts. Now I do not cavil at nature but to philosophise thus about the fruitfulness of intelligence so that you do not turn your eyes and attention to the actual persons with whom we are concerned, is nothing other than \textit{splendide nugari} \[to talk highfaluting nonsense\]\textsuperscript{71}. This is not the place to complain about the most wretched condition of our schools and preparatory education but it is quite blatant that these new law students who present themselves to us are generally ignorant of polite literature, ignorant of history and of all the Ancient World, ignorant of the Greek language and of the proper elegance of Latin, to say nothing of philosophy, especially moral philosophy. I do not know what perversity drives you to attribute the reason for the corruption of legal science or rather for the corruption of legal studies (for I reckon the former is still as sound as it ever was) to ignorance of Latin and Greek rather than to the practice of our preparatory education. And indeed you are acting shrewdly with regard to the Greek language, because you said not a word about knowledge of it being required in a law student\textsuperscript{72}, just as if it was no more relevant to legal criticism than a knowledge of Swedish or Lappish dialects. But if after you had been recently created a doctor you had assisted our friend Munker in Delft for a little longer in this regard, I believe you would have inveighed no less severely against the contempt for Greek literature than now you do against the authors of compendia and systems. Now you have dared to mention Licinius Rufus, the fragments of Ulpian, Gaius and Paul and the Theodosian Code, but you passed over in a sad, or should I say a shameful, silence Greek law and the treasure house of the \textit{Basilica} from which scholars who know Greek, have dug out many jewels of great value and can still discover them. And I do not see you, Crusius, as the proud censor of common knowledge.

\textsuperscript{70} Van den Bergh notes that this is reminiscent of Descartes. See his \textit{Noodt} p 164.
\textsuperscript{71} In the 17th century, the contemporary disdain for mediaeval scholasticism and the methods of the Schoolmen was often expressed by the phrase \textit{nugae scholasticorum} ('the useless trifles of the Schoolmen').
\textsuperscript{72} Van den Bergh. \textit{Noodt} p 22 writes "Noodt's main interest was in Latin; he was much less versed in Greek and knew virtually nothing of oriental languages".
Iuris, Dialogus.

& exaëtorem criticus, fine ulla Graecarum literarum notitia. Tametì Graecos Jurisconsultos basilicamque paraphrasis contentus sit omittere, vel Interpretibus fidere, quod in re critica stemus, quam tutum aique decorum sit; tamen, inquam hujus studii, quod laudas, profetio, quâ ratione potest alienari ab illâ parte Juris Justiniani, quod totum utrum Graec compositum est? denique in antiquis latinarum scriptis, quí unquam fine mediocri Graec literaturâ peritiâ feliciter in exercenda Crisi veritas est, aut Criticum fœ profiteri suffinuit? Sed mittamus Graec permittamuique non tantum Accursianus, sed etiam criticus pace tua dicere, Graec sunt, legi non possunt, quoties fœ nobis obtulerint; vel si criticam ne haœtenus quidem omittere placeat, imitemur Illum, qui cum in Ulpiano legisset hæc verba, pros epos, façacitate vere criticâ, monuit legendum esse, ita; pro fœ poscit. Sed revertamur ad institutum, Contemplare mihi, quælo, Cruæ, adolescentes, vix tantum Latinè doctos, at animi sui senos, quod fatis sit, efferrerant, Philosophia & antiquitatis & Historiae Latinae ignaros; adeone te praecessus amor inquit ut teneat, ut his cum aliquo fructu eruditissimos & difficillimos antiqui juris commentarios exponi possè statuas? Noëtë & experiri, fieri non possè, totum uti corpus Iuris auditoribus tus illustres; obscuriora & ardua quæque, fine dubio excerpenda sunt, ut digna Interpretis ope, digna publice vocis officio videantur. In his tu adolescentes ita, siue dixi, preparatos cum valido profectu verläri, siccine Iureconsultos inde fieri possè credis? Non dices, opinor; sed in tuis auditoribus supplefœtitem humanioris literature prius, credo, requires. Quod facies igitur illis, qui non habent eam nec adferre possunt, quemadmodum decimus quique non repetitur, qui mediocriter, neque centefimus, qui ut deber, hac
and as one who insists on criticism, without any knowledge of Greek literature.

Even if you are content to leave out the Greek jurists, the imperial paraphrasis

and to rely on the commentators (in matters of criticism we know how safe and

fitting that is), nevertheless, I say, on what grounds can the profession of this

study that you praise be separated from that part of Justinian's law that is entirely

and ἀυτὸς Ἰωνίως 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 Graecae 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 epōs (according to the word) in Ulpian, with his true
critical sagacity, recommended that it be read as pro se poscit (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.

73 For ἀυτὸς Ἰωνίως reading ἀυτὸς Ἰωνίως. 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 Authentica 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 πρὸς 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.
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Hac parte sit instructus. Non inculcabis tamen illis compendia, domi legant, si velint; Professors altius spiret, Ille figurae & notarum enigmata, Ille malas interpunctiones emendare ac interpolare, glossas variisque lectiones a textu genuino separare, luxata refutare, vitiatas sanare, plebiscita atque Senatusconsulta concinnare; fugitiva retrahere locisque suis reddere doceat. Hac enim visagere Professores, haec tradere facitoribus suis jubes. Mihi vero quid ineptius quid fanis hominibus dignius videri queat, nullo modo appareat; siquidem nec adolescentes ita, sicut diximus, instituti quicquam ex iis rebus perciptere, nec si queant, ullus inde fructus ad eos redundare potest. Noli putare, me effecum, qui spernam vel reprehendam instituti illustrationes; sed quod haec a Professibrus doceri vis adolescentes, antequam paratita totius juris ab illis percepisse, superat omnem futilitiam; ignoscit dicenti quod res est & sepham, sepham. Nec quisquam fani ratione praeitius terre potest Anteceoress haec rudibus animis incultantibus, atque eos qui Compendia talibus praebentur corrupta jurisprudentiae eos peragentes. Quid vultis tandem amamus cum ipsis, qui nihil quam latini fermonis & senus communis intellectum habent? ut remittamus eos in scholas atque ad Parentes: an ut detineamus immani tumpti in Academias, ut inuentam enigmata, quae tu dicis? an potius, ut ejusmodi nonnam Juris in illos transferamus, per quam de causis responderes, cive regere conflitius emerique foro navare possint? Atqui hoc est in potestate compendiorum nostrorum; qui illa tenet memoriam, dixitque judicio, probare potest; legibus, ut nos dicimus Audites nostros. Hi non ineptis praeidit ingenii caque dixi, praetare possunt & feliciter omni die praefant. Non est quod mihi credas adfirmantes, specta Viros Clarissimos e disciplina mea pro-
You will not, however, press upon them compendia which they may read at home, if they wish. Let the professor aspire to greater things. Let him teach the riddles of sigla and notae. Let him teach them how to emend and how to interpolate faulty punctuation, to distinguish glosses and variant readings from the genuine text, to restore dislocations and to emend corruptions, to reconcile plebiscites and senatus consulta, to retrieve fugitive texts and restore them to their correct positions. For this is what you wish professors to do, this is what you bid them to hand on to their disciples. But it is in no way clear to me what can be more senseless, what more unworthy of intelligent men. If indeed young men are taught as we have described, they cannot gain anything from this teaching and, if they could, no benefit would redound to them from it. Do not think that I am one who spurns or finds fault with that system of teaching but the fact that you want young students to be taught this by the professors before they have grasped an outline (paratitla) of the law as a whole exceeds all stupidity. With respect, this is the position, I am calling a spade a spade\textsuperscript{75}. 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,

\textsuperscript{75} The Latin idiom \textit{Scapham scapham} is from the Greek τὴν σκάφην σκάφην λέγειν (lit. ‘to call a boat a boat’ or, more probably, ‘a tub a tub’). For the spelling \textit{schapham}, not \textit{scapham} (see Latin text). This is repeated as above in the 1696 edition, p 606. Buder has \textit{scapham scapham}, in the 1724 edition, p 68. The phrase does not appear in 1684, p 54.
Iuris, Dialogus.

deductos, per omnes Germaniae Belgicaeque republicas spar-
sos, & ade negare, Compendiarum Institutionem esse effi-
cacorem ad utilitatem publicam, illa tuorum siglorum, in-
terpunctuationum & conjecturarum demonstratatione. Quam
quidem ego nunquam, ut tu facis de methodo nostrà, con-
tempi, vituperavi; sed, quod toties repeti, sequi debe
paratiorem Institutionem, sensuali, siudeo, contendo.
Nec credo, quenquam adeo bona mentis inopem fore, qui
non mihi potius, quam tibi haec parte fidem fit habiturus.
Inflare te quidem, atque hoc unum minus inceptè, in haec re,
intelligo, postquam illa compendiaria in Academias & Au-
ditoria Juridica introducèta est, juventutem in ea subsistere,
nihil alius fìbi proponere, nec ulterius provehere studiorum
fuorum curas. Hoc igitur te quiri, te incusare & expobra-
re juventutem nostrà, etiam verò Professoribus, si qui Au-
dores fè talis fœcordia præberent, oportebat; non etiam
detonare contrà, quod nemo sapiens, aut juris prudens o-
mittendum putat, neque contendere Pandæelas sine com-
pendio paratilia effè docendas. Non ignoro, plerique
Juri deditos, ut studia & ingénia sùnt, tantum temporis in
haec compendiosà totius Juris doctrinà confundere, uti per
fortunas suas integrum illis non sit, alius deinde stadium in-
gredi novoque curvù de ultimà coronà denuo certare. Quod
profectò non hujus methodi, sed hominum & sceuli esse vi-
tium pluquam manifestum est. Eoque vires eloquentiae &
autoritatis vestrae, Crux, intendere debuitis, ut generosis
juvenes perfecè eruditionis amore novaque difcèndi cupidit-
date inflammarentur, non ut precipites darentur in cjuvi
dobài laborem, quo ësparsà tantum infinitàque lectione me-
roriam impellet, neque praefectis ullis regulisque universis
forment frumentque judicii rectitudinem, quod stanulis in-
nixum fundamentis vagà legum notitìa diffuère, siaque

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

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

\textsuperscript{76} Cf. Böckelmann Compendium Praefatio sub fin . . . testatum faciunt sexcenti Viri Clarissimi qui in hac nostra atque celeberrima Germanorum Academia Palatina, mea methodo non infeliciter . . . usi, finem praemium quod Caesar studii statuit nostri, Rempublicam siliis in partibus administrandam sibi 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 Nôl p 38 ft 13, on Huber’s feelings about an academic career.
De Ratione docendi & discendi

...met intentione frustrari necessit. Quod si alterutrum à Juris studio abesse oporteat, vel criticam subtilitatem, vel summariam universi Juris notitiam, & si facultatem non habet utraque methodus, quá conjungatur; age, videamus, utra minore cum incommodo publico adhiberi neglegique posse. Eocompendiis & syllematicibus, ita ut à nobis proponuntur & explicantur, palam est, haberi possit jurisprudentiam, eo cum fructu copiisque, ut ad causas agendas, scribenda consilia judicandique munus sufficere possit, atque sufficiat; clarissimis atque vivis exemplis argumentum undique prebentibus. Veltri nullis compendiis imbuti universam quidem Artis scientiam, qua subnixi prompte & expedite in foro hominumque societate vertentur, nunquam perci pieunt; argumentiones quasdam, observationesque rerum ad ulium nihil pertinentium, ferupulos vulgatum lectionum concuturalem plerunque superfluos movent iactantique, & omnino talem sibi doctrinam comparant, que supervaean aliquamque à communi usu vitique subtilitatem, ut tibi verba tua reddam, præferre videatur. Denique, sic ego, sic omnes, qui jurisprudentiam magis in rerum gravitate, quam in verborum captatione conßitere credunt in animum inducimus; neminem sine compendiarì totius Juris intelligentiâ valide promteque Jurisconsultum esse possit; nec aliter sapientissimos antiquitatis & hujus, & superioris seculi Juris Interpretes exitimulè videmus. Quod si tu hisce rationibus neceem tibi persuaderi patetis, duntaxat hoc admitte, singuli ut suo genitu abundant, & sine deteclatione, sine convito quique bono publico famulas manus vocisque minifterum commodet; necalius alium corrupta jurisprudentiae, neque compendia prima institutionis, ut dispensa juventutis probro accutet.

Crusius: Ego quidem huncique, sic ut volebas, disputat.
A Dialogue on the Method of Teaching and Learning Law

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

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

tantem te Bökelmann confeclusus sum, tametvi plus è ver-
bis meis, quam in his erat, deduxeris. Nam hi recte an-
mum illisadvertitales, non id mihi confilium fuifè, colli-
gere potuifè, ut ulium compendiorum, ficur à Te, ficur
ab alius homibus claris ulurpantium, veluti caufiam corruptae
Eloquentiae traducere; sed feuinationem nihil quam Com-
pendia quareentium in diciendo, nihil aliud in docendo pra-
feribentium infectatus sum. Quid autem? centeo faiamus
aliquando finem hujus alterationis & rogemus Huberum
ut & ille suffragium fimum edere animique fententiam & ex-
perientiae exemplum declarare velit; forte an medium ali-
quod confilium, periculis feu veris five fictis utrimque va-
cuum, ab illo suppeditetur. Recte; meherele regerebat
Bökelmannus: Nisi enim respondendi vices ab illo mihi
commodatas penitus intercipere & consumere velim, tem-
pus est, ut desiftam; quod eò jam proclivius accidit, quod
ru, latere male teëto, abscedis, & plus in alieno auxilio quam
in propriis viribus fpei collocare videris.

HUBERUS. Ego vero, si multa, de compendiiis & sy-
ystematibus Juris in medium proferre velim, posse quam vos
in utramque partem copiosiffime hoc argumentum executi-
fis, mihi ipsi vobisque gravis & inepte verbofus haberer.
Nolite à me aliud expétare, nisi, ut simpliciter exponam; quaé fit ratio methodusque institutionis, quam juvem-
tut, cuius fpei adnotus fumi, impertior; atque exinde,
quam partem vestra contentionis ego probem vel impro-
bem, si res tanti videtur, colligendum relinquam. Enim-
vero non possum fitis laudare nobilem Ceruti indignationem
adversus pravum &cui nodtri miorem, feftinandi studia ju-
ventutis nihilque sis quam Compendiorum Systematum li-
bellos exponendi. Sed hæc longa querela nulloque bono à
nobis iteranda. Permittite mihi, ut repetitâ priorum tem-
PppPp2 po-
argued your case, as you wished, even if you have read more into my words than was in them. For if you had rightly attended to them you would have been able to gather that it was not my intention to traduce the use of compendia as employed by you and by other well-known men, as the cause of corrupt rhetoric, but I was inveighing against the superficiality of those who look for nothing other than compendia in learning and those who prescribe nothing other than compendia in teaching. What then? I think that we should now make an end to this argument and ask Huber if he would be pleased to cast his vote and tell us what he thinks and what he has found by experience and perhaps whether some compromise solution, free from the dangers, whether real or imagined on both sides, can be supplied by him.

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

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

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

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

porum memoria, diversas docendi discendique juris rationes vobiscum recentem, atque exinde, quomodo ad hanc methodum, qua nunc utimur, perventum sit, denique ex omnium viarum comparatione, quae praetentissima sit, animalvartamus. Primo omnium ante Justiniani tempora, ut ipse narrat, cum ad studium Juris abiolvendum quadriennium omnino definitum esset, in eiusmodi tempore, ut et vices centesimae versuum millibus, in quos libri de jure scripti, erant distincti, studiose vix sexaginta millia proponerentur, reliquis omnibus tanquam ab usu remotis, penitus neglectis, atque ex illo ipso Compendio, adhuc non pauca velut superstant, quod erat Compendium Compendii. Imperator deinde novae Juris epitome ex duobus librorum millibus composita, methodum studendi hoc modo disperitus est, ut omnium sseorum librorum institutio quinquennii spatio absolvavit, initio ab Institutionum libellis facto, monitoque, ut ad reliquos libros paratitla quidem praeferentur, vel ipse leges et latino in Graecum quae nostros vertentur, commentarios autem facere ne liceret Ptolemaeus Caesar Leo Philosophus Compendii Justinianae fecit alius breviarum, in quo selectas leges et Constitutiones est corpore Justinianae vertit in Graecum verborum, et in non ubique in alio in re verbo observata, quam Justinianae volucrat. Atque ex hoc basilico Compendio, latis amplissimis, ruribus idem Leo fecit epitomen, opus meris definitionibus et regulis colitis, prater alia eis, five manualia, quae Constantinum Harenopolus, Michael Attaliota, Michael Psellus, Antiocchus Ballamon aliique plures in notitiat Basilicorum Απαρεσος recensib, ipse quoque ruribus Leo nostri filius Imperator Constantinus Porphyrogenetos publicaverunt, licet et peculiare Compendium Novellarum edit-Julius Patricius Exconful & Antecesor Constanti-
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 law\(^{81}\), scarcely 60,000 were put before the students, all the rest being as it were remote from practice, completely neglected and, even from that abridgement, quite a number were still passed over as being unnecessary. This was a compendium of a compendium. Then the Emperor, having composed a new epitome of the law from the 2,000 books, divided the curriculum of study in the following way, namely that the teaching of all his books should be completed in a period of five years, a beginning being made with the books of the *Institutes*, with the qualification that of the remaining books, *paratitla* would be composed, or the actual laws would be turned from Latin into Greek \(\kappa\alpha\tau\alpha\varphi\omicron\delta\alpha\varsigma\) (word by word), [A9] but, it was not permissible to write commentaries. Later, the emperor Leo the Philosopher wrote another epitome of Justinian’s compendium in which he translated fragments and constitutions selected from Justinian’s *Corpus*, into the Greek language, even although he did not observe \(\kappa\alpha\tau\alpha\varphi\omicron\delta\alpha\varsigma\) (the word by word) translation as conscientiously as Justinian had desired. And from this imperial compendium, which was fairly comprehensive, the same Leo again made a further epitome, a work consisting of pure definitions and rules; besides there are the other \(\pi\rho\omicron\chi\epsilon\rho\alpha\omicron\) 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*.

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

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

nopolitanus; é quibus omnibus fatis constat, quae fuerit inde a tempore Justiniani veterum Graecorum ratio docendi diffendi Juris; videlicet, incipere ad Compendii, atque exinde ad Excerpta basilica, denique progresdi ad universum corpus Justiniani: nec eis in exitimam, dispensium id esse doctrine juridice, si nemo sua verba dicta esse aut operum torperis, verba sunt Harmenopuli, sibi pulchriora, & utiliora maximeque necessaria in libra manuali colligerent. Imo patet ex codem Harmenopulo catechetique superstitibus, id eos egiisse, uti, quae a tempore Justiniani ad tiam atatem plus annis quincentis evenerant mutationes additisque legalis disciplinae, earum in suis epitomis notitiam studiorum impartirentur. Quod rursus vel lim observari adverter eos, qui his diebus Arctem Juris contaminari violarique clamant, si quando aliquid hodiernis Juris manualibus e moribus institutisque sequentium temporum miseri adjungique sentiant. Greci Imperatores, & Jurisconsulti, utcumque fuisse solares Justiniani in eodem Imperio, minime religioni duxerunt, illius prudentiam ad uenum sui temporis accommodare; ineptophiæ fo fore cedere, si compendia & manualia futu, quibus adolescentibus fummas Juris positionis tradabant, perinde composuisse, ac si Justinianus adhuc viveret nihilque ab eis atate suflet innovarum. Nos vero post alios sexcentos & quod excedit annos, extincto Justiniani Imperio, qui jus ejus haud aliter, quam ad superlaudes leges domesticas cuiusque populi recepimus, non adeo inveniri novitiae manuali praecipere, in quibus eos admodum, quid de jure vetusto moribus hodiernis observetur aut locus? Sed pergamus. Dum ita Greci Juris scientiam suis moribus & institutis aptam excellebant, in Occid. cum Imperio leges Romanæ exulabant & ignorantur; donec:

\[
\text{PPP}\ 3\quad \text{Lothar-}
\]
From all of the above is evident what constituted the ‘old’ Greek method of learning and teaching law from the time of Justinian to their own day, namely to begin with compendia, and from there to go to the imperial excerpts i.e. the *Basilica* and finally to proceed to the entire *Corpus of Justinian*. They did not think that it was a waste of legal teaching if, according to the words of Harmenopulus, τα καλλιστα χρειωθη τε και ανεκανωτα ςυντεμοντες εν προχιρω βιβλω συντακτοιν (if they were to collect the more noble texts, the more useful and especially the essentials in a manual). 82 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

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

Lothario Saxone Imperatore, quasi postliminio studium ejus inftauraretur. In his initii, prima quidem ingeniorum occupatio fuit eaque sola libros Justiniani evolvere, dare operam, ut intelligenter, diversis libros legeisque inter se conferre, diffidentia conciliare, posterioraque cum prioribus conjungere; cujus rei specimen Inerius in Excerptis Autenthicos per Codicum spargendis audax & nobile dedit. Secundum hae principia progresisti sunt homines studiosi ad proponendas Auditoribus suis Summas, ut loquebantur haud abfurde, librorum Juris, quæ nihil aliud fueræ quam paratitla, quæ Justinianus appellat græce corrupto vocabulo, idque petitum ad Institutiones atque Codicem, ut Placentius & Azo præverunt. Ita enim exifimabant, Codicem postius quam Pandætas iis, qui Institutiones perceperant, effe prælegendum, quia recentius in illo jus eft ufusque in foro certioris & frequentioris, quæ gratia Novellarum argumenta singulis in Codice Rubricis Inerius ille subjec turat; quod illorum institutum ad formandos judices cælorumque Patrons, id est, validos Jurisconsultos, non erat, ut magnopere improbaretur, utcunque deinceps alter virum fuerit pofteritati. Juxta Summas pro tyronibus Artis, in ulum prædictorum scribebant glossas, quæ sunt breves interpretationes legum, secundum ordinem verborum, in quo genere facile principem locum tenuit Accuratus. Fuer e, qui intentiorem præ alios cura jus Romanum fleherent ad trituram forensem, cujus rei præcipuus Auctore Durandus ille, dicit s pater Prætice, laudatur. Pottea cum glossando materia consumpta summarumque fatis est videetur, fecuti Interpretes ingenti apparatu ad commentarios in omnes juris libros legeisque scribendo se contulerunt; spreto jam repudiatoque Justiniani præcepto, quod priores, Summas atque glossas contenti, cum illis Caesaris edictio exacte con-
Saxon was emperor, the study of it was restored as if by right of postliminium and it resumed its former position. At the beginning, the first object of talented men was to read only the books of Justinian and to make every effort to understand them, to compare the various books and fragments one with another, to reconcile contradictions and to join the later with the earlier. Irnerius, in his extracts, the *Authenticae*, scattered through the *Codex*, gave a bold and splendid example of such work. In accordance with these principles learned scholars moved on to expounding to their classes *Summae* of the law books as they not illogically called them. These were nothing other than *paratitla*, as Justinian called them, an unfortunate translation from the Greek, and these were given chiefly on the *Institutes* and the *Codex* as Placentinus and Azo had done previously. For they used to say that the *Codex* rather than the *Pandects* ought to be taught to those who had mastered the *Institutes*, because the law in the *Codex* is more recent and of more certain and more frequent use in court. It was because of this that the famous Irnerius had subjoined the appropriate extracts [*Authenticae*] from the *Novels* to the individual rubrics in the *Codex*.

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

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

congruerent; haec tam modice ab eo recedebant, ut auctoritatem ejus comitter industriique euftodire velle viderentur. Sed commentandi signum imprimis estulere Bartholus de Saxoferrato & Baldus de Ubaldiis; ade exinde copia enormis confiliorum, respondorum omnium generis commentariorum jurisprudentiam, ad veterem, quae fuerat ante Justinianum, incertitudinem, dubitationem confusionemque, sit ipse predixerat Caesar, reduxit atque deformavit; ut non minus ad communes Doctorum sententias quam ad ipsos fontes legum confilia sententiaeque exigerentur. Hic temporibus juvenis ad studium Juris accedebat, imbuta, si forte, Philosophia scholastica, illa spinosa & incivili, a notitia utriusque literarum & antiquitatis alienissima; nec alia ratio Juris studio conflaret potuit, usque dum superiori seculo humanioris literarum luce &tenebris ignorantiae barbarice emergit. Ab eo tempore cum novam faciem induit universa Iurisprudentia, tum ratio quoque descendit atque difcendi juris alia planeque nova invaluit; neque tamen ea sine alia qua varietate. Videntur omnino Juris Interpretex, qui literas politiores cum Juris scientia conunisserunt, duorum fuisse generum. Quidam intra folios Juris Romani limites fere continuerc nihilque alium agere voluerent, quam ut libros a Justiniano reliquis illustraret abscondare. Alii faciendum putarent, ut intelligerem Juris antiqui cum tuis nostri seculi peritiisque forensi conjungerent. Priores inter, familias duxerent Cajiacius, Duarens, Donellus. Inter posteriores excelluerunt Zaluz, Alciatus, Viglius; ex ingentibus numero Triumviro edidisse fatiss est. Sunt etiam, sicui nostri, qui non tam just, id est, scientiam boni & aequi, quem antiquitates & Philologicae observationes libris Justiniani admiserunt quales Antonius Augustinus, Budaeus atque Reuardus. Hi omnes inter
to the emperor’s edict and the glosses departed so little from it, they seemed in a willing and industrious manner to be trying to protect his authority. But Bartolus de Saxoferrato and Baldus de Ubaldis in particular raised the banner for commentating and from then on an enormous flood of consilia, responsa and all kinds of commentaries reduced and debased jurisprudence to the ancient, pre-Justinianic state of uncertainty, doubt and confusion, just as the Emperor had himself predicted. As a result, consilia and opinions related as much to the communis opinio of the doctors as to the actual sources of the law.

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

86 See D.1.1 pr. and D.1.1.1.1.
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inter alias industrix sue partes operam Arti utilissimam navarunt, emendando corrupta Juris antiqua loca; quod tamen neminem cum aliquo laudis sucesse videmus aggressum, quam qui copiam librorum veterum, maxime Florentini Pandectae habuissent, aut ubi conjecturis utendum videre tur, qui longo docendi scribendique usu literariique tam Gracis quam Latinis culti famam auctoritatemque insignem adepti forent. non ignoro fieri potuisse & aliquando contignisse, uti qui neutram horum subsidiorum facultatem habere rent, tamen felici quadam conjecturâ nodum alicujus loci detexuissent atque solvissent: cujus rei speciem Dominicus Baudius Jurisconfultus minimâ equidem Validus; dedit, quando Grotius ab eo monitum se fatetur, apud Ulpianum in l. 1. §. 45. « Unde Vi. pro posside, legendum est: possidet: præter quem locum ego non admodum recordor, Grotium in lectionis receptâ mutationibus, quæ vivisse lauram; tametì illam doctirinæ partem merito inter gravissima Juris confulti officia reputabat.

Hoc faciant, adolens Themidis Cujacius aris,
Ingentique sono nonima nata Fabri

canebat ipsi, cum juvenis suos flores adispergerat Infini no, sicut olim Alcibiades, ut refert Plutarchus, magistro predicanti, sè corrigendo Homero parem effè, Ne tu,
igitur sintus, inquit, es, qui abhuc schola des operam.
Nec enim etsi manifesta, neminem hanc studii partem in quâqua disciplinâ profiteri posse, qui non omnibus numeris in ea fit exactus & abolitus, judicioque multaëctione continuâtque tacitatione rerum, in quibus verfatur, subâcto limatoque: si quidem non modo collere, sed etiam judicati re suam Artem, & probare, quod ab Artis tue conditoriibus extat reliëcum, fine dubio ad summum, ut auctorita tatis, ita scientiae peritissique faustigium pertingit. Unum in-
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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, 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 possebatur should be read for possides (sic). Apart from this instance, I do not recollect at all that Grotius sought to make his name by changing the received reading, even although he thought that this aspect of teaching is rightly one of the most important duties of a jurist:

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

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

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

Line 1 Nec alius de ist vu est, quam qui possidet. Lege possedet . . .

(omiss 9 lines)
Non ali autem quam ei qui possidet, interdixit unde vi competere. Legendum possedet, atque id olim annotavi suggerente Buido.

(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 possedet (he is in possession) must be read.)
89 The 1684 text, p 70, reads: praepter quam locum non mentor Grotium in universa florum sparsione ad omnes Justiniani libros, idam lectionem ab omnibus receptae mutationem, adscripsi; eam eam doctrinae partem mentio inner gravissima Jurisconsulti officina reputat. (apart from this one instance I do not recollect that Grotius in his Florum Sparsio on all the books of Justinian, made any change to the reading received by all, although he considered that aspect of teaching is rightly one of the most important duties of jurists):

The two lines cited above appear in G.C. Gebauer’s Preface to Grotius’ Florum Sparsio ad jus Justinianum (Naples, 1777), (and are part of ten lines composed by Grotius).
90 See Plutarch’s Alcibiades, § 7.
Iuris, Dialogus.

intelligo Antonium Fabrum ad hoc institutum se contulisse natum, annos viginti quatuor, neque manuscriptis inforvern etiam magnopere subnixum collatione veterum monumentorum, quae lectionis suo tempore receptae fideum facere potuerint. Non vero non adfentior Bachovio, qui cum elementer loquitur, eum appellat hominem corrupenda jurisprudentiae natum; tametsi Wissenbachius nother hoc nimir avide convitum arriperit, auditoreque fuos a lectione conjecturarum ejus graviter dehortari sit folius. Id tamen eximio, emendationes ejus esse plerisque non necessarias, atque ita comparatas, ut ab alio, fuit ipsa fateetur in praesentia suae, refei non nequeant. In hac autem ego sum hærete, et libenter vobis ipsis, in fluctuationibus juridicis esse duas facras anchoras, quibus non sit utendum, nisi extremam necessitatem cogente: sunt autem haec iudicio, confesio antinomiae & mutatio lectionis Florentiae. Sunt qui hodie modos tollendi difficultates legum appellant viam Regiam; sed quibus Artis fuer honos & integritas cordi curaque est, non profunt alteri arbitrari, quam hane esse viam militarem solvendi nodos gladio, decus autem Artis profutuendi ludibrio & ipsam dilacerandi. Nimir haec acerba dicta Cruust auribus accidere, quam ut diutius ea silentio transemittere poteret. Atqui ego, mi Hubere, modo non adessebamus praesumere, ait, quod nimir aperte jam profiteris, esse te a verso animo ab illa parte studii, quod inde ad renatis literis versus jurisprudentiae delicias fecit, & clarissima norma superioris secuti externe posteritatis admirationi conseravit. Imo vero, replicabant ille, nemo praecarius de illo genere, nem no magnificiuntius de auctoribus, quorum tu laudem demonstras sentit. Ita enim eximio & semper arbitratus sum, Professionem studii Juris critici, quod in emendandis mutandique legum dictis confitet (ita utimur verbo) habendam esse profaetingio & quas.
Antonius Faber, at the age of 24, betook himself to this study. He did not have manuscripts nor did he rely greatly on the comparison of ancient texts which could support the received readings of his day.\textsuperscript{91} To be sure, I do not agree with Bachovius\textsuperscript{92} who, when speaking quite mildly, called Faber ‘a man born to corrupt jurisprudence’, even although our Wissenbach seized upon this excessively heated controversy and used to seriously discourage his students from the reading of Faber’s conjectures. However, I do think that Faber’s emendations are generally unnecessary and such that they cannot fail to be refuted by others, as he himself states in his preface\textsuperscript{93}. In this regard, however, I am of that school of thought, and εὐχομαι εἰναι (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)\textsuperscript{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 sword\textsuperscript{95} 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.\textsuperscript{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, 

\textsuperscript{91} See A. Faber Conjectura (Epistula). Faber mentions his age and also writes that his emendations are not essential. [N]eque tamen ista necessaria quin possint etiam refelli ab ipsis qui feliciori ingenio et maiore eruditione praediti. (Nor however are they so essential that they cannot be refuted by those who are gifted with happier talent and more learning.)

\textsuperscript{92} See Bachovius in Rationalia Fabri. In his Ad lectorem Bachovius launches a vigorous attack on Faber, lambasting both his De erronis pragmaticorum and his Rationalia.

\textsuperscript{93} Van den Bergh Noodt, p 140 ff 89 writes that Huber’s remark Id tamen existimo, emendationes eius esse plerique non necessarias atque ita comparatas ut ab alis, sicut ipse fasierit in praefatione sua refelli non sequantur, is directed at Noodt’s comment in the Praefatio to Book I of his Probabilia (1674). Probabilia gippe ede instituti opiniones, non date decreta, nec defini de quo sunt ambiguus sed quid mihi videatur verissimis enarrare. (My intention is to give plausible opinions, not decrees, not to determine what is ambiguous, but only to explain what seems plausible to me. Transl. van den Bergh.) However, here it seems that van den Bergh is overprotecting Noodt. It is clear from the context (1688, p 41) that Huber is attacking A. Faber. See Faber’s Conjectura (Epistula) as cited in ft 82.

\textsuperscript{94} See Commentary Chapter V.1.3.1 on Roads.

\textsuperscript{95} The reference is to Alexander the Great cutting the famous Gordian knot in 333 BC. See e.g. Plutarch Alexander § 18. The metaphor of untying knotty problems was introduced in 1684 pp 71-72. In 1688, p 4, it is replaced by in fluctuationibus juridicis, presumably because the 1684 mixed metaphor of knots and anchors jai, whereas waves and anchors are natural companions.

\textsuperscript{96} For more on Huber’s attitude to textual criticism see Digressiones, 2.1.24. p 549 f.
De Ratione docendi & discendi
quasi complemento doctrinae legalis, fere, sicut Censora
fuit habita, respectu Magistratum Romanorum. Sed ut
optima quaeque pejus modo corrumpuntur, ita nihil exi-
tiofius arti Juridicae, quam terneritas & luxuria Cris多了 esse
mihi videtur. Nam reliqua docendi vitia, sive in methodo
praepossera, sive in conciliando pigritia, sive in ipfa fenten-
tiarum pervertitatem confidant, alias Artis libros intacros re-
linquunt. Critica male exercita leges ipfis corrumpit & fa-
crum Juris corpus violat ac imminuit. Ne vero huiofimodi
infinita oratione praefantiffimurn inftitutum maligne a me
putes arrodi, dacet, quod pace tua fiat, quid in vestro,
Crisfis, inftituto potifsimum mihi duplceat. Primum atque
precipuum id elle puta, quod occupavi dice, vos prima
docendi juris rudimenta ponere in emendationibus, nec
aliam credere januam famae patere, quam fi receptas pro-
bataque ab antiquiffimis codicibus legiones follettetis ac in-
vertatis. Tameffs quid ego de antiquis Codicibus loquar;
cum satis confit, non habere nos aliud antiquitatis vene-
racione commendatum, de Pandoftis altem, nifi quod ex-
tat, Florentiae vos, inquam, adolefcentum, qui fce vobis
committunt, initia talibus conjecturis earumque subtiliffi-
mis probationibus occupatis, antequam terminos & regulas
artis univerfor methodicae inftitutione, quam penitus impro-
batis, percepertint, quae re nihil inutilius & a verà docendi
discendique ratione alienius esse poteft. Ex quorum genere
non est mirum nafci tales Juris criticos, quales illud vetus
dic tum notat, emendandis legibus neminem fe dedere, nifi
qui de legibus nihil intellegat; quod equidem fi de omnibus,
qui in hac provinciâ lauream quaferunt, interpreteri sint,
injuriam falsifque esse non negaverim. Enimvero, fi quis
in indagandis legum fentibus eiusmodi quid reperiat, quale
temulentum fed elegantis ingenii Baudio occurrit, in laudato
modo
as it were, the fulfilment of legal learning, almost like the office of Censor with regard to the Roman magistrates. But as all excellence is corrupted by excess, so nothing seems to me to be more pernicious for legal science than the temerity and excess of a critic. For the other faults in 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 se res habet & feliciter! acclamabimus. Nec minus si quid simile vobis haeferit, applaudemus & gratulabimus. Ipse quoque non minus gratanter, vobiscum, si quid occurrat ejus generis, communicatur.

Tu vero, (interrumpere Crustus) fatis inclemente, tum prae te fers admirati.onem. Crizes, utum ejus & studiose auctoresque nimis adspersanter babes, ut nec beneficium in Aretem, quondam statere, collatum, sine convitio emendatoris commorare potueris. Mi Crusi; Huberum subridens; noli in te dictum putare namque, quod de Budio minime profecto patri oratorem exedit: est tu quoque, sic noti minus inter nos, gaudeat hac parte morum prisci Catonis, quam toties fisci Baudius ultero apud amicos adscribit. Sed nec ego Baudii contumeliam neque tuam, facillime Crusi, quod in conspectu habui, quam quod ab aliis fere notatum est, ejusmodi laetus ingeniorum, feliciorisque divinationes & amena criptos libentius inter pocula vel a poculis, quam inter occupationes succedere concatenatas. Forsitan inde contra dictum est, quod mihi sic potius animo feter, libros juris evolvere, ut inde regulas & exemplarum agendarum colligam, imitarique cupiam Antonii Mornacii inter alios multos institutum, qui rarus erat in Doctoribus Accursianis & Bartolissis, rarus in novitiis Interpretibus communibusque fententiis inter se comparandis; sed ipsi Juris corpori incumbebat, ipsas leges memoriis judicioque fabigebat; & tamen idem rarus in emendationibus censurisque juris antiqui; unam hanc, pulcherrimamque facultatem acquisivere, quibuslibet factorum speciebus applicare textus legum; exacte singulis convenientes, omniaque ad usum humanae societatis referre; neque minus tamen idem eloquentia omnino literarum cultu excelsebat, suaque scripta talibus ubi-
that is splendid and we will cry 'congratulations'. [A11] *No less if something similar happened to you, we will applaud and congratulate you. We will also no less readily share with you if any such occurs to us."

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

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

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

99 On μη τι χολωθης see Homer Iliad IX.33. Ὑθεὶς ἐστιν, ὑνακέ, ἀρορη, σο δὲ μη τι χολωθης. (My lord, this is the right of the assembly. Do not be angry.) Diomedes (Huber) is here criticising Agamemnon (Crusius) and claiming the right of the agora to speak his mind. Agamemnon must not be angry. Diomedes says he opposes Agamemnon’s (Crusius) foolish actions Ἀρείδη σοι πρώτα μοχυςωμι ὄφεικοντι, but has the right to speak his mind.
De Ratione docendi & discendi

que decoravit elogius. Nifi me vehermanter opinio fallit, hac ratione Iurisconsulti officium melius impletur, quam perpetuis finemque contredendi non habentibus emendandi conjecturis. Maxime, quando ita conjecturalis illa Crisuf exerctur, ut proprias opineses vetras de juris controversiis adjuvat, rationesque adversantium & obstantia legum argumenta refellatis; quod quidem loco secundo animadvertere cupiebam. Nam si toleranda fine manucripitis et emendandi licentia, duntaxat tam evidens esse debet, ut minus facile refelli quam adstrui & approbari posset: quod de talibus, quae tuendis opinionibus, in quibus Interpretes discrepant, adhibentur, nullo modo licet adfirmare: cuju cui luculentam specimina dedit Antonius Faber, dantur hodieque fimilia. Constituimus inde ab initio de singularibus inter nos discrepantiis haud agere; quamquam tua de articulo fuit: Lege 101. de verb. obl. sententia, pro obligari legendum esse obligare, huic loco nimir pulchre conveniebat. Vidimus & Salmasium de mutuo cum Jurispruditis disputantem eodem genere sanguine uti; neque dubium, quin ac licenti invalezcente, quilibet Artis imperitiissimus idem jus sibi in Infiniamum, quod in alios suas notitiae scriptores exercent, brevi sit arrogaturus. Quid dica, necpotites celebrique diversis autoriibus sententias in partes rapi! aperta via eff & patula porta, quam videmus, adscribendis conditoribus Artis sententias ab sequo bonoque alienisifimus, Reipublicse infestas planeque solum. Dicam, & emendandi facro artificio dictantes faciam Jurisconsultos, nulam cedem mortis paua multandum esse, nisi que more latronis alto confido animique praeestimatione commissa fuerit; in rixà que fuit homi-cidia, subitis animi motibus, eti cultro, sicâ, gladio extra ordinem leniore, quam capitis supplicio adicienda. Ergo 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\textsuperscript{100} 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 \textit{lex}, D.45.1.101\textsuperscript{101}, that one should read \textit{obligare} for \textit{obligari}, illustrates this argument exceedingly well. We also see that Salmasius when disputing with the jurists on \textit{mutuum} (the loan for consumption) used the same kind of attack and there is no doubt that, if this freedom becomes established, each and every one, however ignorant of legal science, will soon arrogate to himself the same right regarding Justinian as writers of his acquaintance exercise with regard to others. What I am saying is that the numerous uncertain opinions are being torn this way and that by different writers. As we see the road is open and the gate wide to ascribe to the founders of the legal science opinions which are most inimical to the fair and the good\textsuperscript{102} (\textit{aequum et bonum}), detrimental to the State and clearly (\textit{obliqua}) 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?\textsuperscript{103} 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 \textit{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\textsuperscript{104}.

\textsuperscript{100} In this 1688 edition the point raised here \textit{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 \textit{Alterum quod male me habet} . . . (see Appendix A) but this passage is omitted in 1688 and the 1684 (p 76) version \textit{quod quidem tertii loco} . . . becomes the second part. So too 1697 (p 614) and 1724 (p 80).

\textsuperscript{101} See D.45.1.101. \textit{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 \textit{Dissertatio ad constitutionem Divi Marci de curatoribus minorum quinque et viginti annis} Leiden, 1712. On this see further Noodt, \textit{Probabilia}, 1.4.2. (1674) and Commentary Chapter V.2.2.

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

\textsuperscript{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 \textit{De Criminibus}, (1644) 1. passim. On p 377, Matthaeus cites an emendation by Alciatus (\textit{Disputat.} 1.17) but rejects it. For a more detailed exposition of Noodt’s views on D.48.8.1.3, see \textit{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.

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

&c promiscua cæde cruentata fine metu mortis celebrātē: qui rapido furore fodalium sanguinem duellis hauriunt, nihil amplius ulorem gladium metuent. Quin tu, si ituc alius prætextu crītacæ auctoritatis obtinebit, aliunde probes, ordinariā furti poenā eximendos, qui subītā cupiditate accenfē res alienas abstulerunt: Qui matremfamilias alienām improvīsā libidine motus corrupt, eum exprespā legis Jūliae fāncētōne non teneei neque Textus decrent, quī quibus mutatis lectionibus laxatiōaque poissīt evincere, si Lex Corneīla violentis hominum affectibus eoque violentioribus, quia subītis, in atrocissimi criminiōs temeritatem ignoescit, aut, si hæc sententia fācētāte crītālegibus inferri potēt.

Necio, ad illa CRUSIUS; quorum hæc ultima spectent, nec imaginari possum, quis ad stabiliendam opinionem, ut mihi videtur, inaudītām, articulum illum veteris Jurisprudentiae vellet immutatum. Posse equidem singularibus & exquisitis perfonarum riixarumque circumstantiis jūdici mitiganda poena cauam dari, fater, ut apud Alciatum me legere memini, de puero, qui fortuitā irā collufo-rem fīum cultro percussīt. Verum si quis inde colligen- dum putet, homicidiam quilibet subito riixandī studiō ficiis et gladiis admitti, miōtore quam capitis supplicio adficienda, ne ille parum incoluimentī generis humānī confulēt, quod salvum esse non posse, quī violenti affectūs rigidiōs po-narum fēris à facinoribus non cohīberentur. Cütera tua, Mi Hubere, nunc quidem prætereo, quis enim fīnis contentionum! Dicērem alicui, quam inficetos ōape fē præ-bant, quī Autōrībus noffīs fennentia, de quibus illī ne fœmniarunt quidem, adfīngere malunt, quam ĕvīmanu vocūle aut litterāe aliquando unius subtrāctione, vel addi-tione, vel mutatione sūnum veteribus sensūm Artīque honorem Q. 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\footnote{Alciatus Dispunctiones, 1.17.} 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

\footnote{\emph{quis enim...rettabatur} (p 46).}
De Ratione docendi & discendi

conciliare malunt: Sed his ego minime retardabor, nihilique fecus Crisum juridicam, fuentibus Mufis, dum spiritus hos regit artus, alaciter exercebo, neque morabor;

Si lvor otrectare curam voluerit,
Donec seculum criminis sui pudeat.

Colliganusigitur vela, regerebat HUBERUS, pro pinquio portu; neque libet mihi reciprocare ferram, a qua Tu manum generosam contemnui amovisti. Unum addam, aquam me cenfere, ne vos folos effe, quos aquis amavit Jupiter, reputare in animum inducatis, omnes autem qui in exercendis emendationibus fe conficiendos non præbent, quid de sensibus legum sit, perficere non posse. Sed manum de tabulâ, ubi addidero, me fequatum effe in adolectentia seclam hominum, qui varie eruditionis liquorem non inuentì leviter sed imbuxi; tamen in correctionibus legum venditantibus auditoribus suis non praeferunt: Vinius, Mattheus, Wissembuchius, moti, fat ficio, rationibus á me pri dem expositis, tum vero hac inprimis; quod fatis comper tum habebant, eos, quibus hæc precipua Crisces professio arriet, ab omnibus systematicâ doctrinâ, denique ab omnibus, quæ civilem prudentiam tradunt, disciplinis alienis avertoque effe; cujus speciem habuimus in Salmaianum, quem fatis consfrag, cum alia hujus generis, tum divinum Grotii de jure pacis & bellorum intelenter adeptur, atque ad omnem politicam civilemque doctrinam tantum non nau ferat conuevisisse; quod & alis, si non omnibus eundem instituti rigidis cultoribus evenire notabiliter animadverimus, eujus contemptus Salmaianus fructus in succelli defensionis Regiae confitit haud omnino gloriouso. Preceptoribus illis me feci arbitrabantur, officio eis fui, facere Jurisconsulti, id eff, homines qui de quolibet facto consulti respondere, cavere, scribere possent; quas boni Jurisconsulti
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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 τος παντος (in particular) in Salmasius whom it is generally agreed haughtily spurned both Grotius’ divine work De Iure Belli et Pacis and other works of this kind107 and was all but accustomed to spew forth nonsense against all teaching of political and civil subjects. And we clearly notice that this happens also to others, if not to all who rigorously cultivate the same subject, and for Salmasius the not entirely glorious fruits of that contempt consisted in the success of his Defensio Regiae. These teachers of mine thought, as I just mentioned, that it was their duty to produce jurists, that is men who, when consulted on a certain point, could give a responsum (legal opinion), advise on legal transactions and draft documents, which are the attributes of a good

*† aequum me...ubi addidere.

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

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

fulit esse partes, ut olim Cicero tradidit, ita hodieque facultates eadem illud nomen atque munus implet, a cujus gravitate cos, qui folis verbis & syllabis inherent, mirifice videbant esse alienos. Enimvero non debeo preterire, Wissenbachium nostrum fuisset maximum sui temporis Criticum, idque ei haec tribu ad preceptum suum Mattheo Seniore, Groningeni; sed prorius alio genere Crisoeos, ac illud eft, quod in figlis & notarum enigmaticus occupatur. Tenebat homines clarissimos immodica confuetudo demonstrandi navos juris, vel potius, ut loquuntur, detegendi flagitia Triboniani, errores veterum Juris magistrorum, omniumque inbonesti, absurdi, falsi notae, ut ipsius videbatur, deformia passim indagandi, in locis communes redigendi atque exagitandi in auditoris & in libros suis. Habet hic Facultas speciem libertatis neque vulgare famæ lenocinii; falsis videlicet animis esse Juris Interpretibus, ipsos Artis sue Conditores vocare sub cenatura; ideoque res hac admodum late patet, ut ingentes libri cenature Juris Romani extrent in lucem dati. Ego nunquam aliter de hac parte Crisoeos fenli quam de Antinomiis & emendationibus; non utendum illis, nisi extremæ cogentia necessitate. Non puto faciilem, reprehendere Justinianum, vel antiquos Justiniani, facerotes, quales se merito appellari possint credebant, sed hoc affectare gloriamque exinde captare, sicut facere videntur, qui numerum Juris novorum tam immaniter augment, alienifilium ab officio boni Interpretes esse videbatur. Nefcio, quâ mea simplicitate fiat, ut judicium meum à judicio communi, quo jus Romanum nititur, admodum raro deflecât. ideoque dedi toto biennio in publicis lectioibus operam, ut demonstrarem, plerique loca Juris nostri, quà ut iniqua, inbonestà, falsa, absurda traductur, sane senije intellecta, nihil ejusmodi continere, cujus
lawyer as Cicero once said\textsuperscript{108}, so today too these same abilities are required for the name and office of a jurist. From the importance of this those who cling only to words and syllables seem wondrously far. For I ought not to omit to say that our Wissenbach was the greatest critic of his day and that he learned that from his teacher Matthaeus senior of Groningen, but this is a completely different kind of criticism from that which is concerned with *sigla* and the problems of *notae*. Very well-known scholars were bound to the unrestrained practice of exposing the blemishes of the law or rather, as they said, of detecting the sins of Tribonian, the errors of the old legal masters, and of generally sniffing out everything which is inelegant (as it seemed to them) and marking it as dishonourable, absurd or false; of restoring them in general arguments and discussing this in their lectures and books. This practice has the appearance of liberty and not the vulgar and meretricious appeal of fame, namely it was enough for the interpreters of the law to subject the actual founders of their discipline to their criticism and this topic is so extensive that huge volumes of *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 *De Oratore*, 1.48.212. His words are: *Sin autem quaeretur, quisnam jurisconsultus vere nominaretur, eum dicerem, qui legum et consuetudinis eius qua privati in civitate uterentur, et ad respondendum et ad scribendum et ad cavendum pertius esset.* (But if the question were to arise as to who should truly be called a jurist, I would say, he who is knowledgeable as to the laws and customs which private citizens use in the state, in order to give legal opinions, to draft documents and to advise on legal transactions.) See too *Oratio II* p 64.
De Ratione docendi & discedi

cujus à claris hominibus insinuatur. E quorum lectio-
um memoriam nescio, an non aliquando censuram Censura
Juris Romani & Anticriticam hujus generis incorrupto
eruditorum judicio sim propositus. Quae mea de criticâ
studii Juridici professione eteententia, fatis abundeque
differui videor, In historicis similibusque veterum scrip-
tis, ubi nulla dogmata in humanâ societate stabilita tra-
duntur, res non habet tantam âmbiguitatem; quamquam ego, si
in hoc ipso genere me continuissim, experimenta professo-
nis & famâ ab emendationibus prima non cepiüm, neque
etamen, si quae mihi obiit: fuillent, abrupte averlatus effi-
emi; quo pertinent exempla, quae modo mihi è differtia-
ationibus illis historicis objiebas. Quod ad systematocom-
pendiofâ univerfi juris attinet, non diçrepant instituti medi-
atio à communi omnium temporum confuetudine, nec
ab iis quae modo in hanc rem luculenter à Böckelmanno nostro
prolatâ sunt in medium, modo à duobus scopulis diligenter
caveamus. Primo, ne studiosis compendia, icca, jejuna
er arida proponamus, verum talia, quae gustum melioris
doctrinae, simulque initium exhibere possint; tum vero, ut
adstituis hortamentis exemploque recipamus, ne in his e-
lementis subdieris òe debere, nec posse praesumant. Denique
nollem, mi Crufi, tantopere placuiâs tibi, ut rem ab o-
mini studiorum ordine judicioque remotiâsam, cum atro-
eci invidia òecus agentium, tam faetidienti oratione prosecu-
tus effès. Nec efl, quod dicas, ut postremo definebas,
tè paucos notare voluiffe nundinatores sintifima òArtis,
qui Juris Docëores intra paucos mensës perficiendos impre-
denter fulciunt. Nam hi provéstito sunt pauci, nec, si
aliás bene òe haberet Ars Juris, horum causâ, de corruptâ
Jurîprudentiâ queri in mentem tibi venisfît. Tu latè pa-
tentem errorem universâlìmque vituperasti, qualém vis
viam
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\textsuperscript{109}. Let this opinion of mine about criticism in legal studies stand. I seem to have argued enough and more than enough. In historical and similar classical writings, where no body of tenets rooted in human society are being studied, the material does not need such *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\textsuperscript{110} and soulless compendia but with such as may be able to arouse a taste for more in-depth knowledge at the same time as providing an introduction; then indeed that we should show the way with constant encouragement and example so that our students should not presume that they should, but cannot, cope with these rudiments. † Finally, friend Crusius, I would not like you to have pleased yourself so much that you pursued a subject completely removed from all orderly study and from legal practice with unyielding ill-will and scornful words, towards those doing otherwise. You cannot say, as you were stating at the end, that you had wished to point a finger at a few traffickers in our most sacred subject, who, shamelessly undertake to produce Doctors of Law within a few months. For these indeed are few and if the science of law was otherwise in good condition, it would not have occurred to you to complain about the corruption of jurisprudence just because of these men. You have censured a widespread and universal error, which you allege

\*† modo a duobus . . . praesumant.

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

\textsuperscript{110} Cf The title to Albertus Rusius *Oratio de jejuna quorundam et barbaro iuris compendiaria*, 1659.
illam esse preparatoriam Compendii Institutionem. At vero
nollem illum [necesse est], generofum illum spiritum, qui ad
instituandam Juris disciplinam tanto cum impetu adiurgit,
inde reformationem aulpicari, quo maximé obtento, refor-
imationem in se ipsam ruere oporteret.

Ego vero, CRUSIUS, actum agere nolo, & iremo-
vende sunt amplius ratiunculæ veltrae, quod in procli vi fo-
ret, hujus quidem colloqui odium, sicut vos infituris,
jampridem me habet; aliis dabitur occasio; nunc ad alia
transcamus: Cavendum enim, ne materia novi diaoologi suc-
crescat, neve reliquis convivis parum officiisi longiore se-
cellui videamur.

Ille quidem, excipiebat Wijngardienus, fuis quoque fa-
bellis detinentur. Sed antequam digrediamur, ne plane
[nullas in hac scena esse videar, date mihi quoque lo-
cum, non dicendi sententiam, neque refellendi quicquam
à vobis dictum & disceptrum; fed rogandi te potissimum
Hubere, non qua cauæ corruptæ sit jurisprudentia, nec,
an compendia sint dispensia juvenitis; fed quoniam me
favor studiorum, potius quam meritum eruditionis meæ
in partem aliiquam docendi, seve indultu seu committentia
Amplissime Facultatis jurisprudentiae recepit, fece superem,
quà potissimum ordine, quibus studendi gradibus adolescentes
mibi commissos ad Themidos sacrarium deducere possim.
Quando autem Cll. Bökelmanni Crusisque humanitas semper
ad illos aditum mibi praebet, Tui maxime consilii prefé-
ptum ad exempli copiam mihi relinquui defiderarem. Intel-
lexi equidem genus universitati instituti, quod in studio Ju-
ris excolendo probes arque commendes, fed opus est mihi
exætă magis & speciali descriptione, ac quas manuducitione
a carceribus ad metam, quod ajuvent; Etii enim tuus ali-
quandiu fuerim Auditor, ideoque ordinis quem ferves, ra-

R r r r

tio
is teaching by means of preparatory compendia. But I would not wish that ἄγνωρα 
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 πρὸσωπον (a speaking part) in this play, give me too an opportunity, not 
to voice my opinion nor to refute anything said and disputed by you, but to ask 
you, particularly, Huber, not what are the causes of the corruption of jurisprudence nor whether compendia are a waste of young men’s time, but since 
the favour of the students rather than the excellence of my learning has brought 
me into some part in teaching, either because of the indulgence or the 
connivance of the most honourable Faculty of Law, I would like to know in 
what order preferably, and by what stages in their studies I may be able to lead 
the young, entrusted to me, to the inner shrine of Themis. Moreover, since the 
kindness of Professor Böckelmann and Professor Crusius always allows me to 
approach them, I would like an outline of your programme in particular, to be 
left for me as a model. I have indeed understood the overall nature of your 
teaching practice, which you approve and recommend in working on the study 
of the law, but I need a more exact and specific description and as it were a guide 
from the starting gates to the winning post, as they say. For even although at one 
stage I was a student of yours111 and so the logical method

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

tio mihi non plane ignotus esse queat, haud tamen dubito, quin longa discendi docendique experientia collegeris \& seacreveris monita non tralatia, quae in promiscuo studioforum concurfu proferre non solebas, quaque mihi hanc discendi viam primum ingredienti, multum conducere posse crediderim.

Ergo Tu quoque, HUBERUS, in eodem verbis errore Wyngardeni, quo vulgus studioforum tenetur? Enim vero sapes mihi usus venit, ut adolescentes discendi cupiditas privatim me adirent atque ad interiorem amicitiam aditum affectarent; haud ali gratia, quam ut peculiarem methodum secretamque viam sibi panderem atque monstrarem, per quam celerius \& felicius eruditionis iter conficere posset. Respondere sum solitus, maximum quod illis suggerere possem arcanum, esse laborum indefessum in eaque, quam publice illis praebem; pararent se diligenter, antequam ad audientiam venirent, auspiciament attente, notarent quod non lectionem prius audirent, cum gla repetere domi, conserrent cum fontibus legum, mandarentque memoriae; ruribus offerrent se examini, quoties occasio foret; hoc agetem, ut tyrninimum suum pacis onerarent preceptis, attamen universae artis, eaque validissime sua facerent, \& in causas fontesque rerum ubique penetrarent. Quando tamen ejusmodi summam cohorationem non videris esse contentus, utcumque nihil inutilatis arcanis polliceri habeam, nolo tamen deesse facilitatem meam desiderio tuo, quod ex animo, veteris amicitiae disciplinam memore, proficiit, facile mihi persuadeo. Ceterum, non est quod expectes in Jurifconflutum \& me formatum iri, scire Stoici suum sapientem, describun, necque ut Cicero suum oratorem esse voluit, cui nihil desit, qui quod summum est, quod nemo foritant unquam addit, \& fit consecutus, nec ad studiofo tantum laboris durisque
of the order which you observe cannot be entirely unknown to me, nevertheless, I do not doubt that from long experience of learning and teaching, you have collected and distinguished your own private rulings which you were not accustomed to make known to the general body of students and which, I believe, could contribute much to me as I am first starting out on the path of teaching.”

Therefore HUBER answered: “Are you too, Wijngaerd, 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... penetravit) is taken almost verbatim from pp 88–89.
§ 1  

*Juris, Dialogus.*

in fnet imperii exigam, sicur alii plurquam heroico instituto faciunt, ut merito viæ esse tanti, eruditum esse, inexperti arbitrentur. Agam civiliter, atque ita, ut adolecences ne desperent effici posse, quod ipsis praeficribatur. Sic igitur ego fusigram, Qui animum ad studium Juris applicat, eum primo adniti decet, ut literas ac artes, fine quibus jurisprudentia non potest valde percipi, mediocriter addicat. Literas intelligo Latinas & Græcas, piores exactius & cultius; alteras ita, ut scripta veterum, fætem interpretis ope distinxet & cum ratione tractari posint; sub literarum studio Historicum me complecti facile praeficmetur: Artes quæ ad Juris studium preparant requiro Logicam, efti hac pene jam obsoletar, atque Ethicam, Mathematicas artes & Physicam, si quis addat, laudo, exigere non audet; neque politicam præmittit sed potius comitari volo studium Juris, de oratóriâ quoque nihil dixi; nam præcepta Rhetorica literarum studio implicita sunt, Facultas scribendi habendi que orationes mibi videtur omnium difficultima, ideoque inter praefolarum non collocanda; sed alia ftyli exercitia in hunc usum foleo commendare; vera eloquentia ex omnium rerum notitiam exundat & exuberat, ideoque majorem postulat eruditionem, quam ab adolecetribus, qui Needum jurisprudentia maturi sunt, praefari posset. Plura de propoidenticis non dicam, nec enim dubium credo cuiquam esse, quin liberalia Literarum & Artium studio Juris præmittenda sint; quomodo autem in illis fit verandum, à me hoc quidem tempore non expectas ut ediffeream: nifi unum, quod alii forfitan omnium minime expectas ut edifìceram: nifi unum, quod alii forfitan omnium minime expectabunt, monendum videatur; adhibendas esse literas & Artes fane, priuquam leges aggrandiare, sed tamen heic quoque locum habere Terentianum illud, Ne quid nimis. Intelligo, non
control over themselves as do some people with a more than heroic programme, so that they are rightly considered to be scarcely worth so much, to have been taught but to be lacking in experience.

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

I perceive that I have said this, not

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

114 Cf. Tacitus *De Oratoribus*, 30. *Ha est enim ...*, *ex multa eruditione et plurimis artibus et omnium rerum scientia exundat et exuberat imma 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 & disceendi

fine ossens Čruši, forte nec fine admiratione Bökelman-
ni tuteque id à me adfirmari. Quis enim non potius stimulum
ab hac parte quam suflamen opus esse arbitretur? Certe sti-
mulum multo magis esse necellarium juventuti, res ipfa lo-
quirit, nofque jam publice privatimque facta confessi fumus.
Attamen generosiss animis, qui philosophia literarumque a-
more capi f e toto illis dedunt, ego modo imperare non
dubito; saltem hañtens, ne legale studium inchoare cum-
čitentur, ubi primum ingenio judicioque ad accipientam Ju-
ris disciplinam maturi fačti videantur; eti in Artibus aliis
humanitque literis nondum eo provečti sint, quo pervenire
poßunt & debent, qui harum laude confici atque cenféri
cupiunt. Ratio confiat ab experimentia, quae sic fere me do-
cuir evenire, ut qui diu multumque philosophiae, literatique
ac historiis immorantur, eam amcñitate vel facilitate eo
modo in suó suo adficientur, uti cum ad Leges se conferunt,
earum studium potent esse tetricum & asperum, adequate ab
animis suis impetrare solent, ut earum disciplinam liben-
ter & alacriter fuscipiant. Nemo autem dicit aut proficit
invitus & reluçante nature füe ingenio. Velim igitur, qui
studiofius Juris esse cupit, idem agat, quod mihi Wißenhab-
chius nollet auctor fuit, ut cum annum intégrum in pré-
paratoris studis commoratus essém, Institutiones Justitia-
ni audirem atque deinceps in perciéndis integre Artis e-
lementis perseverarem. In illo anno vellem studiofum meum
audire Logicam & Ethicam, edificere compendium historiæ
universalis & dare operam, ut plane pleneque Suetonium
intelligeret, in quo pleraque ad antiquitates Romanas &
Juridicas spectantia facili ordine atque historico offertem se
explicandam: Nam in omnibus vivam præceptoris voce, si
copia dier, adhibendum esse non est ambigendum. Interim
in legendis aliis Historiæ antiquæ cryptoribus vacuo tempo-
re
without offending Crusius, but perhaps with some admiration from you and Böckelmann. For would one not think that in this respect there was rather need for the goad than for the brake. Certainly, it is self evident that the goad is much more necessary for young people and I have often admitted such both in public and in private. However, I do not hesitate to recommend a limit for those high-minded souls who, fascinated by love of philosophy and literature give themselves over entirely to them, at least to this extent that they should not hesitate to begin their legal studies; that is as soon as they seem to have become sufficiently mature in ability and judgement as to understand jurisprudence, even if those who wish to be acknowledged and recognised as praiseworthy in the other subjects and in humanistic literature have not yet advanced to the point which they can and ought to reach. My reason is based on experience which has taught me that the almost inevitable result is that those who linger long and much with philosophy, literature and history are so entrapped in their toils by their pleasantness and grace, that when they betake themselves to the law, they think the study thereof boring and harsh, and can scarcely force their minds to undertake the learning of it gladly and with alacrity. No one, moreover, learns or makes progress unwillingly and contrary to his natural talent. So, I would like those who want to study law to do the same as my teacher Wissenbach advised me, recommending that when I had spent a whole year in preparatory studies, I should attend lectures on the Institutes of Justinian and then continue with reading the elements of the whole subject.\footnote{See Huber’s Historia Vitae (170v) where he describes his own studies. Veen Recht en Nut. Bijlage 1, p 250.}

I would like my first year student to attend lectures on logic and ethics, commit to memory a \textit{compendium} of universal history\footnote{e.g. Vossius’ De historiis Latinis libri tres, 1627; Dissertatio particularis de ratione universam legendarum historiam in Vossius’ De Studiorum ratione opuscula, 1651.} and see to it that he understands Suetonius clearly and fully. For in Suetonius most things relating to Roman and juridical antiquities present themselves to be understood in an easy and historic order. Moreover there must be no doubt that in all matters, the oral discourse from a master\footnote{Cf. Quintilian Institutio Oratoria, 2.2.8.} 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 Auctorum. Si qui sint, quarum ætas & ingenia non habeant eam facultatem, ut unius anni decursu his rebus mediocritet defungi possum, his, siliacet, tantum temporis adiciendum puta, quantum opus est ad capiendum talem profectum, qualis validioribus intran annis spatium contingere potest. Neque dehine, qui & de physis deque mathematicis codem anno primitias capere possum. Ubi vero studium Jurianno secundo inchoatum fuerit, nolo novum Justinianiæm ita fœtum folis legibus dedere, ut inchoata bonarum artium litterarumque studiosa deferat, nec amplius ad sè pertinere putet. Nihil æquè delectat quam varietas, nec est alia dignior studiis recreandi animi ratio, quam in amanitate doctrinae facioloris. Atque hanc viam, quæ confisit in continuatione studiorum primi anni, per omne tempus descendi juri, eò fidentius commendare fœleo, quod per eam non modo ad Artis Juridicae peritiam felicius perveni, sed & eloquentiae ac Historiarum professioni deinceps admotus, ci qualitercumque satisfacere visus sum. In hoc autem præfata illa, diverse rationi, quæ plures annos preparatorii studiis prescribit : quod & notabile temporis compendium facit, cujuß summa ratio confiat studiosis, & quod illam aversionem, quæ fere laborant, qui valde sunt philosophi & critici, antequam jus didicerunt, antevertit atque consumit. Porro ipsum Juriæ stadium hoc modo inprimis decurrendum exilimo, ut id quodammodo duplex effe meminerint studiis. Primum certis gradibus confectum sufficit ad forenses exercitaciones cum fructu fulciendias; alterum ad interieurum Juriæ antiqui notitiam & ejusmodi facultatem acquirendum pertinent, quæ ad Jus explicandum docendumque sufficient. Primum duobus intervallis abölivitur, 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)\(^{119}\) should so devote himself to the law alone, that he abandons his initial studies in the humanities and literature and considers that they do not concern him any longer. For nothing delights like variety, nor is there any worthier means to recoup the mind of the student than the pleasures of an easier subject. And I usually recommend this route, which consists in continuing subjects studied in the first year throughout the whole period of learning law all the more confidently, because, by that method, I not only came more happily to master jurisprudence but also when I moved subsequently to a professorship of rhetoric and history\(^ {120}\), I was able to give adequate satisfaction in that too. Moreover, for a different reason this route is superior to that which prescribes several years for preparatory studies, because it makes a notable saving of time, which is a major consideration for students and also because it forestalls and dissipates that dislike from which suffer those who are very much philosophers and critics before they have learned any law.

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

\(^{119}\) See *Constitutio Omnem* § 2.

\(^{120}\) See the Commentary, Chapter V.1.
De Ratione docendi & descendi

Pandectis. Institutiones velim bis tractari audiendo atque respondendo. Nam sola audita nequaquam sufficit ad expromtam validamque Juris scientiam consequendum; pri-moque statim ingredi qui serio vult proficere, non debet inutili vereundam superbiaque animi deterreri, quominus examini fe quotidie committat. Juxta secundam auditionem, disputandi exercitium sedulo inchoandum & omni tempore, quod juri impedatur, continuandum censo, cum nihil eis efficax preparamo animo, sermoni, oris ad publicas actiones, in quibus aliquando se Jurisconsulti exhibere atque praebere debeant. Expositio & detection fundamentorum Juris in hoc primo satio non potest aliter regi, quam secundum positiones compendii alicuius systematici, quae in re nihil addendum habeo, ad ea quae Bökelmannus noto in hanc rem exacte differit. Nam quia primus studii Juridici curfos adolescentes aptos reddere debet ad respondendum, cavendum, scribendum; quibus partibus officium Jurisconsulti novimus abfolvi; palam est, eodem modo nobis in hac vià esse procedendum, quem Graecos tribus post Justiniam num secus tenuisse modò probavimus, & quae in superiori disputacione Luculenter scitque demonstrata est. Primà deambulatione hujus itineris, quod ad Institutiones dirigitur, nihil aliud ab adolescentibus exigo, quam ut diēlata Preceptoris sua memoriam judicioque subigant, eaque cum textu Justinianaeo Regularis Juris & preceptis de verborum significacione præse accuratelye conferant. Secunda auditione textus ceteros, qui est Pandectis & est Codicem magnum numero in explicandis Institutionibus adducuntur, inspicer-e, examinare, perpendere debent, quod nemo alter, quam fudante cerebro, fatiscio, praefulabit. Atque hic est annis integri juventus labor, accedente, quam dixi, continuatione studiorum liberaliorum & humaniorum. Sequentem annum Pan-
the Pandects. I would like the Institutes to be treated twice, once when heard in lectures and once when responding. For merely listening to lectures in no way suffices in order to achieve a ready and sound knowledge of the law. For he who seriously wishes to make progress from the very first step, ought not to be deterred by useless bashfulness and mental pride from committing himself daily to examination. After the second course I think that practice in disputing should be diligently commenced and continued during the whole time that is spent on law, for nothing is more efficacious than this in preparing the mind, the mode of expression and the manner of speaking suited to public actions where, at some stage, jurists have to stand up and discharge their duty successfully.

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

The next year

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

Pandectae impendere oportet, eadem praecuncte methodo summariae institutionis, quae materiam omnem Artis definitionibus et partitionibus exaurit, eisque decisiones questionum, tam quae ad integritatem Artis antiquae, quam inprimis, quae in usu rerum humanarum hoc seculo veritantur, ex ipsius juris fontibus addit et innecit. Quia autem mea licet ratio, Quam Artem aliquis omni vitae sua tempore vult profiteri, quia fortunam rerum suarum fulcire cupit, haueum prompte valideque seire atque in habitum, quod Philosophi crebris atibus fieri docent, convertere debere; censenda, repetita praecelitione audientiâque et examinatione opus esse. Prudence biennio non minus in Digestis, eo modo transfigendum: Et si enim Pandectae ego ita tradere soleo, ut quae in Institutionibus exposita sunt, illic denuo per novas positiones non traetentur aut explicentur, tamen annus utilis Academicus opus est ad summariam quinquaginta librorum interpretationem. Interea tamen temporis, operanda est Studio suo, ut non modo leges, et quibus positiones Juris probantur, addiduo intenteque perlegas fudulque inde, quae ad intelligendum Artis doctrinam faciunt, colligat; sed observationes ad illustrandum augendamque eam pertinentes, quarum materia gnavo scrutatori literarumque & philosophiae peritio descfs non potest, a notitia receptarum sententiarum segmentarum segreget atque recondat. Quod autem omnium ego praestantissimum in hoc instituto confilioque meo esse comperti, id est, quod qui in illo triennio, Institutionibus & Pandectis occupato, vacuum tempus evolvetis scriptoribus antiquis impedunt, inde iam Artis fiugnari, felige re & ad idemos locos referre possit omnia, quae ad illustrandum jus Romanum in Philosophia, Oratorio, Historicis atque Poëtis referunt, quod facere non possunt, qui ad legendos antiquos fele totos conferunt, antequam Ar-
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} \textit{Annus utilis Academicus}. The term \textit{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 \textit{annus utilis academicus} refers to a full academic year.
De Ratione docendi et discendi

Artis, cui sit potissimum dedere cupiunt, universam compositionem teneant. Quando enim omnibus excellere multitudo rerum infinita & ingenii humani imbecillitas non patitur, optima ratio est, in unà duxata scientia, quod sumnum est affætare, de cæteris excerpere, quod ad illam utnam pertinent orandam & illustrandam; hoc facere non potest, qui comperdiariam Artis illius notitiam animo non præcepit; ideoque nec Jurisprudentiam ex antiquis augere & exploitre poterit, nisi qui prius Arte cognitam, fixerit terminos, quibus obvia quelibet includere debat. Triennio in Jure, quadriennio in Academiâ ficaboluto, studiofus, cui ratio temporis fui bene confitet, ad alterutrum finem fe comparare debet, ut vel ad forum fe conferat, cujus exercitationibus paret doctrinam adipiści jam potuit acdebeat; 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 sumptuum prorogatione, ad alterum d. currandum sufficeret vel durare solent; nec ideo tamen posterius priori antevertendum esse quibus rectè atque ordine fuisserit. Nam qui Jurisprudentiam forensem animo suo proponunt, his solum et totum jus antiquum in omni tâa subtilitate critica tenere non expedit neque sufficit, opus est illis institutione moribus sepulti adtemperata. Talis cum eloquentiâ Latiniâ, Graecifini notitiâ, Philosophiâ ac Hilariori literisque reliquiæ humanitatis conjuncta, quam hac nostra methodus requirit & præfest, in exitu quadriennii laudabilem Jurisconfultum, etiam fatis criticum exhibere potest: modo Politicam & juris publici doctrinam in illo triennio non omiserit addere privati Juris institutioni; denique, tunc etiam feeta mens cognitione rerum gravisimaru marjuitis orationibus eloquentiam exercere potest. Namvero, si quis hæc
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 stage125.

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

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

haec ita generose persequatur & impleat, ut nostra methodus diœtabat, eum ego non dubitem, pari alacitate fladium alterum, quod diximus, interioresque studii partem aggref- surum: quod, videlicet, conficeth in attentà lectione totius Juris antiqui, scit à Jusæiano nobis est reliquit, ejusque collatione eum reliquis eorum scriptorum, e quibus Caesar corpus sium collocat; que quidem hodie perquam exiguae superius, fragmenta Caji, Pauli, Ulpiani, collatio Ruffini, Codex Theodorianus & Basilica Leonis. Quæ totum Jus compleãterentur, abundantius huic instituto fervirent, et si nunc eadem fatis luculentam conferendi copiam præbeant. Debet etiam hic etiæ lectionis atque collationis universi juris fopus, ut quæ diœtata boni & aequi in positionibus systematicis questionumque decilionibus apud eas træctari solitius nondum percepta sunt, haec est recellibus integri corporis legum, etiam ubi de rebus ab usu hodierno remotis agitur, sedulo conquerantur & ad loca fumma, quæ pridem formata fuere, singula redigantur. Dum hoc autem studiofus navire agit, novimus alteri fieri non posse, quin ubique incidat in facrulos & difficultates intricatissimas, quibus tamen resolvendis & amovendis indefeæam operam navare debet. Interpretes in hac obturà viam lucem affatim præbent; sed ego tam. n ita comp. ri atque ita meis amis sic suaderæ solœ, ut eo modo textibus intricatis, etiam pro de- sseratis aut damnatis, ut loquantur, habitibus, incumbant, quasi nullus Interp. esset in mundo. Nam si prius interpretationes varias confüere & expendere voluerint; in singulis paulo minus difficultatis inventum ac in ipsa Lege re-priuat, parumque aberit, quin idem illis eventurum sit, quod Patri Comico, qui consultis tribus Jurisconsultis, discrepantibus, ita abiab or ab illis, Fecisti, inquit, probe; In- certior fum nunc multo quam dum dum. Ubi vero Tu vires
follows and completes this course as my method dictates, I do not doubt that he will attack with equal alacrity the second phase, which I have mentioned, namely the inner aspects of the subject, which, naturally, consists of a careful reading of the whole of ancient law, just as it was left to us by Justinian, and a comparison of that with what remains of the writers from whom the emperor gathered his *Corpus*. Indeed, today very scanty remains survive, fragments of Gaius, Paul, Ulpian, and the *Collatio* of Rufinus, the *Theodosian Code* and the *Basilica* of Leo. If these works were embracing the whole corpus of the law, they would serve this purpose better, but even now they provide a sufficiently rich source for comparison. [A12]

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

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ingenii judiciique tui expertus fueris, sive inveneris, quod falsis tibi videatur, seu nihil expedierris, tempus erit, ut Interpretes adeas, quo vel in tuis cognitionibus firmere, vel harum defectum ex corum commentarius suppleas. Hei vero suave jucundumque spectaculum præbeat, qui negelet in priore viam, quam per me licet appelles systematicam, incontinenti hoc examen universi juris occupant: quando loca, quae non intelligunt, inopiam doctrina juridicae, continuo suis conjeturis, interpunctionibus, additionibus, subdivisionibus, transpositionibus ac omni genere emendationum sejam et subtilium, ut uno spiritu diffliari possint, in suis intellectus sollicitate, cogunt, rapiunt. Plura Doctissime Wyngardeni, non habeo, quæ hac horā inter nos super hoc sero communicari possint. Dantur quidem & alia, quæ momentum in utraque studii viam non spernendum faciant; Sed cum in aetū magis & demonstratone praestili quam in oratione consiliere videantur, dabis veniam, heic ut subfinis nobis liceat. Wyngardeni novam parat infantiam.

Quando Bökelnannus, ut abrumperet hos nimir studiosos seriones, libellum proferbat, cui praefixus erat titulus talis, Ephemerides Eruditorum, gallice conscriptus. Ratio, instituti notior clft, quam ut eam pluribus exponi necesse sit. Verum Bökelnannus aperto libro incidi in huji singuli titulum, Ventriculi Querela & opprobria, operā A. S. Med. Doctoris Amstelodam. ruribus alibi, Carisius Mosai- zans, Author N. Amerpoel & idgenus alia; quæ auctorum ephemeridum illorum prolixo elogio profequatur. Adhæc Bökelnannus, Nonne vobis indigna res videtur, hos homines, qui scribendis hifice diarias Reipublice literarum dant operam, alia quidem illis inferere atque laudare nullius momenti scripta, ruribus alia magnis frugis & foliis eruditionis omittere vel frigide commendare, coque modo ferr-
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 book127 to which had
been affixed the title *Ephemerides eruditorum* (*Journal des Sçavans*), (originally)
written in French.128 The prevalence of this type of book is too well known to
need further explanation. But Böckelmann, opening the book, began with a title
of this kind *Ventriculi querelae et opprobria, opera A.S. Med. Doctoris Amstelodam.*129
Then again somewhere else *Cartesius Mosaizans, Auctore N. Amerpoel*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

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127 The use of the title *Ephemerides Eruditorum*, argues for the German version. See Chapter IX.
128 *Gallice conscriptus*. This is part of the title of the *Ephemerides Eruditorum* which in the 1665–1666 and
in the Amsterdam edition.
130 See “*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 *Journal des Sçavans*, 30 August
bitros ferre meritorum atque famae eorum, qui nomen aliquid inter literatos affectant? Mihi certe res non toleranda viderur, huuiusmodi quoque nostratum libros, quorum inscriptiones vobis praegi, & quos in his locis rarus lector inspexitione dignatur, illic ut opera consideratione literati orbis digna commemorari, nec quicquam ineptiarum Gallicarum omitti, quod fallendo aulicorum aulicarumque otiio servit; interea commentationes hominum doctissimorum in uraque Germania & alibi silentio damnari, vel frigidae negligentique mentione, quasi quae legantur indignas, tantum non ludibrio exponi: Neque sunt, quibus judior hac parte causa sit indignationis, quique iniquius sint habiti, quam Jurisconsulti. Ad haec Crujius; nolim, Bökelmanne Clarissime, tam parvi animi querelam a te serio intelligere emissam. Quid enim queso refer, tuum de Actionibus vel ad Pandectas, neumque ad Legem, Si Paterfamilias, commentarium iisti Ephemeredi infinitum vel non suisse infernum, magis quam si Novellis hebdomadalibus, ut sit, eorum nomina subjecita suissent, aut non suissent. nisi tu putes, multum interest, menstrui an hebdomadales sint falsi, de actis literatorum, an de Regum & Principum, de pacis & bellis negotios sint compositis; aut nisi putes, invienendum esse Medicis & Artium Magistris, quorum laudes in novel- lis decantantur, prae alis, qui modestia contenti famam ipse non faciant, aut fieri curant, sed expechant. Enim vero non est difficile e lectione Ephemeredum illarum animadvertere, conditores illarum fere ex eorum esse generem, de quibus Fabius scribit, parva facile. Sane jurisprudens adhuc quidem inter eos suisse nullos, ipsae ephemeredes manifesto praefecerunt. Proinde faciant id quod fieri consentaneum est, ut de rebus, quas non didicerunt, aut nihil, aut valde parce tenuiterque loquantur. Et mea quidem auctoritas si S i f f 2 quid
they present themselves as arbiters of the merits and reputation of those who endeavour to make a name among the learned? To me, certainly, it seems intolerable that books of this kind, written by our countrymen, whose titles I have mentioned, and whom in these parts only the occasional reader deems worthy of a glance, be mentioned as works worthy of consideration by the world of letters, and that also included are some French trifles, which serve to entertain the leisure of the gentlemen and ladies of the court; that meanwhile the treatises of most learned men in both Germanys and elsewhere are condemned by silence or mentioned coldly and casually as if they are unworthy to be read except as a joke. Nor are there any to whom there is a more just cause for indignation in this regard, none who are treated more unfairly, than the jurists."

To this CRUSIUS replied "Dear Professor Böckelmann, I would not like such a small-minded complaint to be seriously uttered by you. For what, I ask, does it matter whether your commentary on Actions or on the Pandects or mine on the fragment *si pater-familias*, [D.28.5.41(40)] 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). 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

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131 Böckelmann produced a series of 11 *Exercitationes* on Actions, probably published together in 1661. See Ahsmann-Feenstra, *BGNR Leiden* p 56, no. 12. Under p 64, nos. 46-48 are listed posthumous *Exercitationes de Actionibus*, which according to Jugler 298 are completely different from the above. These do not appear to be the text referred to as the dates, 1687, 1694 and 1695 are later than the first edition of the *Dialogus*. For the summer semester of 1671, Böckelmann appears in the series as offering lectures on *jus actionum*. See Molhuysen *Bronnen Leidse Universiteit* III p 235*; Feenstra, *Böckelmann*, pp 141, 142.

132 In 1664, while still at the University of Heidelberg, Böckelmann produced his *Exercitationes ad Pandectas* containing 25 disputations concerning books 1-6 of the *Digest*. Böckelmann himself had acted as *Praeses* and it is presumed he was the author. The *Exercitationes* was published in Heidelberg by one Adrian Wijngaerden. Four years later, in 1668, Wijngaerden published Böckelmann’s *Collegium Pandectarum compendiose exhibens fundamenta et praecepta controversias quae in singulis titulis occurret, 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 possum statim ostendunt*. (These are such as do little things easily and, carried along by their audacity, they immediately display their limits.)
60 \textit{De Ratione docendi \& discendi}

quid apud eos valeret, rogarem Viros cordatiissimos, ut Jurifconfultorum ordinem ephemeredum iurum memorialisbus fauis eximere tur, singulorumque fato committerent, utrum famam hab. rent, au merentur. Quod si tu in aliqua parte gloriae possis, nomen tuum in illis diaris, cum ample clo- gio cuumque speciosa scriptorius tuae historiae confici, ita cen- tico; scribas cum in procinetu es edendi aliquem librum, tuo vel typographi nomine, ad compilatores \textit{episcopi}, quid pares emittere, quem libri tuis summa, quid in eo praepiu excerpi laudarique cupias, inprimis ipsas Ephemerides carum- que Scriptores fac aliqua sublimi charactere laudis adpergas. Sic tibi nullam caufam fore polluceor hac parte Salvio \& A-
merpoelio similibudem Heroibus invidendi. Necio, rege-
bate Bokelmannus, quid ex meis verbis argumenti fum-
feris, ut mea potius unius quam Jurifconfultorum communi causæ queflum me esse putares. Quod si torum hogenus ti-
bi contemnendum videtur, non habebis me tam confitamment adverfaram, quam modo in caufa systematum \& Compem-
diorum expertus es. Proinde facile patior, nihil esse commune Jurifconfultis, cum diaris \& Novellis hifis eruditorum, nisi quid Huberus dissentit. Ego vero dissentio, ille, venerabiles Symmysia, nec ullo modo confulum duo, ut homines elegantibus ingenii \& pari fami notor ordinii no-
ftro inimicos reddamus. Nec enim ipsius ueltcendi ratio decef-
fet, si intelligerent, nos de instituto suo tam inueniuntur, quam vos in animos vestros inducere vultis. Credo, non amplius silentio nos omittere, sed cum aliqua notæ vel con-
temptus argumento scripta nostra suis fauis immiferent. vel omittentes, quæ magno labore confitissent, si quid tibi forfian abortivi fœtus tuoque nomine minus decori excidisset, nomi-
ne licet preflé, rem, illi hoc suis compilationibus, nomine tuo palam factum inferere non dubiarent. Necio, 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 τὸν νεαρὸν (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 . . . duitatent.

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

Digressionibus, quae continent observationes Juris Humaniores, incontinenti forte scriberent, eas idem fere esse cum Menagio. Amenitatis Iuris Civilis, et in liber ille mihi nunciam vitis foret, atque materia utriusque scripti nihil omnium inter se commune haberet; sola tamen intrepidio-finitud ad speciem veri sufficeret, ipsos libros excludere nihil ad rem pertinere: Et in autem illa Digressionum meorum cum Menagio libris comparatio mihi forte pudenda vel pene tenda non foret, tamen ex ejusmodi relatione simpliciter facta imperiti facile opinarentur, me praecipue observationes meas debere Menagio, utequque follicite in praefatione monuissi, sive laudandi conatus mei sive excusandi felinitio effec, propria stylo & cogitationibus elaborata esse, quæ publici juris facerem. Caveamus igitur Virtute Clarissimi, offendere vel irritare genus hominum, cui tam potens fame intrumentum in promptu est. Videamus illos ephemeredes in manibus omnium doctorum & indocetorum verfari, care vendi, cupidie legi, ut fit in rebus novitate fui lectori bland entibus. Et quanquam vera solidaque exigitatio virtutis & doctrinae ab ejusmodi suffragiis non pendet, ideoque tali se fuscus quam mercare, publicata magna nimo sperri posse; tamen si verum est, contemptu fame plurumque etiam contemni virtutem, viri prudentis esse videtur, nulla publice approbationis adiuncta, praeterim adeo late perpata adispermani. Est fane Jurisprudentia maxime ad gravitatem veritatemque doctrinae comparata, ideoque Gallis et nostro autoriibus, qui philosophia, mathematicis & amoeniore doctrinâ potissimum, ut apparat, decentantur, minus placuit, nec apta visa fuit ad augendum scriptum, quod totum recreando non minus quam erudiendo lectori comparatum est. Credo, genus hoc scribendi etiam ad Germanos vicinoique, uti sunt omnes populii novitatis avidi, tran-
Digressiones which contains humanistic observations on the law, saying that it is almost the same as Menagius’ Amoenitates Iuris Civilis136, even although I had never seen that book and the material of both books has nothing in common. Only a similarity of the titles would suffice as a justification for the statement, to examine the actual texts would be irrelevant. Moreover, even although a comparison of my Digressiones with Menagius’ work would perhaps not be to my shame, and discredit, nevertheless from a simply made comparison of that kind, the uninformed might easily conclude that I owe my major observations to Menagius, even although in my preface137 I had specifically stated that whether my attempts were to be praised or my haste excused, it was a working out, in my own style, of my own thoughts, as I had formulated them in my lectures, which I have published. Let us therefore, dear colleagues, be careful not to offend or irritate a group of men who have at hand so powerful a means to make or break a reputation. We see that those journals are passed round in the hands of the learned and the unlearned, are sold at a high price and are eagerly read as happens in the case of information which appeals to the reader by virtue of its novelty. And although a true and sound evaluation of merit and teaching does not depend on votes of this kind and so such possibly undeserved publications can be spurned with pride; nevertheless, if it is true that ‘contempt for reputation is generally contempt for virtue’138 it seems to be the part of a wise man not to spurn the aid of public approval, especially when so widespread. And, indeed, legal writing is specially composed for weighty and serious instruction and so it does not appeal to those French writers τω ν νεαρω νυν (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 font.) Certainly the contents of the Digressiones bear little resemblance to Menagius Amoenitates’. However, on pages 20 and 21 of the Dialogus Huber (through the mouth of Crusius), as shown in note 63, clearly was familiar with chapter XV. As an extenuating circumstance it is of interest that the 1684 edition does not contain the long section, running from Quod tu compendiariae on p 20 to velle videbant on p 22, which contains the reference to Menagius. This was presumably added in 1688.

137 See Digressiones, Dedicatio Zachariae Hubero (his father). “Quod autem hodie profero, sive ejusmodi sit, ut melioris proventus spem facere videatur, sive nulla quam festinatae editionis excusatione sublevetur, nec solius ingenii periodo 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

fiturum. Germanorum, ingeniis propitia magis est Juris-
prudentia Belgique secundum illos aequae familiaris. Hi de-
fectum, quem Bokelmannus in Gallis arguit, forsitum sup-
plebunt, ordinemque nostrum pro parte aliquae literati or-
bis, habere non gravabantur, atque, si juvat & referat, in
ipsis suis diariis nihil magis obliviscuntur. Ego quidem hac
gratia liberenter illis utor, quod ex is per compendium seire
licet, quibus Auctoribus studia nitantur: Favendum est in-
genius feculi nec solis mortuis utendum magistris, neque de-
cet esse tam fastidiosos, ut quae maximo labore clari homi-
nes, aut qui incandescere cupiant, opera doctrinæ compo-
suerunt, ea non modo legere, sed ne argumenta quidem
summaque librorum cognoscer e dignemur. Nolim istiur
contendere, ut ordo nositer, quafi interdicto ab hac fecere
Reipubl. literarit excludatur, neque fane etiam ambitre
muito minus, ut ratio nostrum habeatur. Facile patior,
auctores uti arbitrio suo; duntacat, ne faciant Criticas gene-
rales, sed ut simplicitate narrationis, quae est propria dia-
riis & novellis, contenti, abstineant omni judicio omnique
criti: hanc enim integre cujusque scriptoris lectioni publica-
xeque affiliatione relinquere oportebat. Quod quidem eo
magis requisitum necesse rium est, quo difficilior evitatur; si-
quidem obseruare licuit, aliquis id fero in prefationibus
uis pollicitos, in progressu relationum calore scrivendi ab-
reptos nihil minus premitisse ac etiamnum preftare. Scribant
igitur, CRUSIUS, argumenta librorum fuorum & ambiante
eologia, qui volent pacantiue fe delicias imaginariis. Ego ma-
luerim, homines ragent, cur Crusius non comparat proce-
ribus pernixtus achiis, quam ut elogia rationeque mero-
rum qualiumque scriptorum, juxta tot dignas pariter in-
dignaque reverentiæ poloeritatis chartas, cparentur atque
cesantur. Non deecerat adhuc materia dialogorum, sed
reli-
A Dialogue on the Method of Teaching and Learning Law

Jurisprudence is more suited to the talents of the Germans and, next to them, is equally natural to the Dutch. These people will perhaps provide the lack which Böckelmann finds in the French, and will not be reluctant to regard our profession as some part of the world of letters and they will not forget in their papers what pleases and is relevant. I, personally, am grateful to them for this reason, that thanks to them one can learn as if through a compendium, about the authors who are relevant to one’s own studies. The talents of our age must be cherished, and we must not only use the great masters who have passed on, nor is it fitting that we should be so disdainful as to refuse to read the works of learning which well-known writers, or those who desire to be well-known, have written with great labour, but should also disdain merely to learn their arguments and the main points of their books. Therefore, I would not like to argue that our profession should be excluded, as it were by an interdict, from the public stage of the Republic of Letters, but much less would I like us to court favour so that account be taken of us. I can easily accept that the contributors should use their own discretion, provided that they do not make all sorts of criticisms but that, being content with a simple statement such as is proper to papers and news-sheets they should refrain from all judgement and criticism. For this ought to be left to a reading of the entire book and to the evaluation of the public. But the more necessary it is to demand this, the more difficult it is to be avoided, if one may be allowed to observe that some writers, having made earnest promises in their prefaces, carried away in the course of writing by the fervour of composition, have provided nothing less * and even now provide it.”

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

There was still no lack of topics to discuss but

*† et etiamnum . . . censeantur.

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139 From 1675, the edition of the Journal provided a list of books published that year and it may well be this to which Huber is referring. In 1686 Huber’s Positiones was mentioned. See Commentary Chapter IX.1.

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

141 It is ironic that Huber should scorn those who comment adversely on books they have not read in their entirety, as he himself is accused by Noodt of citing and refuting authors without having read their works (Noodt to van Eck, Leiden, 3 October 1693. U.L. Utrecht Ms 1000): gelijk ick dan ook bevinde dat hij allegert auteuren, ende die refuteert sonder dat hij se gelesen heeft. See van den Bergh Noodt, p. 56. ft. 90 and Veen’s article on Stolte’s Brenkman p 383 ft. 9.
Iuris, Dialogus.

reliqui convivæ Bökelmanni, qui magis verecundia nos interpellandi, quam suæ sponte in alio recessu amoenissimi horti subliterant, tandem affuebant, ut nobis valedicerent, hospitique gratiss actis, in urbem se reciperent, quod & à nobis, post aliquot ultimæ civilitatis complementa mutuo-que amicitiae contellations, 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.