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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Citation for published version (APA):
PART II

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

Latin text with English translation
PRÆFATIO
Summam Diatribæ exhibens.

ULRICUS HUBER
Auditoribus suis S. D.

Unc dialogum initio fierarum eslevarum calamo effusum vobisque promisum serius exhibeo, quia rursus eum, mutato conflito, abjeceram; ut fit, ea que cum voluptate scripsi seris, absoluta minus placere. Sed quia propostum ejus illa prævià policitatione umnis innotuerat, alienique à meo conflito sermones de eo cædabantur, fuisse non esse integrum mibi, supprimere editionem: nihilque potius esse credidí, quam ostendere, nihil in eo à nobis actum esse, nisi ut sentiam, de re ad utilitatem vestram pertinentem, juxta alios innocuà libertate dicearem. Si argumentum præsumere vultis; est hieColloquium in horto Clarissimi Bökelmanni apud Lugdunum Bataviæ ante complures annos habitum; cui occisus dedit ejus Colga Crufius vir egregius, qui fatis acriorat, Comp- endia Júris civilis in præsens scholae addibiis solita inferatibus, eorumque loco studiosos, inde statim ab ingressu auditorii, legere totum jux antiquum óbríasque difficiles & enigmata conferendo, conciliando, emendando, inter- pungendo, omniqve alio criticae artis instrumento solvere volebat. Quas rès Bökelmannus nonnisi ab illis, qui prisci universum jus paratilari methodo prompte valdeque didicissent, tentari suadebat. Rationes eorum diversis vicibus commutatas agitatasque, non sine functionibus aliquando.
PREFACE

Providing the main points of the discussion.

ULRIK HUBER

To his students GREETINGS

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

Now, if you wish to learn the tenor of this dialogue in advance – this was a discussion that took place, several years ago¹, in the garden² of Professor Böckelmann³ near Leiden. An opening for this was provided by Böckelmann’s distinguished colleague Crusius who, in rather bitter language, used to inveigh against the compendia on the Civil Law that were habitually used in private lessons⁴. And, in their place, he wanted the students, right from the first lecture, to read the Old Law in its entirety and to resolve the difficulties and enigmas encountered by comparing, reconciling, emending, punctuating and by all the other techniques of the art of criticism. Böckelmann recommended that only those who had first got to know the overall scope of the law readily and well by the paratitlar method, should tackle such issues. You will see that their reasons were discussed and weighed up turn and turn about, sometimes

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

A1, A2 etc. indicate where passages in the 1684 edition have been removed from the 1688 edition.

The Latin text and the English translation are to be found in Appendix A.

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

² The garden which was supposed to provide the setting for the Dialogue was situated some distance outside Leiden beside the Old Rhine at Hazerswoude. Böckelmann bought this property in 1676 and the deeds of transfer are dated 25 April and 27 June, 1676. According to the Acta of the Senate of 14 July 1679 (Bronnen Leidsche Universiteit III, p 342), it was decided to hold a convivium piscinorum extra urbem ad quod Nobil. D. Böckelmannus praelium suum concepit, 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 Wijngaarden see the Chapters V and VI.

⁴ On collegia and colleges in the Law Faculty at Leiden (1575-1630) see Alismann Collegia et collegues, (1990) especially p 245 ff, in the German edition of 2002 especially p 172 ff and p 303 ff.
PRÆFAATIO.

jocifque, sicut erant homines liberi oris animique, salva
tamen dignitate, videbitis, & de meritis singularum exis-
stimabilitis. Me quoque tandem vocaverunt in partes, nec
aliud a me dictum, nisi quod rationes docendi discendique
juris varias, inde a Juttiniani evo recensuerim, atque ex-
inde, quae mihi præstansissimam videretur, collegerim; de-
nique usum absurdamque criticas, quam vocant, in jurispru-
dentia demonstraverim. Postremo, rogante Hadriano Wijn-
gardenio, qui nobis aderat, atque tum scholas domesticas
Lugduni habere instituебat, totum studii juridici cursum,
sicut ego illum studiosiss præeundum censeo, simplici oratio-
nis filo dimensum sum. Donec Böckelmannus prolato epheme-
ridum literatarum libello, habes disceptationes aperit, ea-
que occasione de instituto illorum diariorum juxta novellarum
pauco inter nos actum. Non ignoro quam exigua laudis
redbofimentum à patrocinió Compendiorum sit expectandum,
et si nemo paulo prudentior usi illorum abstineat, imo qui re-
prehendunt, sepe contentius utantur, nihil tamen proficiès,
si maxime cuncta illorum vitia, quique in illis summam studi-
diorum collocant, frena vituperes, tamen non deereunt, qui
dignationem nefcio quam, stiliicet, in compendió derivab-
bunt. At vos legite satis, & nostrum sequimini, quod beic
dabitur, consilium. Siullum sèveriori lege vobis preßibent,
quoadmodum descendi hoc pretex tum pervertunt, nullum su-
is fecio, praebunt, quodcum bhus gravitate veroque fru-
ctu conferri posse videatur.
with jibes and jokes, as befits men of free speech and free thought, but nevertheless maintaining their dignity, and you will evaluate the merits of each argument. At length they also called me in to take sides, but I said nothing except to review the various methods of teaching and learning Law, from the time of Justinian and then conclude with what seemed best to me. Finally I pointed out the merits and demerits of the art of criticism, as it is called, regarding jurisprudence. Eventually, at the request of Adrianus Wijngaerd, who was with us and had himself already begun to give private lessons in Leiden, I spelled out, in a straightforward statement, the whole course of legal studies, just as I reckon they should be undertaken by students. Until at length Böckelmann, producing a booklet containing learned newsletters, interrupted this debate and so, on that occasion we briefly discussed the practice of those journals or news-sheets.

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

**† Non ignoro . . . posse videatur.

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5 See pp 46–58.
6 Böckelmann produced a copy of the *Journal des Sçavans*. The articles referred to (see p 58) appeared on 18 January 1666 and 30 August 1672.
7 This idea appears in Huber’s address to the students in his *Positiones*, 1682. It does not feature in the 1684 edition of the *Dialogus*, only in the 1688 edition.
8 The 1684 text places *lege solitis* after *inter nos actuam* i.e. after the reference to the news-sheets, implying read the news-sheets “if you want to”. The 1684 text concludes with ‘*et 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 sit, ut cum ad Artes studiorum facultaeque doctrinæ opus est Anteceffloribus in scholis illustribus atque in Academias, adeò pauci ad eam rem administrandam idonei reperiantur, quique reperti sunt tam raro auditorum Meeenatumque expectationi satisfaciunt; maxime, cum, ut hodiæ res sunt, Academicæ functiones inflant plu felicissimæ tractatae; nec honoribus suis neque commodis quibus ut ajunt, aluntur artes, carere videantur, adeoque parum abit, quin id praestent, quod olim Marco Tullio in summâ votorum suffici legimus, ut in otio cum dignitate vitam sibi transfigere liceret. Verum haœ rationes non faciant, ut difficile sit, re diligentius expensæ, causas reddere, quor Professiones Academicæ tam paucos habeant sibi pares, à quibis cum aliquo gloriae publicoque approbationis fructu exercentur. Nam primo omnium, ex immenso multitudine adolescentium, qui ad capiendum ingeniis cultum mittuntur in Academias, fatis confiat, esse pauciissimos, quos æquus eò usque Jupiter amaverit, ut ingenio memoriamque valeant ad ejusmodi apparatum eruditionis acquirendum, quem ad docendas artes literarum scimus esse necessarium. Quorum autem ingenia quandoque suflécterint, horum voluntatem fere ab ea studii intentione, fine qua excellens doctrina haberí nequit, remotam esse videmus. Ut autem sint, quibus & naturæ vis & patientia laboris adest, his plerumque fortunæ rationes, sive angustæ sive hilariores, negant tam longam dicendi moram, ut ad arduum docendi munus.
It often occurs to me, most excellent students, to wonder how it comes about that when there is need of professors for our illustrious schools and for our universities to teach the humanities and the skills of learning, so few suitable men are found to carry out this task and that those who are found so rarely satisfy the expectations of the students and their patrons; I am especially surprised since, as is the situation today, those academic functions when performed somewhat more successfully, lack neither the honour nor the profits by which, as they say, the arts are nourished. And it is almost as if they were examples of what we read was once the greatest wish of Marcus Tullius namely that he should be allowed to live his life with leisure for literature and with honour. But these arguments do not explain (as it is difficult to do, even when the matter has been weighed up rather carefully) why the Academic profession attracts so few competent persons to undertake it and win some glory and public approval. For first of all it is well known that of the great number of young people who are sent to universities in order to develop their natural talents there are very few whom benevolent Jupiter has so loved that they have sufficient talent and memory to acquire the foundations of that sort of education which we know is necessary for teaching the liberal arts. Moreover, we see that of those who sometimes have the ability, the desire to make the effort to study is lacking and, without this, first class knowledge cannot be achieved. On the other hand those who have the natural ability and dedication to hard work, generally, because of financial considerations – be their circumstances constrained or comfortable – are denied a long span of time for learning, so that they can mature, by the lawful steps of study, to the arduous task of

1 The Illustres Scholae were colleges to prepare youths who had been through the Latin schools for a university. These schools concentrated on improving the standard of Latin (and Greek), philosophy and history. The professors usually gave private lessons at home but also public lectures which the citizens could attend. In short, the Illustres Scholae provided much of the instruction of a university but without the ability to confer degrees. One of the most eminent was the Athenæum of Amsterdam, founded in 1632 with Gerardus Johannes Vossius (1577-1649) as its first rector. After March 1645 Albertus Riusius 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 beatissimae 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 legitimos studiorum gradus maturefere queant. Denique ex iis, quibus omnes haec opportunitates confluit tam generosi copiam faciunt, bona pars, vel fato, vel Judicii aut opiniosis errore defleunt à via rectâ seque itineri committunt, quo nunquam ad verum doctrinae faciarum entit atque penetrare poiliunt. Id autem sepe mirari subit, quod, cum omnis difficultas in perceptione memoriaque rerum, qua in singulis disciplinis traduntur, consistere videatur, in ordine modoque discendi atque docendi tanta varietas & confusio ac inde proficiendi impedimentum, bonis mentibus objiciatur. Cum hac de re non ita pridem, quod ad Jurisprudentiam attineret, inter aliquot Juris Studiosos orta effet disputatio, laudantibus ut fit, singulis suorum Preceptorum rationes, impetus me cepit, idque tum prae me tuli, fore ut in scriptum redigerem, meisque Audito-ribus traderem, argumenta Colloquii, quod olim multi cum Johanne Frederico Bökelmanno & Georgio Cumrado Crusio Antecefloribus Luduno Batavis, super hocipfo negotio intercesserat. Cum Bökelmanno familiariter Heidelbergiae in honestissimâ studiorum æmulatione jucundoque amicitiae commercio vixeram. Crusius in Academia Francoperae Wissenbachio nostro operam dederat, dum ego illic rudimenta Professionis Historicae deponerem. Atque deinceps arctior inter nos confuetudo invalueter, cum ad accipiendum doctrinae titulum in Franekeranam illæ consolilet. Digreffus eram feriis aeliis in Batavos, nec committendum putabam, quin Lugdunum ad homines amicitiae tam Veteres candidolique visitarem. Peraeto apud Bökelmannum primi congressus officio, multus inter nos terno de rebus antique jucundissimâeque coniunctudinis Pa- latina fuerat; donec Crusii interventus ad promissu de re- bus obtius colloqua teremonem avertit. Quæ tandem int- terrum-
teaching. Finally, of those, where all those favourable conditions provide the means for so honourable a plan, a good number are turned aside from the straight road, either by fate or by an error of judgement or expectations, and they commit themselves to a course by which they can never mount up to and penetrate the inner sanctuary of knowledge. But it often enters one’s mind to wonder, when the only difficulty seems to consist in perceiving and remembering the facts which are taught in individual disciplines, that such great variations and confusion in the order and method of learning and teaching and hence obstacles to making progress are put in the way of the motivated 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.
Juris, Dialogus.

terrumpens Bökelmannus; sunt, inquit, amici aliquot suaviores, vestriisque, ni fallor, moribus egregie convenientes, qui prandium mihi apud puëcinam meam condixerunt, Rogo, comites vos & convivas, & si libet, confabulones praebatis. Annuentibus nobis, rhedam ejus pennilem, quam habebat more beatorum hominum, contentimus, breviqve itineribus villam ejus urbanam ad antiquam Rhenilittus ingressi, convivas illic, scaphâ recens advectos offendi
mus. Inter quos, praeter Wyngardenium Auditorium olim meum, neminem mihi notum reperebam. De apparatu & tralâtisis epularum fœlennibus fabulisque nihil referam; sed menis sublatis, animisque à sedentariâ fatigatione, per horcum ambulando, recreatis, accidit, ut nobis quatuor, nam Wyngardenius se ad junxerat; sub platano quodam confidentibus, fermo per amages ad inquisitionem de fato Academiarum studiique juridici modo methodoque deducetur. De fato Academius frequentiâque fidenter illi & magnificè loqui, nec obscura mirari se meas rationes, quæ fecissent, ut tam illuïtri theatro me subduxissent; tamen, ut erat hominum candor & liberalitas, videri volebant, eo factum esse, ut ipsis locus tanti honoris & emolumenti patuisset. Inde Crucius de meis Digressionibus, quas superiores anno de Praelectionibus ad Institutiones Justinianae excerptis incipere; probabat eorum institutum, esti nonnulla viârum mihi efféct in illis collocare, que ab ipius sententiâ judicioque abhorrenter; de quibus indicabat, se per litteras me cum agere contituisse, nisi nunc faciendum mihi videtur, ut coram de illis familiari dîscerpantemus. Ego non recusare; sed Bökelmannus & Wyngardenius intercedebant, eo quod ife locus, & congrè fûs ad disputaciones de opinionibus juris, sententiisque discrepantibus parum idoneus neque factus & institutus videtur. Atqui, regerebat Crucius,
BÖCKELMANN interrupted and said: “I have some agreeable friends who are, unless I am mistaken, very congenial to you. They have engaged themselves to lunch with me at my riverside garden. I ask both of you, if you please, to give us the benefit of your company and conversation”. When we agreed, we climbed into his sprung travelling carriage7 which, being a prosperous citizen, he kept available and after a short ride we entered his country house on the banks of the old Rhine and met up with our fellow guests who had recently been conveyed there by boat. Among them I found no one known to me except Wijngaerden8, a former student of mine. I shall say nothing about the table setting or the formal courses of the banquet or the conversation but when the tables were cleared and, being tired of sitting, we were refreshing our minds by a stroll through the garden it happened that while the four of us (for Wijngaerden had joined us) were settling at the foot of a certain plane tree9, the conversation developed in a roundabout way into an in-depth discussion about the state of the universities and the manner and method of studying law.

On the state of the university [of Leiden] and its numbers10 they spoke confidently and proudly and they clearly expressed their surprise at the reasons which had induced me to refuse an appointment in so illustrious an establishment. On the other hand, such was the candour and affability of these gentlemen that they admitted that by my so doing, a position of great honour and remuneration had been laid open for them.11

Then CRUSIUS began on my Digressiones12, which in the previous year I had extracted from my lectures on Justinian’s Institutes13. He approved the concept of those even though I had decided to include therein some items which were offensive to his views and judgement. Regarding these Crusius indicated that he had decided to discuss them with me in a letter unless it seemed good to me that we should forthwith tear these issues apart in a friendly fashion.14 I did not refuse but Böckelmann and Wijngaerden intervened on the grounds that the place and that sociable gathering did not seem really suitable or designed and intended for disputes about legal opinions and opposing views. “But”, CRUSIUS retaliated,
4. De Ratione docendi et discendi.

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

Quare Crucius, Haud facile dixerim, mi Hubere, pergit; quam mihi volupae fuerit, animadvertere est tuus Digressionibus, te non esse ex corum numero, qui systemata nobis & compendia Jurisprudentiae, quæ nihil quam totidem dispensia sanctissimæ artis sunt, omnis die obtrudunt & secundum ea iuentutem sibi comminæm inctuitum an corrum-punt. Verum id mihi præter expectationem accidisse fateor, quod in omnibus quatuor libris observationum illarum humaniorum, non incidi in ullum spectem emendandi textus vitiosos Juris nostris; cum tu ignorare non possis, dari adhuc plurima loca, quæ in turribus scripturae mendis hæreat, & videmur jure quodam nostro expectare, dum Tu illud studium criscos juridicamente jam pene fitu & fœcalore obsitum & oblitteratum, inter paucos alios escolas, atque in ufm honoremque pristinum redueas. Cujus instituti propositique nulla me vestigia in hilce tuis Digressionibus, quæ nihil alium fere, quam Observationes Juris Humaniores, ut ipse quidem eas appallalti, continent, reperissè, non potui quin agere ferem. Necicio enim quid taciti argumenti hocce tuum de criticis filentium, in tali opere, pra fæ ferre videatur, non esse tibi consilium, hanc docendi juris viam infiltere, quæ per examen omnium veteris Jurisprudentiae locorum in emen-
“don’t expect scholastic argumentations on the controversies of the masters or on profound legal perceptions or antinomies. Neither my nature, nor Huber’s nor our mental desires are inclined to arguments of that kind, especially at this time of convivial pleasure. But let us discuss our differences since it seems a good idea, even if we avoid the humanities and matters referring to classical literature. However, nothing prevents our speaking about our common scholarly interests. For I cannot think what is better for us to do under this plane tree which seems to me to be sacred to learned debate”. The others did not decline.

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

\textit{Institutes}) which he declares was the source for his \textit{Digressiones}. These were lectures given in the year before the Dialogue and the reference is possibly to as yet unpublished lecture notes, given in conjunction with his disputations and \textit{collegia}. The first part of the \textit{Praelectiones} (on the \textit{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”, \textit{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 \textit{Digressiones} which was added in the 1688 edition, and is not linked to the \textit{Institutes}, textual criticism does feature, eg \textit{Pars. II, lib. I cap. xxiv}, p 551.
Iuris, Dialogus.

emendatione textuum depravatorum definit, ac ita nobis antiquam Artem nitoris suo genuino integritatiqpe refuit. Nam si hoc in iis meditationibus, quae pertinente ad politio-
res litteras cum Iuris prudentia coniugendas, faciendum non putafis, quando & ubi fas sit hoc a te præictolare, mihi quidem sperare difficile est. Eaque res tanto minus expe-
ctata mihi contigit, quod jam olim, cum adhuc in genere Historico verfarere, criticalis emendandi conatibus non absti-
nueris, solum recordor, te in dissertationibus, quas edi-
disti de Temporibus ante Cyrum observavisse, nec non corre-
xifis vita in locis quibuldam Diodori Siculi atque Orofii, qua nec cum ipsis nec cum alii corruptis rerum gestarum
monumentis convenire judicabas. Deinde vero cunctis bonas
mentis amatoribus optimam spei signum extulisse videbaris, in oratione, quam habuisti, cum ex Eloquentiae & Historia-
rum Cathedras solumiter in Iuridicam transfers. Id enim
unice in univerfa Oratone illaagere videris, ut conjunctio-
nem politioris criticæque literaturae cum Juris prudentia, stu-
diosis inculcares. Praeinde gaudes, hanc occasionem mihi ob-
latam esse, quia confilii hujus occasionem de ipso cognof-
cercem, sperans futurum, ut quidvis potius quam infuliuti
adè praecleri mutationem in causa tibi fuisset intelligam.

Dux res sunt, ita regerebam, Clarissime Cruix, ad quas
responsum debeo; Prima quod tibi mihi que gratularis, me
potius edidisse Digestiones à Praelectionibus Inulianis,
quand systematicum Institutionis Imperatoriae, Compen-
dium; Alterum, quod in Digestionibus meis ipse quon
de criticis observationibus, quæ huic operi in primis con-
venire viderentur, fefellerim. Quamquam autem conten-
tur esse poteram eæ laude, quam mihi in invidiam systema-
tum & compendiorum adÆripitisti, habeo tamen rationes,
quarae nec hae in parte tibi penitus adÆentiri possum vel de-

beam,
and which thus restores for us this ancient science to its true splendour and integrity. For if you did not think that this should be done in those thoughts which concern classical literature to be joined to jurisprudence, it is difficult for me indeed to envisage when and where it will be right for this to be expected from you. I was quite expecting this to feature, because previously, when you were still involved with historical studies, you did not refrain from attempts at critical emendation. If indeed I remember rightly in the dissertations that you published De Temporibus ante Cyrum (On the times before Cyrus)16, you observed and also corrected flaws in certain texts of Diodorus Siculus and Orosius which you judged did not accord with themselves nor with other uncorrupted records of past events. And then in the oration that you delivered when you transferred officially from the Chair of Rhetoric and History to that of Law, you seemed to put out a most hopeful signal to all lovers of good learning. For to an exceptional degree in the whole of that speech you declared that you would emphatically impress on students the link between polite and critical literature and legal science.17 And so I rejoice that this opportunity has come my way so that I may learn the reasons for your policy from you personally in the hopes that it will turn out that I understand anything other than that, in your case, there has been a change regarding that very excellent practice.”

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

16 The Tractatus de Temporibus ante Cyrum first appeared in Huber’s De genuine aetate Assyriorum etrego Medorum 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.

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 cum ex ordinaria Eloquentiae et Historiarum cathedra solemniter in Iuridicam deduxentur, ex historia iuris romanæ utriusque studii conjunctionem exhibens. See the Commentary Chapter IV.3., Feenstra BGNR Franeker, pp 49–50, nos. 133 and 134.
De Ratione docendi & discendi.

beam. Paranti de hoc instituto sententiam meam pluribus verbis exponere, Bokelmannus, comprehensa lectori manu mea; Quin tu, mi Hubere, quod ad hoc caput attinet, inquit, huic homini cede tuae partes; nam id ego meliori juris vindicare mihi debeo, ad cujus inuidiam vel contemptum, hae orationis Crucianæ pars, si quid inde contemptus invidiaque potest oriiri, in primum redipat. Novinum nos inter nos Crucianus & ego, atque libertatem oris animumque ejus, utpote Zuthanianus ego vicinus Welfphalus, & jam Collega familiarisique amicus tam bene perfecit habeo, ut nec ego caufam irascendi habeam, quod coram instituta mea vituperat, nec ille sit aegre laturus; si pari libertate rationes ejus refellam; libentius id Te communi amico praefente & arbitro facturus, quam si cum solo ipso vel seorlem apud ignotos aut minus intelligentes faciendum foret. Aequum Bokelmannus petere videbatur, ideoque & cum defidero meo cessi respondendi Crucianæ transiendum putavi, donec illi de compendio & systematicis ablueissent, id unum stipulatus, ut quam aequitatem animi praefeceret Bokelmannus, hanc utque in orationis progressu fideliter praefaret, Utroque blando cum rifu annuente.

Si quid mihi, pergit Bokelmannus, fucescendum habeat, non immerito queri possem, sparsos jam pridem nimis odiose in vulgus rumores & pene jam in dicerium abiusce, compendium Bokelmanni nihil esse quam dispensum, forte an etiam conquereret, nisi eventus me compendiumque meum absolveret, omnemque dolendi caufam publici applauus frequentiæque gloria praeclere; nam fas est, opinor, magnifice loqui adversus contemnentes & calumniias invidientium compellere iactantiam, nec scio, an non brevi continuis 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.

debeat. Sed adhuc quidem Crusti dociliime, de compendiis & institutione methodica Juris, qua utimur, nihil quam dicta peremptoria, summaque inriisionum & scomrnata percepit, nec fatis dircernere potuit, sitne vobis prorsum, omne genus compendiorum & syntagmatum eliminare, vel an in meo libello sit, quod dircipiat & quod adserioris disciplinæ legem emendatum cupiatis. Quod si placet, ut hac quæstione defungamur, faciendum tibi centeo, ut de hoc genere totam animi tuorum tentantium & quo pacto in docenda juventute procedendum putes, exponas. Cum enim Tu Aétoris, ego Rei partes fuistinere videar, non habet res facultatem, ut defendendæ rations incantur, antequam litis intentio apta, certo, clare peracta & absoluta fuerit, fidi dem hæce tres proponenda intentionis fœ Rer vitutes à systematicis nostris accepimus. Dein ego, licet potero, contradictionis vices peragam litemque eo modo apud hosse duos, si videbitur, arbitros contendatibus.

Quando res eo deducatur eft, ajebat Crustius, age, non disipicet conditio, quid enim iucundius, aut facilius mihi, quam agere cauam, qua tantopere ad animum meum pertinet, & eloqui apud amiciimimos homines, quod jam olim me coquit & veriat sub peclore fixum! Nihil enim minus agitur in hac disputatione, quam de causis corruptæ Jurisprudentiae, quorum ego principem maximeque in oculos incurrentem hanc compendiariam docendi rationem effe, non verear profiteri. Credo, non vocabitis in controversiam, Artis nostræ gloriam à patrum nostrorum memoriae velomement eftl diminutam. Quis enim nostrum fine dolore animi potest comparare nomina studiaque eorum, qui superiori seculo jus illuftrarunt, cum hui qui hodiè fahiam inter jurisconsultos ducere creduntur? Vere dicere possum, Juris Artem his diebus nihil quam supervacuum 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 Tite! Si quid ego adiuvor, curamve levassor,
Quae nunc te coquit, et versat in pectore fixo
Equivit erit potius?

(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; Alsmann-Feenstra BGNR Leiden, p 178, no. 427.

23 Cf. Noodt's inaugural oration p 616, . . . cur, ubi priora tempora nominibus tot excellentium jurisconsulorum inclamant, nostrum potissimum obscurum atque ignobile, vix paucorum lumine et gloria illustretur. (Why, when earlier times were celebrated by the names of so many eminent jurists, are our times in particular dark and undistinguished, and illuminated by the light and glory of only a few?)
De Ratione docendi & discendi
omni non solum elegantiâ doctrinâque, sed & à communi
utili preferre subtilitatem. Quam nobilissimae disciplinâe
contumeliam non utique ipfius ineptiz, sed infici non al-
sequentium ego quidem imputandam censo. Quid enim
ciff, quod impediret nos ad cande Artis perfectionem eniti,
modo eadem contentionem viaque procederemus? At nunc
studiosi juris beatos r e valoreque eruditos credunt, fi brevia,
qua venditatur, Artis compendia vix animo comprehen-
derint, & definitionum partitionumque summas & aotion-
umm solennia carmina memoriae mandaverint, artemque o-
mnia principem & lade diffusam in angustas tabellas pau-
casque & fipe ineptas quaestiones coarctaverint. Interim fi
quis siglorum & notarum ænigmata, fi interpunctiones, fi
Glossas, fi varias lectiones judicet atque discernat, fi lacen-
nas librorum juris legumque suppletat, fi viiâta, infecta,
luxata deterge & refitut, fi Leges, plebiscita, Senatorus
Consulta, formulâque actionum concineret & fugitiva reter-
hat, id omne nimis anxii fluidæque diligentiz effe opinantur.
Nec ita vulgus tantum imperite juventutis per inertiam aut
ignorantiam, sed etiam Professores [pe mercedis aut ambitio-
ne frequentis auditorii in tranvierium aguntur, ut nihil pen-
fi habeant, animos juvenili credulitate fluxos atque obnoxios
corrumpere, pulcherrimamque artem subvertere & parentum
vota frustrari. Hi sunt, qui fatis effe jactant, fi velbinas
quotidie horas Studiis libris incumbunt; Id enim spatio
temporis sufficere abolvendo penfo quotidiano, quod illis
è compendio preceptoris sui secundum ordinem lectionum
privarum injungitur. Quid denique frequentiss auditur,
quam viam illam veterem ac regiam, asperam & præruptam,
etiam obscum & multis anfractibus detortam, coequelong-
gam ac molestam effe; illam à paucis, quamquam fedulis
atque ingeniosis vix multâ lucubratione & immenso labore
vinci.
not only from any elegance and learning but also from every-day practice. I indeed think that the contumely heaped upon our most noble discipline is certainly not to be attributed to its inherent 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 formulæ 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 formulæ 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 praefere. (. . . that it seems to present empty subtlety and be completely removed not only from all learning and elegance but also from practice and everyday life.)
25 Cf. Noodt’s inaugural oration. This passage merits direct citation from p 619 . . . ita se valde eruditos beatosque existimant, si quae brevia Artis compendia vix comprehenderint; et definitionum ac partitionum actionumque solemnia carmina memoriae mandaverint; Attenque late portam, in augustas tabellas, pascasque et saepve inexpertas quaestiones contavarient. (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 spre mercedis et ambitione frequenti auditum adaeque transversi apument; ut nihil penit habeant . . . animos juvenile endulatat fluxos atque obscuris corruere, in primis parentum vota et republicae subsidia frustrari. . . . (But many professors, either from laziness or ignorance or the hope of gain or the desire for well attended classes, are so perverse that they think it of no importance . . . to corrupt the unstable and impressionable minds of the credulous youth, in particular to frustrate the desires of the parents and the interest of the state.)
Iuris, Dialogus.

vinci. Manc autem compendiariam, planam, simplicem, rectam, omnibus patere, ac ne fregibus quidem recordibusque inviam aut insuperabilem effe, eaque ad jurisprudentiam brevissimae certissimeque perveniri. Ego vero cenfo, multas illas nostras via praeclamam scientiam obtinuisset, quam qui vulgarem & compendiariam iniere, qui etiam tum mihi, cum in Portum fium pervenerunt ac spera confecti sunt, naufragium fecisse videntur. Selicet, fallit ambiguitas vocabuli; ea fertilia dicitur, ea mora est, & quod compendium vocatur, Sapientiae damnun est. Quod si tantopere Compendia expetant, ea privatim legant & habeant Studio, Antecedentes publice privatimque altius spirent; & positis his in Institutionum narratione totius operis five ossibus five membris, post deinde apta & diligentia & accurata Panderzarum & Codicis interpretatione, tanquam nervis ac thorsis masculum illum prudentiae vigorem constringant pariter atque intendant. Verum quia plerisque penitus tam praefantibus disciplinæ, eae angustis inclusa Jurisprudentia est, quæ quibus ipsi, quid tam eximiae disciplinæ deinceps futurum arbitramini? Atque utinam exempla deessent huius tam juto metui? Quid Livium imminuit praeter Annæ Flori, quid Dionem Cassium, praeter Xiphilini epitomen? Si Polybius, si Trogum Pompejum, sialos non contraxissent aut excerpissent studiorum homines, fortis integris uteremur, neque in antiquarum rerum memoriam tans hiatus pateret. Eloquentiam videamus, quid cam perdidit, nonne compendiaria, per quam eloquentiae laudem affequant, qui nec dum bene loqui didicerunt? Quid multis? ipsum Papiniunum, Paulum, Ulpiunum, quid abutit aut accidit, nonne Compendiaria Justiniani? Quod ilia veterum extarent scripta, quantum ad rem literariam conferrent, quantum ad publicum, quis ignorare potest; M m m m qui
On the other hand we hear that the road with compendia is smooth, simple and straight, open to all and not inaccessible and insuperable even for the lazy and unintelligent and by it one comes most quickly and surely to knowledge of the law. I indeed think that more men have achieved outstanding knowledge by my route than those who entered on the common compendiary route for they seem to me to have suffered shipwreck when they have come to their harbour and have achieved their hopes, for the ambiguity of words deceives them; what is called speed is actually delay and what is called a compendious summary is loss of wisdom. But if it is the students who so greatly desire compendia, let them get them and read them privately. Let the professors aspire higher both in their public lectures and in their private lessons. And having set up as it were the skeleton or limbs of the whole work in a detailed exposition of the Institutes, let them then afterwards by an appropriate, careful and accurate interpretation of the Pandects and Codex, as it were the sinews and muscles bind together and at the same time extend the virile strength of legal science.

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

\[*\] Scilicet... damnum est.
\[**\] et positis... intendant.

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28 See Böckelmann’s Praefatio to his Compendium passim; the Commentary Chapter V.1.3 and plates VIII and IX.
29 This passage from 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 enarratione Institutionum totius operis sive ossibus sive membrn, post deinde Pandectarum et Codicis lectione apta, diligentia, acuretia, tamquam nervis ac thoris, masculum illum prudentiae vigorem constringat panter atque intendant. (but having set up as it were the skeleton or limbs of the whole work in a detailed exposition of the Institutes, let them then afterwards by an appropriate, careful and accurate interpretation of the Pandects and Codex, as it were the sinews and muscles, bind together and at the same time extend the virile strength of legal science.) Here, too, Huber takes words which Noodt directs to the student and applies them to the Antecessores. Note Huber replaces the lectione of Noodt with interpretatione. The rest of Crusius’ speech is an abridged version of Noodt p 621. Sed quid dissimulam to luci restituta sunt. Crusius/Huber omits a passage criticising Justinian which leads into the remarks about the benefits obtained from discovering the fragments of Ulpian, Paul etc.
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qui intelligit, quantum potuerint erudita præstare ingienia, postquam illa Theodosiani Codicis, illa Licinii Rusini, Ulpiani, Pauli, & Caii fragmenta luci refituta sunt. Hæc eo pertinent, Viri Clarissimi, ut veras corrupta jurisprudentiae causas, simul quibus viis ea constituta, his & florentem facile retinere & omniam refitui posse, intelligatis. Atque hæc quidem summa fuit corum, quæ Cruñius, majore copia verborum pro instituto suo, differebat.

Ad quæ Bokelmannus: Satis secuti, inquit, Candidissime Cruñi, profutatione nostræ; neque mutatum controversiarum nostræ statum, ab eo, quod inde ab initio profellis es, animadverte. Proinde hæc est præstis quæstis nostris, recte Tu corrupta collapsaque jurisprudentiae causam adsignaveris hanc systematicam fæu compendiam institutionem, quæ nunc in Scholis Juridicis utimur, & cujus me sectatorem autoremque, denique, sic enim tibi placet, Reum effe profiteor, siquidem maleficium id opertet effe non tralatium, quod inertia, avaritia ac ambitionis macula deforme, corrupenda jurisprudentiae causam præbuerit, acetiamnum præstet. Denique, id animadverterendum erit, an ita faciem domum tu præcepti, ut si quis omnino sibi necessarium putet cujusmodi compendium, quod definitiones partitioneque rerum, quæ sunt in Arte Juris, actionumque solennia tradat, illud sibi privatum habeat ac legat; Antecessores autem publice privatimque ne se ad talia demittant; nihilominus, idque vix, in Institutionibus enarrandis. Ubi verò ad Pandectarum & Codicis interpretationem transferint, procul habitis id genus brevarius, ipsos veteres integros & illibatos aggreditantur. Ego ita exsultimo tibi quæcunque contentio, Cruñi, non effe perfectum jurisconsulturn, qui se veteribus, hoc est, ipsis Pandectis & Principum Constitutionibus per se totique
how much learned thinking has been able to advance after those fragments of the
Theodosian Code, of Licinius Rufinus, Ulpian, Paul and Gaius were brought to
light, can be unaware how much these ancient writings would confer on
literature, how much on society, if they were still extant. This all points to the
fact, my learned friends, that you should understand the true causes of the
corruption of legal science and also that by the same means as it was established,
our legal science can easily be retained where it is in good condition and be
restored where it has been neglected.”

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

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

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

Juris, Dialogus.

que legendis evolvendisque non dedat, sed nego id esse tentandum, priusquam paratitlaris notitia omnium librorum Juris antiqui, exprompta memoria judicioque comprehenfa fit, Nec arbitror ejus gententiae te fore, quales Pandectae Principiumque Constitutiones auditu primo ab adolescentibus & disciplinae juridicae ignaris intelligi possint. Nimis enim manifesta omnium qui jus didicerunt, quique medio in curtu defectare, vel qui defuncti rei id aliquando inexpserunt, experientia te refutaret. Infinita rerum actionumque humanarum varietas superans etiam Graecae, nedum Latinae Linguarum divitiae, fecit, ut antiqui Artis hujus conditiones, aliarum more disciplinarum, nativos plurium verborum usus ad diversas abstrat fraque significations transfulerint. Quis fine eorum, ut vocantur, Artis terminorum pravis notitia, quibus referre sunt veterum nostrorum scripta, gravissimas & difficillimas eorum considerationes intelligat, quis species factorum ab illis subtiliter involuteque subdutas, si verba necum singula percipiat, memoria judicioque subigere, nedum explicare & applicare posset. Nonne id perinde foret, ac si declamarent (que te comparatio delectat) antequam Latinae loqui didicilient; Ne dicam eos, quibus summa rerum differentiae, perfonarum necessitudines, obligationum vincta, sucessionum judiciorumque ordine non innotuerunt, eos intricatissimas de his rebus disputationes veteribus occurrentes nihil magis intellecturos, quam quilibet nostrum enigmata vel arcana mathematicum, quibus nunquam imbuti fere rimus, perciperet. Necio, quae fit illa tua Cruce, aliorumque paucorum intemerics, ut omnibus in universum compendun adeo sitis infesti, quibus nulla unquam aetas, nullus autor erudiendi juventutem carere se posse credidit. Ipsi Infinimiani jura populi Romani haud alter a se tradi posse judicavit, nisi primo levi ac simplici via, post deinde diluc.
to the reading and unravelling of the ancient writings, that is the actual Pandects and the Constitutions of the Emperors in their entirety, but I say that this is not to be attempted before a summarised knowledge of all the books of ancient law has been understood, and committed to memory for easy recall and assessment. And I do not think that you will be of the opinion that the Pandects and Constitutions of the Emperors can be understood at a first hearing by adolescents who are moreover ignorant of legal learning. For you would be refuted by the exceedingly clear experience of all those who have studied law but have dropped out in mid-course or who have at some time looked into it cursorily. The infinite variety of topics and of human actions, exceeding the riches of the Greek, much less of the Latin, language, brought it about that the ancient founders of this discipline, as was the custom in other disciplines, applied the original use of many words to different and abstract meanings. Without previous knowledge of the technical terms (termini Artis) as they are called, with which the writings of our ancient authors are packed who would understand their most weighty and very difficult treatises? Who could commit to memory and assessment, far less sort out and apply, the types of acts introduced subtly and obscurely by them, if he does not even understand individual words? Surely it would be (and I know you’ll like this comparison) just as if students were practising declamations before they had learned to speak Latin. Let me not say that those to whom the major classification of things, the relationships of persons, the bonds of obligations and the order of succession or of trials are unknown, will no more understand the intricate debates on these matters which occur in the old writers, than any one of us would appreciate the enigmas and secrets of mathematics in which we have never been steeped.

I do not understand this intemperate attitude of yours, Crusius, and of a few others. Why are you so hostile to all compendia in general? At no period ever did any teacher of young men believe that he could do without such. The great Justinian\footnote{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.} 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
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gentissima atque exactissima interpretatione singula comple-
eteretur. Quin cum prudensissimus Imperator commenta-
arios ad Pandectas Codicemque sub falsi pede seribis vetuerit, Prae-
tilla tamen, id est, singulorum titulorum summam &
compendia, quibus non posset carere discentes intelligebat,
ilis luppeditar permisset: Contra quae vos, praeclares reje-
cntique compendiis, tyrones vestrus ad ipsa, quae vocat Ca-
far, immensa volumina commentanda producitis. Porro
quid ego hic de Aristotele, Cicerone, Quintiliano alli-
que hominibus doctissimis auctoritates & testimonio profe-
ram, quid de hoc & superiore seculo narret; cum nihil fuit
manifeh, quam id egisse omnes à compendiis ut inciperent
alterque in ulla studiorum disciplinâ facere folium esse nem
nem. Tu adolecentes nullis, inquam, preparatos initiis
gravisima juris antiqui volumina vis aggregi? Sic Me-
dicinae admovendos doce confellim totos Hippocratem atque
Galenum evolvere; Philosophos Aristotelem atque Pla-
tonem ediscere, Rhetorices Historiam studiosos immen-
sa veteris eloquentiae rerumque gestarum monumenta feratur,
Sine dubio pari, quâ nos, infames dabis insignioris artifices
compendiorum Historiae universalis & Systematum Rheto-
ricorum. Nemo pejus de politiore literarum meritis erit,
quem Iohannes Gerardus Vossius, qui de omnibus huma-
nioris doctrinae partibus compendia atque systemata fecit,
etiam de Arte Historica, quam ante cum nemo in Artis
formam redigi posset praefumplaret. Tibi quoque Theologi
facer doctrine corruptores videbuntur, qui compendios &
Systematismus rudium adolescentium animos ad diffusam re-
rum facerum notitiam introduserunt atque etiamnun in co-
dem instituto perseverant. Quid mihi adverfar hanc neces-
fitatem de Livio, de Trogo, de Dione, de Polybio nar-
ras, quâ brevioris illi nobiles Auctores interitis adjicent.

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?

*† Quis 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 moralen scientiam ex ipso Aristotele adolescetibus hodie tradendam putant, quis Medicinam doet 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.
13

Iuris, Dialogus.

Quid habent simile Compendia, de quibus nos loquimur; cum is, quibus antiqui Scriptores coactati sunt? An nos Digesta Codicemque contrahimus, ita ut Livius ad Florus Dion à Xipiliro, Trogus à Justinio contraè fierunt Adeone. Tu dividere nelcis compendia Notionum & regularum; quibus percepis, Ars quaeque facilius intelligi potest; ab epitomis, quibus ipsi libri angustè formæ descriptur & exhibentur? Quanquam ego ne quidem studium faciendo tales epitomas damnare sustineam, quibus sapientissimos Viros intelligo usus esse, multique etiamnum maximó cum fructu utuntur.

Etènim, me aut omnìa fallunt, aut omnìgenæ lectionis memoria deñsit in compendiarium rerum dictiorumque notabilium, qua legendo audiendaque percurrimus, intelligentiam. Quæ si meditando ruminandoque subæcta, scripto comprehenfa, verbiqque quorum Auctorum expressa significataque fuerint, quæ præfior efficaciorque proficiendi, animoque res pulcherrimas imprimendimethodus excogitari posset, ego qui dem non intellegr. Etiæ vero judicium, quod in omnì rerum humanarum doctrinaeque generè longe maximi semius esse momenti, hoc modo accertæ validissimeque exercetur & comprobatur. Quin etiam qui à fæ lecta perceptaque alis tra dere & inculcarent cupiunt, si, quæ memoria intellectuque complectuntur, ea in compendium dictioris redigere fuisse que auditoribus succinétque ob oculos exhibere non possint, quæque discipuli audita fecum ipsi colligere & contræta recollere animoque recondere quœant, neueri unquam res eadem latius explicare & ad usum applicare poterunt: Adeoque si qui in eo præceptores auditoresque gloriam ponunt, quod compendiarior non sunt, eadem operis licet, ad docendum diffendumque, pene dixérunt, ineptos fœ rateantur. Ego quidem nihil prius studiois, qui validæ

M m m 3 per-
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).

\*\† Etenim me aut omnia fallunt, (p 13) to suppimendum perdendumque putaverint (p 16) which was absent from the 1684 edition but which was added to the 1688 edition, is taken almost entirely from Huber's Specimen philosophiae civilis, 1686. This passage was repeated in its entirety in Huber's Opera Minora (1686) in the Praefatio p[17] 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.
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peremptorique, ut ita loquar, difficere volunt, auctorum, quam compendia facere scripserum, qui pleniora manus res ipsis factit necessariae trahant. Horatius, si unquam aliquis homo qui quidam sapiens rationem putavit, idem monerit, Quicquid praecipies, est brevis, inquit, nec metuit doctrinam iterilitatem. Namque ubi cito dicta perceivebant animi dociles, tunc omne supervacuum pleno de pecho manat, ut idem adfaverat. Quin doctissimos homines, maximos esse compendiarios, neque maiores ullos, quam quicquam erat, vocantur, oportet, argumentumque praefatius hujus instituti vel maxime præbet, quod ab omni antiquitate, quanto quique minus ineptus sapientiaque videtur esse consecutatoris, tanto majorem in dicendo scribendoque compendii habet rationem, ut olim Lacones & Homericus Nilitor, qui μαθηματικος ελεγχει μηδεν λογος, compendio sed efficacissimo orationis utebatur. Quod autem, Optime Cruce, ab ejusmodi Epitomis, insignium aliquid scripserunt clades lacunase, summum cum orbit literati detrimento, causam acceptissime quereris, an auguraris, Mirum est equidem, hanc rationem non modo non deterruisset veteres à compendia ejusmodi faciendo & publicandi, sed coiderat etiam, tot secutorum experimenta, talem inde pestem oriri non fuisset convictos. Nam ut aliarum artium historiaeque epitomatores antiquos silentio prateream, inter Jurisconsultos ipsosque gravissimae sapientiae conditoreos non modo Hermogenianum epitomas scripserat conlat, verum etiam, Paulum inter auctores Pandectarum antesignorum Alfeni Vari quadraginta libros Digestorum in epitomen re degiisse, idemque Justoelum facie de libris decem Labeonis posteriorum inscriptiones excerperunt in Digestis loquentur; qua tamen imple opera principalia postquam erant excerpta, nihilominus salva integraque ad etatem utque Justiniani,
who stoutly and resolutely, if I may say so, wish to learn, to make summaries of the writers who deal over lengthy 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 ἐμψυχοι (walking libraries) and it especially provides a justification for the excellence of this practice that throughout all antiquity the more fittingly and wisely a man appeared to speak and write, the more account he took of brevity, in speaking and writing, as of old did the Spartans and Homer’s Nestor, who used παυρα μεν ἄλλα μάλα λαγεός (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.

 Quiquid praecipies, esto brevis, ut cito dicta
Percipiant animi dociles teneantque fideles
Omne supervacuum pleno de pectore manat.
Be brief in all your precepts: you will find
An epigram sticks in the hearer’s mind
While a long-winded lecture will be leaking
Out of his head, before you’ve finished speaking

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

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

ininian, qui omnia suppressit, ut volunt, per annos quadringentes & amplius, ex istem titulus capitum in Pandectis, remanisset videmus. Quoquam si authentius scriptoribus compendiorum instituto praesidici poterat, id ab ejusmodi metuendum fuisset epitomatoribus, qui doctrinam laudique universa opinione veteres illos prolixioresque autores, quos contrahebant, omnium hominum reputatione superabant. Ego vero nihil errare me putem, si Laboenis & Alfeni Vari scripta ab usu temporum Pauli & Juvoleni remota, ex quo à tantis viris contracta in oculos hominum reducita sunt, frequentius libenteriusque ad studiose, quam prius, lecta fuisset dixero. Vulgaria quidem ingenia folis epitomis ut contenta fuerint, neminem tamen, cui studia ad animum pertinerent, extitisse credo, qui non è lectione compendiorum ad ipsa veterum illorum majoraque scripta videnda & exploranda inflammaretur. Neque fane quod Hilligerus & Vinnius Donellum nostrum, alius Thuanum, feiplum Mezerayus, alique multi alios hodieque contraxerunt, ullam adhuc periculum imaginari possit, quo ipsi Autores illi è manibus hominum doctorum excutiantur minorique pretii, quam alias unquam, habantur. Quin si quem id genus scriptorum compendia, diffendi voluptate afficiunt, aliter evenire non potest, quam ur, qui praetantiam operum illorum, quasi per tranfennam viderint, in ipsa ufque penetralia intimoque receftus & latifundia progresi & exspatiori velint. Ceterum, quod inter antiquos aliquot praecipui scriptores, quorum adhuc integra compendia extant, (Iuris heic alia ratio est) grave detrimentum passi sunt, id iphis epitomis accepto ferendum esse credam, ubi que causas populos omnes nationesque in Europæ sedibus suis excravit, urbesque & regiones ita evexit ac immutavit, ut plerumque ne nomina quiddem 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\(^40\) have done likewise, still I cannot conceive of any danger because of which those authors would be discarded by scholars and would be considered of less value than under other circumstances. Indeed, if compendia of that type of writer fill anyone with the desire to learn, the only result can be that those who see the excellence of these works as it were through a barred gate should wish to proceed right to their centre and innermost recesses and to wander freely through their broad expanses. But, I would believe that where some outstanding ancient writers have suffered grievous harm, yet the fact their epitomes (the case of law is different) have survived intact is a point to be added to the credit of those epitomes. For I have discovered that the barbarian invasions which drove all the peoples and nations of Europe from their homes, which so overturned and changed cities and regions that generally not even their names survived,

\(^{40}\) Huber made “compendia” of his own works. The second edition of *De Jure Civitatis*, 1684, Franeker, was summarised in his *Institutionis Reipublicae liber singulatis* which was first published in *Specimen Philosophiae Civilis*, 1686. The *Specimen* contains excerpts from Aristotelian and Cartesian philosophy and other writings for the benefit of students. Likewise, the *Praelectiones* (1678–1690) are summarised in the *Positiones Juris*, 1682, and *Hedensdage Rechtgeleentheit* (1686) in the *Beginselen der Rechtskunde* (1684). See Veen Exercitia, p 142 ff; ibid *Recht en Nut* p 183 ff; Feenstra *BGNR Franeker* p 75, nos 219–221; p 76, nos 222–224; p 94, no 280; p 73, nos 209–210.
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hanc ad libros manuscriptos abolendos minuendosque apud gentes barbaricas, jure belli in humana divinique omnia graffantes, non sufficiisse cognovero; aut si alii Autores, quorum nulla furet compendia, elementius habitos esse magisque integros, ad nos pervenisse, comportum est; itaque eadem belli clade cuncta fuerint involuta, tive Christiani veteres religiosae infes gentilis sapientiae monimentis, quod belli incendium evasaret, id imprudenti zelo piace in tempere supprimendum perendumque putaverint. Ne Justiniani quidem Cæsaris propositorum in Corpore Jusris contrahendo tam mihi reprehensione dignum quam neceffarium fuisset videtur, si in modo contradictionis reatam viam tenuisset. Nisi tu putes Iulii quoque Dictatoris consilium eadem notà cenòria prosequendum, quod ille Romani iuris, fuatam tum magnitudine laborantis, compendium publicare decreverat. Ego vero magis Hubero nostro adfense-rim, qui in oratione, quam modo laudabas, inaugurali, non putat esse nefas iracdi Marco Bruto, quod nimis crudo irritavit odio & improbera felinatione falsissimi conatus fru-ctum humano generò studioque Juris intercipil videat. Etenim quanto cultius Justiniano Iulii Cæsaris ingenium, quanto melior & doctior Tribonianus fuit Trebatius, quanto beatiora florentis Romae quam jacentis & à Gothis oppressis tempora, tanto concinnius ac eruditius Iulianum præ Justinianeo compendium extitiflet. Verum, te arbitro, Crucì, est quod gratulemur Iulii Cæsaris manus òptimâ, omnem infamium fatum, quod clarissimi nominis memoriam compendii Jusri titulo non dehonestavit.

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

And not even the Emperor Justinian’s plan to abridge the body of law seems to me to have been deserving of censure but needful, if only he had kept to the right track in his policy of abridging. Unless you think that, because the dictator, Julius Caesar, had decreed that there should be provided a Compendium of Roman law41 which even then was suffering from its great bulk, his proposal should be marked with the same ignominy. Truly, I rather support our friend Huber here, for in his inaugural address which you have just cited, he expresses the view that it is not wrong to vent one’s anger on Marcus Brutus for, because of an excessively simplistic hatred of servitude and unfortunate haste, he is held to have sabotaged the benefits of a project which would have been most advantageous to the human race and to the study of law. For in as much as Julius Caesar’s natural talents were more cultivated than Justinian’s, in as much as Trebatius was more upright and learned than Tribonian, and in as much as the period when Rome was at her peak was more fortunate than when she was laid low and oppressed by the Goths, so a compendium by Julius Caesar would have been more polished and learned than that of Justinian. Presumably, Crusius, in your view, we should congratulate Caesar’s departed spirit (on his unpropitious destiny) because it did not dishonour the memory of his great name with the label of a legal compendium."

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

41 See Suetonius Caesar § 44. Nam de ornanda instruendaque urbe, item de tuendo ampliandoque imperio plura ac maiora in dies destinabat . . . ius civile ad certum modum velut ex immensa diffusisse legum copia optima quaerendo 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.

Nec minus Jurisprudentia Legum multitudine et Interpretum copia non sine magno judicionem dispenderet et omnium rerum confusione laborabat. Adeo quidem, ut Caesar Julius inter praecipuas ordinandae Reipublicae cursus, huic morbo nonnisi magno et anda remedio succurrendi judicaret. Quippe ex infinta Legum et disputationum mole tollere supervacua, seligere et in paucos confere liberos (sic) ut multis postea saeculis a Justiniano factum, probatisisma quaeque denuverat. Quod nisi mori cum infausta et hac utique parte inspescita occuparet, sic paucis messes inveludibili sumpserit et pastitim fructus absolvurit. Per me quidem fuisse consipienti tuae Brute, et quantum vivi, imputa Iudae Mar pus vulnus Romano. Consuluisse tamen immortalitati tuae potius quam orbi terrarum . . . O quam praevlo Magni Dictatoris beneficio Jurisprudentia fruenterus! Quanto oltius Justiniano (ignoscant sacratissimi manes) Caji Caesaris ingenium, quanto melior et doctior Triboniano Salpingico, quam disparos Donotho nescio cui, vel Theophilus, Scaevola atque Trebatius, quanto beatora florentis Romae quam jacenti et a Gothis oppressae tempora, tanto elegantius, tanto concinnius et eruditius (confessionem vis veritatis extinxit) Julianum praef Justinianae Compendium extaret. (And legal science also suffered from the great number of laws and the
Iuris, Dialogus.

me nolle dixi, ut Antecessores illis explicandis operam datant, Studioi vero quominus ea domi haberent legerentque, non intercepsi.

Bene recordor; ait, Bökelmannus, cum tu modo, indignabundus; Quod si tantopere compendiiis deletantur, ajebas, studioi, hubeant ea privatim ac utantur, ut libet. Non obscurè significans, gratiorem tibi fore studiorum viam, quæ fine compendiiis, tanquam bona mentis remor, veteres ipsos incontinenti aggerarentur. Et sic, noli dilimulare, Cruisi, qui se ātum tuam sequentur, de nostra methodo sentiunt ac in vulgus opinantur; meum Compendium, dicunt simpliciter, esse dispendium studiorum, quod tu cogenium fugiens facilest, damnun esse dicebas. Sedulo id agunt, ut studiofam juventutem ex auditorio meo, tanquam ā Scylla vel Charybdi, ut in Cebetis tabula fenex ille facit, qui pueris vitam ingredientibus rectam viam præmonostrat, quā ad veram sapientiam pervenire quæant. Sed bene habet, quod rationes veltræ à fenxi communi abhorrent et prejudicio generis humani damnantur; nec minus primo intuitu, quam experientià docente, liquent in hoc esse comparatae, uti rudes & infirmos animos studiorum multitudine ac varietate rerum onerent; duorumque alterum, aut defertores studiorum efficiant, aut cum magno labore ferius ad id perducant, ad quod leviore vià duèst, maturius perduci potuissent, ut sapientissimus Imperator de hac ipse institutionis difcrepanià loquitur. Idque te ipsum Cruisi, non puto negaturum, quin tibi sic eveniat; quando fatis confiat, te hanc ipfam ob causam, duntaxat in Institutionibus, eadem vià definitionum atque partitionum, velis nolis, procedere cogi, alioquin omnibus à primo limine deferturis auditorium tuum. Adeone vero facilis tibi videtur hæc compendiorum doctrina, tam humilis, ut Professor...
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 Cebes’ table when he points out to youths on the threshold of life the right road by which they can come to true wisdom. But all is well because your arguments do not accord with the general perception and are condemned by the judgement of the human race, not only at first sight but also when taught by experience, and they are clearly in accordance with the following: ‘that these methods burden the unformed and unstable minds of students with a multitude and variety of facts and achieve one of two results: either the students abandon their studies or with great labour they eventually reach the point to which they could have been led sooner by a less arduous road’, as the most wise Emperor said about this very problem in basic legal education.

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

*†*Quod tu... dicebas.

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

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


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 . . . loss’. This is probably an addition made as a result of Noodt’s use of the term *damnum* in his inaugural oration *Corrupta Jurisprudentia* (p 621).

46 Cf. *Constitutio Tanta*, § 11.

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

Rex vocis officio non indiga vel indigna sit? Misericet me conditionis tua, qui, licet invitus ad tam humile schola ministerium, ex parte saltem canque infima te demittere sis coactus; quod tamen ante nos, quotquot Jus prudentia claros & admirabiles posterus fecit, gnariter instituerunt. Denique, non possum fatis mirari, qui fit, ut in re tam obvia, tam protrita viri undique doctiilli tam rarè satis facere posint expectationi desiderioque studiorum juventutis, cuius quidem judicium universæ conspirantis, in hoc gene re nullo modo spernendum esse, communis famæ experimentis jam pridem abunde compertum est. Sed mittamus judicia studiorum, quanquam his arbitris parum abeunt, quin flent fata fortunæque Professarum; compendia ipsa, si placet eorumque indolem consideremus, an ea tantum facilitatem vilitatemque praefecerunt, ut Professaribus indignum sit, ea privatim adolescentibus interpretari. Nam de publicis prælectionibus concedo tibi, non esse faciendum, ut in ipsis compendia, vel fyttemata, vel quicquam, praeter antiqua juris monumenta, celebretur. Verum nostra, ut olim vocabantur, summae institutiones, quibus privatim excrcemus adolescentes, breviaria, sicet vox fons, essent debitam, paucisque dictis universi juris fundamenta complecti regulatque tradere, quibus judicium in difficilloribus rerum argumentis controversiisque regatur. Quod nec fine obscuritate aliquâ collocari, nec fine inductione utus & exemplorum intelligi, nec omnino fine Interpretis ope confilioque perfect potest, ut ego & Huberus & Wyngardenius, & quicunque non gaudent insulsâ philiautâ ad communem via recedere, fatebantur; sèce inquam, non modo tempore, continuat laboris intentione, fundamentales Institutionum Pandectarumque regulas & regia rerum, quibus instruxit 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 breviora (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.

48 Cf. p 1 where those sentiments are voiced by Huber.
19

Juris, Dialogus.

bene valideque didicisse. Non quod ego, vel quisquam
sanus homo studiosos tum grandi temporis pati ab ipsis
legibus liberilique veteris prudentiae exclutos velimus. Posi-
tiones compendiorum vel imprimit ad hoc comparatae sint
opertae, ut indices legum praestent perpetuoque studiofos
ad fontes remittant; ne quiquam de principe juris crede-
re in animos inducant, nisi quod est Textibus ipsis clare fo-
lideque probatum videant. Quod vero in id sedulo incum-
bit, ut summariis positiones illas Artis universae, cum le-
gibus allegatis quotidian consuetudinesque judicio distinguat me-
morique iniigit, hunc ego non unius alteriusve horae pati-
tio sed magnae parte diei noctuque vix posse defungi certus
& expertus sum. Quod velim, habeas, Crudi, ad falso
fomma tuum, quo me, felicet, insignitum voluisti; nec
enim me fugit, quid hac de re in invidiam facilitatis meae
sparsum sit, quasi auctor fructu studiosis, bene habere, si
vel binas ternasve singulis diebus horas studis privatis me-
que compendio imponderent. Hac, felicet, est mollis illa
Bökelmanni disciplina, quâ juvenitis adeoque fibri fre-
quentiique conciliat, ut invidia criminatur. Sic est ratio
mea, Cru, res hominesque civili considerare & expenderi
judicio, consilia machinataque adhibere, quibus exitum
cuique negotio convenientem sperare liceat; non monitis,
non sufpenis, infinita, sublimia loqui, non quarrere vias
in terris fecundum signa syderum, ubi lapides monumenta-
que ob oculos extant; non inculcare studiosis grandia, magni-
ifica dicta, sed uti causâ & inania rebus, denique non Hercu-
lus cothurnos aptare puerris, quod tu in oratione modo
effusæ, si quis unquam alias, fecisse videris: Id agens, ut
qui receneter studiâ legum attingunt, mole doctrine, quam
portare non posse, ut Justinianus ait, obruantur, repu-
diatis cum supercilio primæ eruditionis elementis, quibus
N n n n 2

juvenes
It is not that I or any other sensible man wish the students to be excluded for a long period of time from the actual laws and books of ancient jurisprudence. The propositions of compendia ought in particular to have been drawn up with a view to providing summaries of the laws, and to directing students constantly to the actual sources; they should not lead them to believe anything about the principles of law except what they see clearly and truly supported by the actual texts. He who will diligently apply himself to this, so that he makes a daily practice of comparing the summary propositions of all jurisprudence with the texts cited, differentiating between them and stamping them on his memory, such a student, I am sure from experience, will not achieve this within a period of one of two hours but will scarcely be able to complete it within a great part of the day and night.

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

Incendebatur Bökelmannus, quando Crusius, Natu, inquit, in impulso, quod ajunt, fluuitus excitatas, & nefcio, quo paço, parum apest, quin Majestatis violatae rerum apud Caesaris tribunal agere me velle videaris. Atque ego, magne compendiorum Patrone non magnorum, non omnium, quae de fyltematis usus in animo fuere, simul unoque spiritu effectivi; nec omnium, Tu, qua modo in hanc rem me dicta sunt, reprominius tuus consecisci. Consepsi ego, si memini, Antecedentes in Institutionibus explicandi non male facturos, si prima Juris fundamenta per definitiones divinioque exequerentur; In Pandectis non arbitrabar id expedire. Quod antequam latius prosequar, non possim silentio praterire, quod Tu compendiariae Institutioni veltrae speciium Imperatoriae aut, toritas iurum jam tertium praetendi, quali paratilia quoque secundum libros suis componi permissis Julianianus, veltræ forent Compendia. Scito, quando fieri in animum inducis, errare tevehementer.

Eruerit te potui Johannes Leonclavius (in proloco de preciso paratitlorum usu ad Collectionem Constitutionum Ecclesiasticarum Balsamonis) qui mentem Justiniani de ratione docendi Jura per paratitla, docet hanc effe, ut licet, quemvis ad titulum adnotare, quae aliis in Titulis ac locis illum ad titulum pertinentia reperiantur. Hic praecipus sic licet, germanusque paratitlorum usus. At vero quid ei simile traditum a nostris paratitlorum hoc ex officioribus? Ait Leonclavius, quorum tu videlicet errorem feceris. Idem ianus a Cofta Vir solo Cujacium minor (in summaris ad ix. prior. tit. lib. 1. decretal.) idem Carolus Annibal Fabrottus. (in not. ad d. Consit. Ecclésiæ?) qui Cujacium, quid paratitia sint, ignorasce non dubitet adfirmare; quad
students ‘so that they can undertake the weightier and more perfect knowledge of the law’, to cite the Emperor yet again.”

Böckelmann was getting worked up when CRUSIUS said “Certainly, you are stirring up a storm in a teacup, as they say and I do not know why you almost seem to require me to defend a case of _Majestas violata_ (treason) before the tribunal of Justinian himself. But, oh Great Patron of not-Great compendia, I have not blurted out at one time and in one breath everything that was in my mind with regard to your systems, nor have you, in your answers, covered everything that was just now said by me in this regard. I did concede, if you remember, that professors, when explaining the _Institutes_, would do well, in teaching the basics of law, to follow a system of definitions and divisions. I do not think this is advantageous in the case of the _Pandects_.

But before I proceed further, I cannot pass over in silence the fact that now for the third time you extend the specious shield of imperial authority over your method of teaching by compendia, as if the _paratitla_ which Justinian allowed to be composed for his books were your compendia. Know well that when you suppose thus, you are mightily wrong. Johannes Leunclavius could teach you. See his views about the original use of _paratitla_ in the prologue to the Collection of Ecclesiastical Constitutions by Balsamo. Leunclavius says that the following was Justinian’s intention on the method of teaching law by _paratitla_, namely that it was permissible for anyone to add notes to a title referring to those places in other titles and fragments which are found to pertain to that particular chapter. This indeed was the primary and true use of _paratitla_. “But what similar to that has been produced by our contemporary writers of _paratitla_?”, asks Leunclavius, and you indeed seem to be following their error. Likewise Janus da Costa, a man second only to Cujacius, says the same (in his summaries of the first nine titles of Book I of the _Decretals_), as does Carolus Annibal Fabrotus (in his notes on the said ecclesiastical constitutions). He does not hesitate to declare that Cujacius did not know what _paratitla_ were and this opinion the learned scholar

*† _Quod antequam . . . velle videbaris_ (p 22).

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

52 The idiom _excitare fluctus in simpulo_ (to stir up waves in a ladle) appears i.a. in Cicero _De Legibus_ 3.16.36.

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

Ægidius Menagius Vir Cl. ad omnes qui Paratitla scripserunt, extendere non dubitat. Quare definiis Imperatori præcepti auctóritate tam humile institutum, cujus te laudatorem profiteris, docendi fuisse compendios, excolle re praenöioque non suo exornare. Bene habet, replicare Bokelmannus, quod me cum Buedo, cum Cypacio, cum tot eruditiimis etiam in ipso genere poliöioris literaturâ, hominibus, comparare suffines, in non pudendâ inférit, quid paratitla Ættiliano significat. Verum si me oppôsitius in harerë non pateris auctoritatis, ego me tuos nihil magis obligatum fentio, quominus ipsœ meis oculis, quid apud Ættilianum paratitla fuit, percipiam. Verba Cæfaris hæc sunt, Sufficit, per indices tantummodo & titulorum subtilitatem, que nuncupantur, quædam admonitória ejus facere in præfato. Digest. Interdict Imperator commentarios fieri, permittit facere singulorum indices capitum, subtilitatem titulorum, admonitoria quœdam. Nifi me omnia & fœnus ipsœ communis fallunt, Indices titulorum nihil sunt aliud, quam breves rerum declamationes, quæ singulis capitibus tractantur; neque simplices indicinae, sed etam admonitoria, quid res singulae sibi velint, idque per subtilitatem verborum, hoc est, tenuem levemque expositionem, quam proprie subtilitatem esse non ignoras. Quo pacto summaria nostra compendiâque melius & expreöius deögnarentur, expleto dom ratione vel auctoritate probes. Imo nec hoc velim obliviscaris, ut hæc verba tuis juribus fugitivis, hoc est, è fede fuœ remotis, quorum adnotationes paratitla vis esse, tam bene convenire doceas, quam nostris ea summariis five Compendiis, exacte convenire probavi. Quod autem ad vocem expulsos attinet, cam, five notare velis, quod præter vel quod juxta titulos adjicitur, quod utrumque prepositionis significatio præfert.

N n n n 3 in
Aegidius Menagius\(^{54}\) does not hesitate to extend to all who wrote \textit{paratitla}. And so why do you not cease to extol, on the authority of an imperial order, and embellish with someone else’s commendation, so humble a practice, as teaching law by compendia, which you claim to eulogise?"

"It is good", replied BÖCKELMANN, “that you continue to compare me with Budaeus, with Cujacius and with so many men who are also most learned in polite literature itself, and also pardonably ignorant of what \textit{paratitla} meant to Justinian. But if you do not allow me to cleave to the opposing authorities, I feel that I am in no way bound to your authorities in that I myself perceive with my own eyes what \textit{paratitla} are in Justinian. The emperor’s words are as follows: ‘Let it suffice to make certain comments on it [the Digest] by means only of indices and clarifying notes (\textit{subtilitatem}) on the titles. These are called παρά\(\)\textit{τιτλα} (\textit{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 \textit{subtilitas}. I am waiting until you prove by reason or authority by which term our summaries and compendia would be better and more clearly described. On the other hand I would not like you to forget this so that you may teach that these words conform to those ‘fugitive’ laws of yours, that is those removed from their proper places, which notes you consider to be \textit{paratitla}, just as well as those I have proved precisely conform to our summaries or compendia. But however, as regards that word παρά\(\)\textit{τιτλα} (\textit{paratitla}) I shall not quibble if you wish to indicate that it means that which is joined to a title in addition (\textit{praeter}) or which is added alongside (\textit{juxta}); the significance of the prefix 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, \textit{Quid sint Paratitla} of Menagius’ \textit{Amenitates iuris civilis}. This first appeared in Paris in 1664. It was later reprinted in 1677, 1700, 1725 and 1738. In discussing what \textit{Paratitla} are, Menagius cites the \textit{Constitutio Deo Auctore} and the \textit{Constitutio Tanta}. He follows this by citations from Leunclavius’ (1533-1593) notes on Balsamon’s \textit{Collectio Constitutionum Ecclesiasticam} and Janus à Costa’s (1560-1637) \textit{In Decretales Gregorii IX summa 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’ \textit{Amenitates} see p 61 and footnote 130, and Chapter VIII.31.

\(^{55}\) The reference here is to the \textit{Constitutio Deo Auctore} § 12 the words of which have been reproduced almost verbatim. The same sentiment is expressed, but in slightly different words in \textit{Constitutio Tinta} § 21.
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in non magno discrimine ponam. Ego vero, CRUSIBUS, nullo modo id agebam, ut de vocis hujus notazione ligaretur: sed utrovis modo eam interpretari velis, mihi ad rem ipsam progregi fatis videtur. Nimirum modò inoneras, quando me contempti Cæsaris reum peragere velle videbaris. Quoniam ego Te Bökelmannæ meliore jure, si non hoc totum ineptum est, læxf dignitatis Cæsare deferre potèm. Nam si omnino libellus aliquid præmæ institutionis ad inchoandam Juris disciplinam opus est, quæ vos agitat infania, ut alid compendium quaeratis, quam Cæsar ipse Ju-stimianus compositum & Juventutis folicite commendavit?

Quis neget, hunc effe contemptum Cæsarei instituit, quis neget fieri non posse, quin detrimentum studia tyronum capiant, si alius discendi principiis, quam ipsius Jurisprudentiae conditoriis, imbantur? Quid aliud neoterici compendiorum Suafores & Autores agunt, quam ut pubem Academicam illo notabili honore, quem Justinianus tam magnifice illis imputat, cum ait, Digni tanto honore tantâque reperti felicitate, ut & initium vobis & finis legum eruditionis, à vobis principali procedat? Quant vero illud est, quod Studiois hac perversâ methodo eripitur, quod qui Justinianum veteresque Juris Autores addidux legunt, eornm dicta fentenialaque sibi familiares redditas, tempor & ubique non modò in Scholis, sed etiam in foro laudare & allegare possum, multô certè luculentius & efficacios quam regulas ilorum compendiorum, quibus fœ vulgus Candidatorum, si dis placet, magnificare solent. Denique, certitudo fententiaria Juris non potest haberi ex hodiernis fystematis, cum autores eorum alii ab aliis ex æo modo diffentiant, & quod ex uno didiciasti, si ad alium te transferas, iterum fœ pedi discendum. Ex adverso, qui folos vetere ferentur, quicquid didicerunt, immutabilis autoricate ad ex-
CRUSIUS said: "But I was in no way concerned about arguing over the meaning of this word but which ever way you wish it to be understood, it seems to me better to proceed to the actual issue. Just now you sounded off mightily when you were trying to accuse me of denigrating the emperor. Although, if it weren’t completely stupid, I could with more right accuse you, Böckelmann, of insulting the dignity of the emperor. For if there were at all any need for some beginner’s text-book to introduce the study of law, what madness drives you to seek a compendium other than that which the emperor Justinian himself composed and solicitously commended to the young? Who will deny that this is contempt for the emperor’s instructions, who will deny that this cannot be done without the studies of beginners suffering harm if they are imbued with basic principles of learning other than those of the founder of the legal discipline, Justinian himself? [A3] What are the modern advocates and authors of compendia doing other than depriving the young university students of that distinguished honour which Justinian so magnificently ascribed to them when he said that they should enter on their studies ‘being found worthy of so great an honour and of such great happiness that both the beginning and end of your legal education proceeds from the mouth of the emperor’? How valuable is that which is being stolen from students by this perverse method! For those who carefully read Justinian and the ancient legal writers can always and everywhere cite and adduce their statements and views, thus rendered familiar to them and they do so not only in the law schools but also in the court, and certainly much more authoritatively and effectively than they do the rules of those compendia on which the common herd of candidates, if they are lucky, are accustomed to pride themselves. In conclusion, certitude regarding legal opinion cannot be got from present day systems since the authors differ (δις δια πασὼν) 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 sollicito commendavit) and the following passage from ‘what are the modern ...’ to ‘... they trust ...’ (Quid aliud neoterci to confidunt, p 23) are taken almost verbatim from Oratio IV p 90–91.

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

extremam usque fenectam in doctrina scholarum usque fori peripheratum effe confidunt. Praetera, ex eo, quod Tu ipse confessus & professus es, illa compendia, stylos scribenda effe brevi atque conciso, fieri non potest, quin eorum, qui talibus adiuvant, ingenium atque oratio firmitate & nec-cio quam contrahant ariditatem, per quam adolescentes, quos maxime decet ubertas & florosa dicendi copia, degenerant & corrupuntur. Notum est etiam, qui Juris studium feliciter exercere volunt, eos amennis historicas humanioresque litteras, cum eo conjungere debere, quam-admodum fieri oportere Te ipsum scio & alia tempore effe retiturum & modo mihi contendenti ultro effe largitum. In-tuper, Ars ipsa juris ea methodo pervertitur aliquum in-duit habitum, quam ad Juris conditoribus accept & quam habere debet. Repletur novis Principiis terminisque, ut ajunt, semibarbaris atque fictitiis definitionibus & partitionibus in syste-ma scholasticum deformatur. Qua r e f i t , ut studiis inde ab initio novis immixi fundamentis, in progressu & in ipsa praxi rationes decidendi non tam ex limpidis antiqui juris fontibus, quam ex lamis & lucinis, e pra-cptis regulisque systematicis petere conficerint. Quis non abominetur hos compendiorum fructus & speci-mina!

Respirant Crusio, Mirari equidem liceat, Crus, re-pondet Bokelmannis; quod cum hae rationes tibigraves valideaque videantur, in primae oratione tua nihil ejusmodi miiferis, sed abrupta severitate nihil quam nigrum theta compendiiis inurendum putaveris; quo nihil omnium tem-porum hominumque eruditorum exemplo, judicioque magis adversum poterat fingi. Unum, fateor, adiures, quod me fugirefellowentem; Indignabundus, si quis omnino compendiiis delestatretur, ægre concephaeas, ut ea priva-tim
extreme old age both in the teaching of the schools and in the practice of the
court.

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

As Crusius was drawing breath BÖCKELMANN replied: “Crusius, one may
indeed be surprised that, since these reasons seem to you weighty and valid, you
have not introduced anything of this kind in the first part of your speech, but
with abrupt severity you have judged that the only thing to do with compendia
is to brand them with a black 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 haberent legereque studiis, ceterum juxta Pandectas atque in Codice nihil ejusmodi usurparant. Sicut in omni hac dispositione, Crispi, praevi potius quam pro communi rationis captu differis, ita nihil imprudentius, nihil à discendi docendique juris ordine alienius adfirmari potuit; quam in Institutionum explanatione compendium Artis usu venire posse, in Pandectis & in Codice non esse serendum. Quis non contrà videt, si quis abhorret à novitius systematibus, eum quod ad Institutiones attinet, in promptu habere Justiniani compendium, quod Imperator ad hunc ulum paratè & praescrispsiè juventuti, intelleximus. In Pandectis autem & in Codice, cum seiret aliquid esse necessarium, quod summam eorum librorum doctrinam exhiberet, induftrix Professorum commissi, ut paratima, id est, singulorum titulorum summariis expositiones (hunc vocis fenfum, velis nolis, jam mihi concede re debes) in ulum discipulorum componerent. Quid autem Te movet, Crispi, ut secundum Institutiones methodum finiendo partiendoque tandem aliquomodo ferre queas? credo, quod intelligis, studiofos sine talibus adiumentis cum fructu in Juris oceanos non posse vereri, nisi, inquam, notiones rerum necessariorum & summum doctrinarum esse praefumferint. Si jam in Institutionum libello, quem Caesar publicavit, elementa omnium capitum, quæ in Jure tacitantur, extant, nihil intercedo, quominus utendum sit tuo consilio: atque ìtatim, ubi Institutiones percepte fuerint, integros Pandectarum Codicisque libros aggregi & ingenio memoriaque subigere liceat. Quod si facile pars æqua totius Artis in Institutionibus Caesaris intrastra manerit, manife stium est, earum rerum initia nihil magis ignorari posse, quam que in Institutionum libellis ab Imperatore collocata sunt. Non exspectabis, opinor, ut tibi demonstrem, quot nobi-
however they were to use nothing of this kind anywhere near the Pandects or in the case of the Codex. In this whole discussion, Crusius, you are arguing in defence of your own notions rather than for those of general understanding, and so nothing more ignorant, nothing more out of keeping with the system of learning and teaching law can possibly be said than that in explaining the Institutes a compendium on the subject can be used, but in the case of the Pandects and the Codex it is not to be tolerated. On the other hand, who does not see that, if someone strictly avoids these newfangled summaries, he has at hand as far as concerns the Institutes, Justinian’s compendium, which we know that the emperor prepared for this purpose and prescribed for young students. Furthermore, since he knew that in the case of the Pandects and the Codex something was necessary which would highlight the most important learning of these books, he entrusted to his hardworking professors the task of composing for the use of their students paratitla, that is summary explanations of the individual titles (you must now willy-nilly concede to me this meaning of the word).

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

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62 See Constitutio Deo auctore § 12. sed sufficiat per indices tantummodo et titulorum suptilitatem quaedam admonitoria eis 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.
Iuris, Dialogus.

nobilissima difficillimaque Juris capita sunt, de quibus altum in Institutionibus silentium: Nihil facilis erat, ni super-vacuum & apud homines, quibus hsec in numerato sunt, tædiosum foret. Nihil est igitur, quod instantem Terursus audio; sufficere in usum preparatoriae doctrine Institutiones à Justiniano reliquit; non sufficiunt, inquam, Sed ad Pandectas intellegendas, ejusmodi libelli æquè necessarius est. Præterea, inanis calumnia impingitur meo ad Institutiones compendio, quasi id ageretur, ut juventutem per illud aberiæ Justiniano abduceremus. Nam meum Compendium (non puder hunc titulum preterere, licet alid speciosius prætextere posse) Auditoribus meis aliter utèrè esse non potest, quam si Institutiones Caesaris juxta eas continent legant cændemque methodum premant; ideoque tantum absit, uti contemptus inde juventuti adversus Authoris Artis subnactus userat, potius ut augeat eorum honorum venerationemque, dum à dictatis nostris ad eos, tanquam ad Principales auctoritates, continuo remittuntur. Ceterum, hoc mihi Sacratissimi Caesaris manes largentur, id etiam vos mihi, ut dicam, largiemini, non esse faciendum his diebus, ut methodo, quam ille quondam prescripsit, in omnibus adamsulim praecipeque inhaeremus. Nam quod Ille primô omnium voluit, ut in studiis ultra semelre spatium in Institutionibus determineret, quod, quam hsec res hodie facultatem haberet. Facitore, Institutiones semelre spatio explicari posset; verum quis velitrum de ingenio memoriaque fuit tantum fiducia conceperit, ut una deambulatione, se argumenta Institutionum ita possidere sentiat, ut super illud fundamentum totam Digestorum molem adstruere posse videri dat. Accedet, quod nemo negaret potest, expedire studio-sis, uti mutationes, que universæ Europæ moribus indisciplin...
most noble and most difficult chapters of law there are, about which there is complete silence in the Institutes. Nothing is easier if it were not unnecessary and boring for men to whom this information is common knowledge.

Therefore, there is no sense in the remark, which I hear you reiterating, namely that ‘the Institutes left us by Justinian are sufficient for use in preparatory teaching’. ‘It is not sufficient’, I say. To understand the Pandects, a book of this kind is equally necessary. Moreover, a groundless accusation has been levelled at my compendium on the Institutes\(^6\), alleging that it was written in order to lead youth away from Justinian himself. For my compendium (and I am not ashamed to attach this title to it, although I could adorn it with another more glorious title) can only be of use to my students if they constantly read the imperial Institutes together with it, and apply the same method. There is no question of contempt for the authors of the law being implanted in the young students because of the compendium, rather it increases honour and veneration for them, since the students are constantly referred by our lessons to these authors as being the principal authorities. But the spirit of the most sacred emperor will grant me, as you also will grant me, as I would say, that these days we must not go about things in such a way that in every particular we stick precisely to the method which he formerly prescribed. For what he wished above all was that the students should not be detained more than a semester on the Institutes. I ask what chance do we have of this today? I admit, it is possible for the Institutes to be completed in a space of six months but which of you has conceived such great faith in his own ability and memory that in one brief run through he feels that he is master of the arguments of the Institutes in such a way that he can confidently erect on its foundation the whole massive structure of the Pandects?

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

\(^6\) 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 \ldots nec satì intelliği posse, nisi conjungatur cum Caesari Justiniani Institutionibus et legibus passim ad marginem citatis et a nobis alisque 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 invenia sunt, Iustiniani regulis admiscantur; Nullus aliquin Artium studiis meliore jure factum illud quam jurisperitis applicari potest. Adolescentes in scolis fluttuamus fieri, qui nihil eorum quae in usu habemus, audirent & discuerant. Quae ratio fola sufficit ad probandum, quod Iustiniani compendium non refusat alius manuale cædem operarum methodoque legendum. Jam porro id praeceter in objectionibus tuis mirari me subit, quod hoc docendi discendique methodus incertitudinis in ratione studiorum arguebatur. Nam si, quod res est, dicere fas sit, non uno mihi experimento compertum est, maxime in Examinibus Candidatorum Iuris, eos, qui diversa à nobis viâ præcipue fæ jactant, in Colloquis & dissertatio- nibus Artis, adeo fluctuantes, ne dicam, ignorantem fundamentorum Iuris esse repertos, ut miseratione potius, quam diversa sententia invi-via convitioque digni judici- caretur. Eminverà si nihil alius discendum traebam, quam hujusmodi compendia brevibus verbis in formam systematibus, ordine tamen Cæsareo redacta, metuendum est, ne non ficiores atque aridi, ficta alia, Cruys, objectio tua dicatam, fierent studiis. sed quid tibi vis, ergone credis, ita nos Compendiiis delectari, ut in his Iustinianaeos auditores omnem suos labores ordi ad atque consument velimus? ut periculum sit, ne ad horum exemplum orationem syllamque contraebant & exhaerant? Ego vero, antequam studiis, de Iuris scientiæ ejusve compendio cogitent, ita eos omnino animos inducere volo, utlectione bonorum auctorum corundemque imitatione & ad eiuis syllae exercitiis amantatem ingenii uberatemque orationis ita comparent, ut in habitum illis abeat, atque deinceps, ubi jus studient & hæc ipfa compendia traebant, ne illa quidem aœceniara penitus illas omittere, sed laxamentum in ipsa studendi va-
have been introduced into the discipline of law are fused into the rules given by Justinian. The satirical comment that ‘youths in schools become very stupid because they hear and learn none of those things we have in daily use’ can be applied to no students of the humanities more rightfully than to law students. This argument alone suffices to prove that another manual to be read in the same way and using the same method does not supplant Justinian’s *compendium*. Further, it now occurs to me to wonder that before all else in your objections, this method of teaching and learning is accused of lack of sound knowledge in the case of the students. For if, as I may rightly say is the case, I have found by more than one experience, and especially in examining students for the degree of candidate of law, that those who have hurled themselves headlong along a road, different to mine, have been found in seminars and legal dissertations to be so doubtful about, let me not say ignorant of, the foundations of law that they were judged to be worthy of pity rather than to be scorned and reproved because of their different opinions.

[A5] Now, if we were to argue that nothing must be learned and taught other than compendia of this sort which have been reduced in brief terms into the form of a system while, however, maintaining the order of the *Institutes*, should we have to fear not only that the students would become dry and arid (as, Crusius, your other objection alleged) but (as you wish and as you therefore believe) that we are so enamoured of compendia that we want our first year law students (*Justiniani novi*) to commence and to conclude all their efforts on them? As a result would there not be the danger that they would abridge and impoverish their spoken and written style on the model of these compendia? But I, for my part, wish that before the students think about the science of law and the compendia thereof, they should so completely train their minds that, by reading good authors and by copying the same and, by the assiduous practice of good style, they should acquire a happiness of expression and a richness of oratorical style so that it becomes a habit with them and finally when they study law and work with these actual compendia I advise them not indeed to relinquish these more elegant writings completely but to seek in them a relaxation by way of variety in their actual studies.

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64 Petronius, *Satyricon*, 1. This same idea is also expressed by Tacitus and Quintilian. See also Huber *Oratio II*, pp 64–65. Van Eck in his *Praefatio* to Böckelmann’s *Differentiis*, p LVH, 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. *Caecus auditeus non volumus vetere tan frivo lo 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 ‘Justian’s Freshmen’.

67 See Huber’s references in the *Praefationes* to other works e.g. the *Digressiones*.
27  Juris, Dialogus.

varietate querere fuadeo. Adde, quod & ante dixi, compendia illa systematum, illè tantum indices, secundum quos textus Juris, quibus nihil uberius, nihil amoenius, inquiri & legi possunt atque etiam omnino debent. Quæ ratio facit, ut in Pandectis, inquam, absoluète necessaria sit hæc preparatio paratitlaris, eti nihil Justiniæi Institutionibus addere velles; fidelem manifestum est, non modo univerfam methodum in illis illè difficilè & obscuram, verum etiam singulos titulos sine directione compendii alicujus methodici, neque perdici neque doceri possè; Quamobrem Cæsar ipse diférè voluit, ejus generis indices & fummas capitum describì, quas utique breves atque concisas essè debère, negotii ipfius naturâtis indicat; nec metuòt Imperator illud prætextum corrumpendæ eruditionis & eloquentiæ periculum. Ex his credo, jam præfumi possè; quid ad illam objectionem, quæ per hanc methodum preti- di volebas communicationem Juris cum literaturâ huma- niore, fit refpomendum. Non contineri in hoc genere compendiæorum observationes digressionesque Historicas & literarias fatemur, impediri prohiberique negamus; nec unquam eftam hortari studiosos ad hanc conjunctionem varie Eruditionis cum Arte Justiniæâ. Denique, nihilo magis de eo laboramus, quod tu etiam, Crudi, præci- piae difficultatis loco ponebas; sic licet, his neotericis In- stitutionum imitamentis, non preferre Themidem suam faci- ciem nativam, sed ejus formam cultu adicitio corrumpi. Profiteor equidem, si per hæc compendia fieret, ut Ars nostra terminis, quos vocant, exoticas impleteretur licentilâ- que finiendi partiendiâe scholaetica in aliam transferite speci- ciem, me tam alienum ab illis futurum, quam cuiquam Themidos amantissimo esse confèntaneum fit. Ideoque curatiissime id operam dedi, ne quid tale meo quidem com-
Add also what I said previously namely that these compendiary systems are only indices, pointers in accordance with which the texts of the law – and nothing is richer and more elegant than these texts – can be investigated and read, and indeed so it ought to be.

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

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

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68 This passage from ‘Finally we also nonetheless’ . . . to ‘we see has been done . . . ’ (Denique nihilomagis . . . fecisse videmus (p 28) is taken almost verbatim from Oratio IV, p 95.
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pendio objectari posset, adeò ut religio mihi fecerit, uellas in eo ponere definitiones aut divisiones, quae non aut e verbis, aut e mente fenentiamque legum evidenter colligi posse. Fuit, inquam, religio; nam superstitione non debui dicere, qualis fuisset futurum ego quidem arbitratus, finimil ejusmodi collocare voluisse, nisi quod totidem verbis à Justinianno veteribusque Iurisconsultis praeceptum esset; tamcti ignaretur non potestis, literatissimos superiores avi Doctores, Cujacium, Duarenum, Donellum alioque Juris antiqui et intaminati cultores severissimos candem intitile viam, quam in nobis tam inquiete animadvertis. Dum, facilicet, proprietates rerum à veteribus fusè expostitas neque semper in finituri partiendiique formam redactas succinctis positionibus enuntiando atque declarando, quod omnium Artium, quae ab antiquis ad nos profectae sunt, magistros fecisse videmus.

CRUSIUS; si, quemadmodum Tu, inquit, Bökelmannae, compendii tui utrum studiosis commendare te narras, ita vulgo aut à majori parte haberetur, non erat quod dispenderii quicumque in illis esse situm existimaremus. Sed per communia facra teftor, an non Auditores tui, tam frequenteres ante notabile, in illa Compendii disciplinae proram atque puppm studiorum suorum collocas, feque perceperis illis, egregios esse Iurisconsultos arbitrentur, neque de ipsis antiquis jurisprudentiae libris evolvendis examinandisque curam ullam fucipiant, & an non hæc res ad summum doctrinæ Iuridicae detrimentum pertineat, adeoque an immaterio compendiarium illud institutum, veluti caufa corruptæ jurisprudentiae, vituperetur. Quod si Tu, ficut nobis fecet consilium, devorum Themidæ juventutem, ad ipsa vetueta Artis penetralia deduceres, si exemplo praxier, ipsa veterum reponfa commentariaque, ficut à Justinianno in deiormi.
so much so that it has become a matter of conscience with me to include only such definitions and divisions as can clearly be derived either from the words or from the intention and purport of the law. I say ‘it has been a matter of conscience’ for I ought not to say ‘excessive scruples’. I indeed think it would have been such ‘excessive scruples’ if I had aimed at putting in nothing except what was written in so many words by Justinian and the old jurists; [A6] even although you cannot be unaware that the most liberally educated doctors of the last century, Cujacius, Duarenus and Donellus and other most rigorous teachers of the ancient and undefiled law established the same method which you so unfairly criticise in my case. Namely they state clearly with succinct propositions the peculiar nature of the material which the ancients expounded at length and did not always reduce to the form of defining and partitioning. This we see has been done by those who taught all the subjects which have come to us from antiquity.” [A7]

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

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

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deformi illâ, quam habemus, epitome reliâta sunt, idonea methodo legere, examinare, conferre inter se, illeque immorari, dum plane penitulique intelligerentur; aut si non præberent se intelligendas, veros sensus emendandi coniecturis indagare. Equidem, si quod res est, fateri vis, eo modo, quid amplíssimum Juridiconfutis nomen requireret, & quid ibi deesset, eti quam veltra compendia tenerent, agnituros esse crediderim; denique, res ipsa compelleret eos veram proficiendi viam infilvere, neque cessaret, donecum verum jus antiquum in memoriam potestatem redessissent, neque nos profecerit pro Juridiconfutis habemus illeque nomen illud venerabile ποιηματικον adscriberemus, qui fierem quandam definitionem, divisionem illeque adhaerentes neficio quas, ac heri nudusve tertiis natas questiones excipere atque resolvvere posset; ne de aliis, qui nec id ipsum didicerint, cum dedecoris publici confessione loquar. Enimvero si compendiis abolitis, tam egregium mutati confilii fructum capere liceret, credo, tibi ipsi nullam visum iri caewam, quare nobis ad invenuita illâ & inamena compendia, pœnitentiamque pulcherrimi confilii, redeundum foret.

BOKELMANNUS: Si nihil aliud a mutatione pœnitentiae tueri vos poterit, quam ille speratus succeddix, credo fide!. præfagio meo confuturam. Quod fi potes animum inducere, ut res tibi proponas, sicut exsunt, dabo operam, ut intelligas, ferones tuos abhorrere abusu civili, plonoque vel ostentationis esse vel ineptiarum. Quod utrem vel faltam hic nos Clarissimos per suadem, necesse erit animadvertamus, quomodo parata, quibus studiis exculta sit juventus, qua ad percipiendum Iuris disciplinam scholas nostras ingreditur, & an fannis hominibus confutum videri posset, ejusmodi auditoribus committere fundamenta juris paratitaria proprio marte diœcenda, 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 responfà commentariosque, non quæ ex illis faciliora, sed obscura, difficilia nodofque continentia vindice dignos. Tu quidem de qualitate huma-
ni ingenii nihil humile, nihil infra captum rerum maxima-
rum præfumis; nec ego naturæ fum accurator: sed ita de fe-
llicitate ingeniorum philosophari, ut oculos animumque non
advertas, ad eos, quibus cum res sit, nihil alius est quam
splendide nugi. Non est hic locus de mihiām iōcholarum
primaque institutionis consuetudine queri, sed hoc palam
est, novos Justinianaeos, qui se nobis offerunt, plerique
rudes esse politioris literaturæ, rudes historiae & omnis
Antiquitatis, rudes Graecæ linguae & proprietatis elean-
tiaeque Latinæ, ne dicam Philosophia, præfertim moralis.
Nec ficio, quam te perversitas agitet, ut causam corruptæ
Jurisprudentiae, vel studii potius Juridici, (nam ipsam,
opinor aequa adhuc integram esse quam fiuit adum) potius
non prodideris ignorantiam Romanae Graecaeque linguae,
quam uσum præparatoriam institutionis. Et quidem de Graec
certo facies prudenter, quod nullo verbum de ejus
peritia in Juris studiis reque erat protulisti, perinde quia
nihil magis quam Suida aut Laponica dialecticae notitia
ad Juridicam Crisín exercendam pertinere. Quod si paulo
durior Munkero nostro, hac in parte, Delfis, elementarius
Doctor, operam naves, credo, non minus severe in con-
temptum Graecarum literarum, quam modo in compendio-
rum & systematurn Authores invectus fuiíes. Nunc auús
es Licinium Rufimum, Ulpian, Caii, Paulo fragmenta,
Codicemque Theodoreanum memorare; Graecum Jus &
Basilicos thesauros, quibus tot tanque valoris cimelia
viri Graeco docti eruerunt, atque adhuc invidigare possunt;
triti, ne dicam pudendo, silentio præteriítti. Neque te ag-
nolo, Crucis, tam superbum eruditionis vulgatae cenorem
&
but the responses and commentaries of the ancients, not those of them that are comparatively easy but the obscure, the difficult and knotty problems requiring attention. You indeed assume that there is nothing lacking about the quality of human intelligence, nothing unable to comprehend supreme concepts. Now I do not cavil at nature but to philosophise thus about the fruitfulness of intelligence so that you do not turn your eyes and attention to the actual persons with whom we are concerned, is nothing other than *splendide nugari* [to talk highfaluting nonsense] 71. This is not the place to complain about the most wretched condition of our schools and preparatory education but it is quite blatant that these new law students who present themselves to us are generally ignorant of polite literature, ignorant of history and of all the Ancient World, ignorant of the Greek language and of the proper elegance of Latin, to say nothing of philosophy, especially moral philosophy. I do not know what perversity drives you to attribute the reason for the corruption of legal science or rather for the corruption of legal studies (for I reckon the former is still as sound as it ever was) to ignorance of Latin and Greek rather than to the practice of our preparatory education. And indeed you are acting shrewdly with regard to the Greek language, because you said not a word about knowledge of it being required in a law student, just as if it was no more relevant to legal criticism than a knowledge of Swedish or Lappish dialects. But if after you had been recently created a doctor you had assisted our friend Munker in Delft for a little longer in this regard, I believe you would have inveighed no less severely against the contempt for Greek literature than now you do against the authors of compendia and systems. Now you have dared to mention Licinius Rufus, the fragments of Ulpian, Gaius and Paul and the Theodosian Code, but you passed over in a sad, or should I say a shameful, silence Greek law and the treasure house of the *Basilica* from which scholars who know Greek, have dug out many jewels of great value and can still discover them. And I do not see you, Crusius, as the proud censor of common knowledge.

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

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

72 Van den Bergh. *Noodt* p 22 writes "Noodt's main interest was in Latin; he was much less versed in Greek and knew virtually nothing of oriental languages".
31

Iuris, Dialogus.

& exastorem criticum, sine ulla Graecarum literarum notitia. Tametis Graecos Jurisconsultos basilicamque paraphrasia contentus sit omittere, vel Interpretibus fidere, quod in re critica sitimus, quam tum atque decorum sit; tamen, inquam hujus studii, quod laudas, profero, quae ratione poetis alienari ab illa parte Juris Justiniani, quod tum dixisse Graece compositum est? denique in antiquis latinitatis scriptis, quis unquam sive nedocet Graecarum literarum periti feliciter in exercendo Critici vera esse, aut Cicerum fa proffiteri suffinuit? Sed mittamus Graecarum permittamusque non tam Accursians, sed etiam criticis pace tua dicere; Graeca sunt, legi non possunt, quoties se nobis obtulerint; vel si criticam ne haeftenus quidem omittere placeat, imitemur Illum, qui cum in Ulpiano legisset hoc verba, pro epos, fagacitate vere criticam, monuit legendum esse, sta; pro se poscit. Sed revertamur ad institutum: Contemplare milia, quae, Graecis, adolcentes, vivant tantum Latine docentes, ut animi fusi sena, quod fatis sit, effecerqueant, Philosophiae & antiquitatis & Historiae Latinae ignaros; adeone te praecognitum amor institutis tue tenest, ut his cum aliquo fruitu eruditisimos & difficillimos antiqui juris commentarios exponi possit saustas? Nofti & experientes, fieri non possit, tum uti corpus Iuris auditoribus tuis illustres; obscuriora & ardua quaeque, sine dubio excerpenda sunt, ut digna Interpretis ope, digna publice vocis officio videantur. In his tu adolcences ita, si uti dixi, preparatos cum valido profectu verfari, sicce Jurisconsultos inde fieri posse credimus? Non dices, opinor, sed in suis auditoribus supplebat humaniorum litterarum praeitura, credo, requires. Quod facies igitur illis, qui non habent eam nec adferre possunt, quemadmodum decimus quique non reperebit, qui mediocrer, neque centesimus, qui ut debet, 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 paraphrase and to rely on the commentators (in matters of criticism we know how safe and fitting that is), nevertheless, I say, on what grounds can the profession of this study that you praise be separated from that part of Justinian’s law that is entirely and αὐθεντικὸς written in Greek? Moreover, in the ancient Roman writings whoever was successfully involved with practical criticism or who professed to call himself a critic without at least a moderate acquaintance with Greek literature? But let us pass over Greek and let us, with your permission, allow not only the Accursians but also the critics to say Graeca sunt, legi non possunt (it's Greek and it cannot be read), as often as Greek presents itself to us, or if it does not please us even now to leave out the critics let us imitate the great man, who, when he had read πρὸς επος (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 αὐθεντικὸς reading αὐθεντικός. A collation of 168 novels (Novellae) were promulgated by Justinian after the publication of the second Code (534 A.D.). Of these novels most are in Greek, 15 in Latin and 3 in both Latin and Greek. 134 of the Greek novels were translated into Latin at some time shortly after they were promulgated but the author is unknown. He appears not to have been a jurist as the translation is faulty. When this text was first made known in the 11th century it was regarded as a forgery but after the Law School at Bologna declared it authentic, it was accepted and known as the Authenticum. (The Authenticae are excerpts from the Authenticum attached to the appropriate section in the Codex.) See Wallinga Authenticum and Authenticae.

74 Clearly the great man, whose identity was known to Huber’s readers, (but is not yet known to me) being unable to handle the Greek πρὸς επος = according to the word, read it as Latin pro se poscit and translated accordingly as ‘demands for himself’. Prof J E Spruit suggested to me that the text referred to could be D.11.1.11.5.
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hac parte sit instruētus. Non inculcabis tamen illis compendia; domi legant, si velint; Professor altius sparet, Illis gloria & notarum enigmata, Illis malas interpunctiones emendare ac interpolare, glossas varialque lectiones à textu genuino separare, luxata restituere, vitatam anara, plebsicitata atque Senatusconsulta concinnare; fugitiva retrahere locisque suis reddere doceat. Hac enim visagere Professores, hæc tradere fæctoribus suis jubes. Mihi vero quid inceptus quid fanis hominibus indignus videri queat, nullo modo apparent; siquidem nec adolescentes ita, sicut diximus, instituti quicquam ex iis rebus percipere, nec si quaen, ullus inde fructus ad eos redundare potest. Noli putare, me effe aum, qui spernam vel reprehendam instituti illus rationes; sed quod haec à Professibus doceri vis adolescentes, antequam parata totius juris ab illos percepta fuerint, superat omnem futueltiam; ignoscere dicent quod res est & sepham, sepham. Nec quisquam fanis ratione praeditus terre potest Anticefiores hæc rudibus animis inculcantes, atque eos qui Compendia talibus praefiensur corruptur jurisprudentiae reos peragentes. Quid vultis tandem agamus cum ipsis, qui nihil quam latini sermonis & senus communis intellectum habent? ut remittamus eos in scholas atque ad Parentes; an ut detineamus immami fumput in Academias, ut anenmata, quæ tu dicis? an potius, ut ejusmodi non sunt Juris in illos transferamus, per quam de causis respondere, cive regere confluentes operamque foro navare polett int? Atqui hoc est in potestate compendiorum nostrorum; quia illa tenet memoriam, dictavit judicium, probare poete legibus, ut nos dicimus Auditors nostros, hæ non ineptis præditi ingenii ea quæ dixi, praestare polett & feliciter omni die praestant. Non igitur quod mihi credas affirmanti, specta Viros Clarissimos è disciplina mea pro-
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You will not, however, press upon them compendia which they may read at home, if they wish. Let the professor aspire to greater things. Let him teach the riddles of sigla and notae. Let him teach them how to emend and how to interpolate faulty punctuation, to distinguish glosses and variant readings from the genuine text, to restore dislocations and to emend corruptions, to reconcile plebiscites and senatus consulta, to retrieve fugitive texts and restore them to their correct positions. For this is what you wish professors to do, this is what you bid them to hand on to their disciples. But it is in no way clear to me what can be more senseless, what more unworthy of intelligent men. If indeed young men are taught as we have described, they cannot gain anything from this teaching and, if they could, no benefit would redound to them from it. Do not think that I am one who spurns or finds fault with that system of teaching but the fact that you want young students to be taught this by the professors before they have grasped an outline (paratitla) of the law as a whole exceeds all stupidity. With respect, this is the position, I am calling a spade a spade. No-one endowed with any intelligence can accept professors teaching this to immature minds and then accuse of corrupting jurisprudence those who prescribe compendia for these students.

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

75 The Latin idiom Scapham schapham is from the Greek την σκόφην σκόφην λέγειν (lit. ‘to call a boat a boat’ or, more probably, ‘a tub a tub’). For the spelling schapham, not scapham (see Latin text). This is repeated as above in the 1696 edition, p 606. Buder has scapham scapham, in the 1724 edition, p 68. The phrase does not appear in 1684, p 54.
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dauctos, per omnes Germaniae Belgicaeque republicas spar-
fos, & aude negare, Compendiarium Institutionem esse effi-
caciorem ad utilitatem publicam, illa tuorum siglorum, in-
terpretationum & conjecturarum demonstratione. Quam
quidem ego nunquam, ut tu facis de methodo nostrà, con-
tempsi, vituperavi; sed, quod toties repeti, sequi debere
paratitkarem Institutionem, fentio, fiadeo, contendo.
Nec credo, quenquam adeo bonae mentis inopem fore, qui
non mihi potius, quam tibi hac parte fidem fit habiturus.
Inflare te quidem, atque hoc unum minus inceptè, in hac re,
intelligo, postquam illa compendiaria in Academias & Au-
ditoria Juridica introducèt, juventutem in ea subsubserere,
nihil aliud sibi proponere, nec ulterior provehere studiorum
suorum curas. Hoc igitur te quari, te incusare & exprobra-
re juvenis nostrà, etiam verò Professoribus, tì qui Au-
debres se talis focrinx præberent, oportebat; non etiam
detonare contrà, quod nemo sapiens, aut juris prudent o-
mittendum putat, neque contendere Pandechas sine com-
pendio paratitkari esse docendas. Non ignoro, quorumque
Jure deditos, ut studia & ingenia sunt, tantum temporis in
hac compendiosa totius Juris doctrinà consumere, uti per
fortunas suas integrum illis non sit, aliud deinde studium in-
gredi novoque curfu de ultima coronà denuo certare. Quod
profecto non hujus methodi, sed hominum & faculèstic-
vitium pluquum manifestum est. Eoque vires eloquentiæ &
auctoritatis veiræ, Crux, intendere debuitis, urgenerofi
juvenes perfecto eruditionis amore novaque diffundi cipi-
ditate inflammarent, non ut precipitae darentur in cjuf-
modi laborem, quo sparsà tantum infinitàque lectione me-
memoriam ingleant, neque praecipit ultius regulisque universis
forment frumentique judicii rectitudinem, quod staullis in-
nixum fundamentis vagà legum notià diffuère, siuque

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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 studiis statuit nostris, Republikam siliici in partibus administrandam sibi commissam, non proe 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 Nót p 38 ft 13, on Huber’s feelings about an academic career.
De Ratione docendi & descendi

\textit{s feminintione frustrari necesse sint}. Quod si alterutrum a Juris studio abesse oporteat, vel criticam subtilitatem, vel \textit{summariam universi Juris notitiam}, & si facultatem non habet utraque methodus, quâ conjungatur; age, videamus, utra minore cum incommodo publico adhiberi negotiique posset. E comprehendis & syllematibus, it \textit{ut à nobis propunnuntur & explicantur}, palam eft, haberi posse \textit{jurisprudentiam}, co cum fruētu copiāque, ut ad causās agendas, scribenda consilia judicandique munus sufficere posset, atque sufficiat; clarissimis atque vivis exemplis argumentum undique preuentibus. Vellīr nullis comprehendis imbuti universam quidem Artis scientiam, qua subnixi prompte & expedit e in foro hominumque societate vertentur, nunquam perciuntur; argutationes quaedam, observationesque rerum ad ulum nihil pertinentium, ferupulos vulgarum lectionum coniecturalesque plerunque superfluas movent jaéntiue, & omnino talem sibi doctrinan comparant, que \textit{supervacuam alienamque à communis usu vitæque substitutem}, ut tibi verba tua reddam, praefere videatur. Denique, sic ego, sic omnes, qui jurisprudentiam magis in rerum gravitate, quam in verborum captatione conservere credunt in animum inducimus; neminem sine comprehendia totius Juris intelligentiæ valide prompteque Jurisconsultum esse posse; nec aliter sapientissimos antiquitatis & hujus, & superioris feculi Juris Interpretres existimasse videmus. Quod si tu hicē rationibus nee tum tibi persuaderi pateris, duxi taxat hoc admite, \\textit{svelpuli ut suo senti abundent, & sine detractione, sine consuetu quisque bono publico faulnas manus vocisque ministerium commodet; nec aliis alium corrupta jurisprudentiam, neque compendio prima institutionem}, ut \textit{dispendia juventutis probrose acutet}.

\textit{Crusius}: Ego quidem humilique, sicut volebas, disputā.
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 nou ac vita, subtilitatem praefere. (The name of Roman law seems . . . to produce useless subtlety, foreign not only to all learning and elegance but also to everyday usage and everyday life.)
35 Juris, Dialogus.

tantem te Bökelmanni confectus sum, tametfi plus è ver-

bis meis, quam in iis erat, deduxeris. Nam si recte ani-
mum illis adverteris, non id mihi confilium fuifè, coli-
gere potuisses, ut uifum compendiorum, fict ut Te, fict ut
ab aliis homibus claris ulurpfantur, veluti causiam corrupt.i
Eloquentia tradecet; sed festinationem nihil quam Com-
pendia quærentium in dicendo, nihil aliud in docendo pra-
feribantium infectatus fum. Quid autem? cenfeo faciantus
ali quando finem hujus altercationis & rogemus Huberum
ut & ille suffragium fium edere animique fententiam & ex-
perientiae exemplum declarare velit; forte an medium alic-
quad confilium, periculis fœ veris fiwit utirimque va-
cuum, ab illo suppedietetur. Recte; mehere le, regerebat
Bökelmannus: Nifi enim respondingi viues ab illo mihi
commodatas penitus intercipere & consumere velim, tem-
pus est, ut desiftam; quod eò jam proclivius accidit, quod
ru, latera male tecto, abscedis, & plus in alieno auxilio quam
in propriis viribus tpe dir locare videris.

HUBERUS. Ego vero, si plura, de compendius & fyl-

tematibus Juris in medium proferre vellem, postquam vos
in utramque partem copiosissime hoc argumentum executi e-
fishi, mihi ipsi vobisque gravis & inepite verborius haberer.
Nolite à me aliud expéctare, nisi, ut simpliciter expo-
nam, quæ fit ratio methodusque institutionis, quam juve-

ntuti, cujus tpeadmotus fum, impertor; atque exinde,
quam partem vetere contentionis ego probem vel impro-
ben, si res tanti videtur, colligendum relinquam. Enim-
vero non postum fitis laudare nobilem Cursii indignationem
adversus pravum feculi noftri miorem, festinatid studia ju-

ventutis nihilque iiis quam Compendiarum Systematuum li-

bellos exponendi. Sed haec longa querela nulloque bono à
nobis iteranda. Permittite mihi, ut repetam priorum tem-

P pp p 2 po-
argued your case, as you wished, even if you have read more into my words than was in them. For if you had rightly attended to them you would have been able to gather that it was not my intention to traduce the use of compendia as employed by you and by other well-known men, as the cause of corrupt rhetoric\textsuperscript{79}, but I was inveighing against the superficiality of those who look for nothing other than compendia in learning and those who prescribe nothing other than compendia in teaching. What then? I think that we should now make an end to this argument and ask Huber if he would be pleased to cast his vote and tell us what he thinks and what he has found by experience and perhaps whether some compromise solution, free from the dangers, whether real or imagined on both sides, can be supplied by him.”

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

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

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

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

porum memoriam, diversas docendi descendique juris rationes vobiscum recenssem, atque exinde, quomodo ad hanc methodum, quâ nunc utimur, perventum sit, denique ex omnium viarum comparatione, quæ praeflatifflima sit, animadvertamus. Primo omnium ante Justiniani tempora, ut ipse narrat, cum ad studium Iuris abiolvendum quadrennium omnino definitum effierat, iva illis feretbat, ut veiies cententis versuum millibus, in quos libri de jure scripti, erant distincti, studiofis vix sexaginta millia proponerentur, reliquis omnibus tanquam ab ufinemotis, penitus neglectis, atque ex illo ipso Compendio, adhuc non paucuvelut superfaciæ præteribantur, quod erat Compendium Compendii. Imperator deinde novâ Juris epitome ex duobus librorum millibus compositâ, methodum studendi hoc modo dispertitus est, ut omnium huius librorum institutio quinquennii spatios absolvetur, initio ab Institutionum libellis facto, monitoque, ut ad reliquis libros paratitla quidem præciferberentur, vel ipse leges è latino in Graecum quibus vertere rentur, commentarios autem facere ne liceret Postea Caesar Leo Philosophus Compendii Justinianae fecit alud brevitarium, in quo feletas leges & Constitutiones è corpore Justiniani vertit in Graecum feremonem, eti non ubique sive tamen religiose obseruaret, quam Justinianus voluerat. Atque ex hoc basilico Compendio, latius amplò tenens, rursus idem Leo fecit epitomen, opus meris definitionibus & regulis coelans, praeter alia, fide manualia, quae Constantin us Harimopolus, Michael Attalota, Michael Psellus, Antiochus Balmamon aliique plures in notitia Basilicorum a Suarejo recens, ipse quoque rursus Leo nei filius Imperator Constantinuses Porphyrogenneter publicaverunt, licet & peculiar Compendium Novellarum edidit Julius Patricius Exconsul & Antecefus Constantinu-
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 us80, when a period of four years was absolutely the limit for completing the study of law, it was customary that of the two million lines comprising the books written on law81, scarcely 60,000 were put before the students, all the rest being as it were remote from practice, completely neglected and, even from that abridgement, quite a number were still passed over as being unnecessary. This was a compendium of a compendium. Then the Emperor, having composed a new epitome of the law from the 2,000 books, divided the curriculum of study in the following way, namely that the teaching of all his books should be completed in a period of five years, a beginning being made with the books of the Institutes, with the qualification that of the remaining books, paratitla would be composed, or the actual laws would be turned from Latin into Greek κατὰ πόδας (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 κατὰ πόδας (the word by word) translation as conscientiously as Justinian had desired. And from this imperial compendium, which was fairly comprehensive, the same Leo again made a further epitome, a work consisting of pure definitions and rules; besides there are the other πρόχειρα or manuals which were written by Constantine Harmenopulus, Michael Attaliota, Michael Psellus, Antiochus Balsamon and several others mentioned by Suarez in his Notitia Basilicorum as well as by Leo’s son, the Emperor Constantine Porphyrogenitus. So too Julius Patricius, the ex-consul and professor at Constantinople, produced a special compendium of the Novellae.

80 Cf. Constitutio Omnem § 1 passim.
81 Cf. Constitutio Omnem, 1. ex tanta legum multitudine, quae in librom quidem duo milia, versus autem tricies centena extendebarunt, nihil ab iis sex tantum modo libros a voce magistra studiendi accipiebant. The Latin text wrongly reads vicies centena for tricies centena.
Iuris, Dialogus.

nopolitanus; e quibus omnibus fatis confatat, que fuerit inde a tempore Justiniani veterum Graecorum ratio docendi discendique Juris; videlicet, incipere a Compendiis, atque exinde ad Excerpta basilica, denique progradi ad universum corpus Justiniani: nec eos ita existimasse, dispensus id esse doctrinæ juridicæ, si ne quisque humilitatem ejus omnes auctores compositisse, verba sunt Harmenopuli, si pulchriora, & utiliora maximeque necessaria in libros manualis colligerent. Imo patet ex codem Harmenopolii ceteriusque superfluis, id eos egisse, uti, quæ a tempore Justiniani ad eum ætatem plus annis quingentis evenerant mutationes additionisque legalis disciplinæ, earum in suis epitomis notitiam studiosis impertirentur. Quod rursum velim observari adverfus eos, qui hie diebus Artem Jurs contemporari violarique clamiant; si quando aliquid hodiernis Jurs manualibus er moribus institutius que sequentium temporum utilitatem adjungique sentiant. Graeci Imperatores, & Jursconfulti, utcunque successores Justiniani in eodem Imperio, minime religioni duxerunt, Illius Jursprudentiam ad ufm fui temporis accommodare; ineptæque fœc fore crediderunt, si compendia & manualia sua, quibus adolecitibus summæ Jurs positiones tradabant, perinde compositisse, ac si Justinianus adhuc vivere nihilique ab ejus ætate suffect innovarum. Nos vero potest alios fexcentos & quod exedit annos, extincto Justiniani Imperio, qui jus eis hand aliter, quam ad lapplendas leges domesticas cujuque populi recipimus, non audebimus juveni no- fitæ manualia praeficere, in quibus eos adnemamus, quid de jure vetusto moribus hodiernis observetur aut occurs? Sed pergamus. Dum ita Graci Jurs scientiam suis moribus & institutis aptatam excolant, in Occid. cum Imperio leges Romanæ exulabant & ignorabant; donec:

\[\text{Pppp} 3\quad \text{Lotba-}\]
From all of the above is evident what constituted the ‘old’ Greek method of learning and teaching law from the time of Justinian to their own day, namely to begin with compendia, and from there to go to the imperial excerpts i.e. the *Basilica* and finally to proceed to the entire *Corpus* of Justinian. They did not think that it was a waste of legal teaching if, according to the words of Harmenopulus, τὰ καλλίστα χρειῶθε να καὶ ἀνακαίνιστα συντεμόντες ἐν προχείρῳ βιβλίῳ συντάττοιεν (if they were to collect the more noble texts, the more useful and especially the essentials in a manual). Indeed, it is clear from that same Harmenopulus and from the other writers who survive that they did so in order that they might share with their students by means of their epitomes the knowledge of the changes and additions to the legal discipline which had come about from the time of Justinian to their own age – a period of more than 500 years. Again, I would like people to be on guard against those who clamour that these days the knowledge of law is being contaminated and violated whenever they see that something from later times has been included and added to present day legal manuals. The Greek emperors and jurists, as being in one way or another the successors to Justinian in the same empire, thought it in no ways disrespectful to adapt his jurisprudence to the needs of their own time, and they would have thought that they were being absurd if they had composed the compendia and manuals from which they taught young people the propositions of law as if Justinian were still alive and as if nothing new had been introduced since his day. But now, forsooth, after another six hundred or more years, and after Justinian’s empire has ceased to exist, shall we who received his law only to supplement the indigenous law of our various peoples, not dare to prescribe for our young students manuals in which we inform them what of the ancient law is or is not observed in present day customs?

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

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82 This is a paraphrase, not a direct citation, cf *Hexahiblos* § 14.
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Lothario Saxone Imperatore, quasi posthuminio studium ejus infauratur. In his initiis, prima quidem ingeniiorum occupatio fuit eaque sola libros Justiniani evolvere, dare operam, ut intelligenterur, diversos libros legesque inter se conferre, diffidentia conciliare, posterioraque cum prioribus conjungere; cujus rei specimen Inernius in Excerptis Authentibus per Codicem spargendis audax & nobile dedit.

Secundum haec principia progreffl sunt homines studiosi ad proponendas Auditoribus suis Summas, ut loquebantur haud abfurdé, librorum Juris, quæ nihil aliud fueræ quam paratitla, quæ Justiniane appellatur græce corrupto vocabulo, idque potissimum ad Institutiones atque Codicem, ut Placentinus & Azo præixerunt. Ita enim existimabant, Codicem potius quam Pandectas iis, qui Institutiones perceperant, esse praegendum, quia recentius in illo jus est usque in foro certioris & frequentioris, quæ gratia Novellarum argumenta singulis in Codice Rubricis Inernius ille subjejecerat; quod illorum institutionum ad formandos judices causa-rumque Patronos, id est, validos Jurisconsultos, non erat, ut magnopere improbaretur, utcunque deinceps alter uifum fuerit poteritati. Juxta summas pro tyrannibus Artis, in ulterum proveeriae scribant glossas, quæ sunt breves interpretationes legum, secundum ordinem verborum, in quo genere facilé principem locum tenuit Accursius. Fuerere, qui intentiore pra alius cura jus Romanum sèdert ent ad trituras forem, cujus rei praecipua Author Durandus ille, dictus pater Praetice, laudatur. Postea cum glossandi materia conclusa summarumque fatès esse videretur, fecuti Interpretes ingenti apparatu ad commentarios in omnibus juris libris legesque scribendo fæ contulerunt; ipreto jam repudiaturo Justiniani præcepto, quod priores, summis atque glossis contenti, cum illæ Caesariis edicto ex ætæ...
Saxon was emperor, the study of it was restored as if by right of postliminium and it resumed its former position. At the beginning, the first object of talented men was to read only the books of Justinian and to make every effort to understand them, to compare the various books and fragments one with another, to reconcile contradictions and to join the later with the earlier. Irnerius, in his extracts, the *Authenticae*, scattered through the *Codex*, gave a bold and splendid example of such work. In accordance with these principles learned scholars moved on to expounding to their classes *Summae* of the law books as they not illogically called them. These were nothing other than *paratitla*, as Justinian called them, an unfortunate translation from the Greek, and these were given chiefly on the *Institutes* and the *Codex* as Placentinus and Azo had done previously. For they used to say that the *Codex* rather than the *Pandects* ought to be taught to those who had mastered the *Institutes*, because the law in the *Codex* is more recent and of more certain and more frequent use in court. It was because of this that the famous Irnerius had subjoined the appropriate extracts [*Authenticae*] from the *Novels* to the individual rubrics in the *Codex*.

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

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

congruerent; hæ tam modice ab eo recedebant, ut auctoritatem ejus comiter industriæque euddire velle viderentur. Sed commentandi signum inprimis extulere Bartolus de Saxoferrato & Baldus de Ubaldis; aque exinde copia enormis confiliorum, responsorum omnilque generis commentariorum jurisprudentiam, ad veterem, quæ fuerat ante Justinianum, incertitudinem, dubitationem confusionemque, sic ut ipse prædicter Cæsar, reduxit atque deformat; ut non minus ad communes Doctorum sententias quam ad ipsos fontes legum confilia sententiaque exigerentur. His temporibus juventus ad studium Juris accedebat, imbuta, fi forte, Philosophiæ scholarum, illæ spinæ & incivili, à notitia utriusque literaturæ & antiquitatis alieni liqua; nec alia ratio Juris studio confiare potuit, usque dum superiori seculo humanioris literaturæ lux è tenebris ignoration æ barbaricæ emeritur. Ab eo tempore cum novam faciem induit univerfa jurisprudentia, tum ratio quoque descendit atque difcendi juris alia planeque nova invaluit; necque tamen ea sine aliquâ varietate. Videntur omnino Juris Interpretæ, qui literas politiores cum juris scientia conjunxerunt, duorum fuìcæ generum. Quidam intra folios Juris Romani limites feci continuare nihilque alius agere voluer, quam ut libros à Justiniano relictos illufrarent aut emendarent. Alii faciendum putarunt, ut intellegiantiam Juris antiqui cum suis noftri seculo peritiæque forensi conjugerent. Priores inter, familia duxeræ Cujacius, Duavrenus, Donellus. Inter posteriores excelleræ Zaæs, Alciatus, Viglius; ex ingenti numero Triumviri edideræ fatis eff. Sunt etiam, sic ut noftri, qui non tam jus, id est, scientiam boni & æqui, quam antiquitates & Philologicas observationes libris Iustiani adperférunt quæs Antonius Augustinus, Budæus atque Revardus. 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 alius industria sue partes operam Arti utilissimam navarunt, emendando corrupta Juris antiqui loca; quod tamen neminem cum aliquo laudis succedit videmus aggreffum, quam qui copiam librorum veterum, maxime Florentini Pandectae habuissent, aut ubi conjecturis utendum videre tur, qui longo docendi scribendique usu literificque tam Gracis quam Latinis culti famam autornitatemque insignem adepti forent. non ignoro fieri potuisse & aliquando contigit, uti qui neutram horum subsidiorum facultatem habe rent, tamen felici quodam conjecturâ nodum alicujus loci detexissent aequae solvi fissent: cujus rei speciem Dominicus Baudius Jurisconfultus minime equidem Validus, dedit, quando Gratius ab eo monitum se fatetur, apud Ulpianum in l. 1. §. 45. a. Unde Vi. pro passides, legendum est: posse dit: praeter quem locum ego non admodum recordor, Gratium in lectionis recepta mutationibus, quaelibet lauream; tametsi illam doctrinê partem merito inter gravissimâ Juris consulti officia reputat.

Hoc faciant, adolens Themidis Cujacii aris,
Ingentique bono nonina nata Fabri
canebat ipse, cum juvenis suis flores adpergeret Instiniano, fuit olim Alcibiades, ut refert Plutarchus, magistro predicanti, fè corrigendo Homero parem effe, Ne tu, igitur seculus, inquit, es, qui adhuc schola des operam. Res enim est manifesta, neminem hanc studii partem in quâque disciplinâ profiteri posse, qui non omnibus numeris in eâ sit exactus & absolutor, judicioque multalectione communique tractatione rerum, in quibus verfatur, subaeclito limatoque: si quidem non modo callere, sed etiam judicatae suam Artem, & probare, quod ab Artis tue conditori- bus extat reliquum, fine dubio ad summum, ut auctoritatatis, ita scientiâ peritisseque faetigium pertingit. Unum
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scholars, in addition to the other facets of their industry, with zeal and diligence accomplished a task, most beneficial to our subject, namely the emending of corrupt texts of the ancient law. However, we see that no-one has embarked on this task with some degree of success except those who had at hand a number of the old texts, especially the Florentine Pandects\(^{87}\), or who, when they decided to use conjecture, had acquired an outstanding reputation and authority in both Greek and Latin literature from long training and practice in teaching and writing. I am not unaware that it could happen and sometimes has happened that those who had expertise in neither of these skills, nevertheless by a happy conjecture, had identified and solved the knot in some text. An example of this is provided by Dominicus Baudius, a rather second-rate jurist. Grotius admits that he was advised by him, that in Ulpian’s text in D.43.16.1.45 *possedit* should be read for *possides*\(^{88}\) (sic). Apart from this instance, I do not recollect at all that Grotius\(^{89}\) sought to make his name by changing the received reading, even although he thought that this aspect of teaching is rightly one of the most important duties of a jurist:

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

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

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\(^{87}\) The Florentine was notoriously difficult to access. For a discussion of the texts available, see Stolte Bredkman p 73 ff.

\(^{88}\) The 1684 text, p 70, reads *pro possidet legendum esse possedit*, as does the 1696 edition (p 612) and the Buder edition (p 76). The 1688 *possides* is a misprint for *possedit*. On his debt to Baudius Grotius wrote p 178:

<table>
<thead>
<tr>
<th>Line 1</th>
<th>Nec alius de juis virtus est, quam qui possidet. Lege possedit . . .</th>
</tr>
</thead>
<tbody>
<tr>
<td>(omiss 9 lines)</td>
<td>Non alit autem quam ei qui possidet, interdictum unde vi competere. Legendum possedit, atque id olim annotavi suggerente Baudio.</td>
</tr>
<tr>
<td>(Nor does anyone appear to be deprived of possession except he who is in possession. . . . The Interdict <em>Unde vi</em> is available only to him who is in possession. At the suggestion of Baudius I formerly noted that <em>possedit</em> (he is in possession) must be read.)</td>
<td></td>
</tr>
</tbody>
</table>

\(^{89}\) The 1684 text, p 70, reads: *prae ad quam locum non meod Grotium in univerae floresl sparione ad omnes Justiniani libros, ad timem lectionis ab omnibus recepitem mutationem, adstitisse; cem cæi doctrinae partem mento inter gravisissima jurisconsulti officina reputaret.* (apart from this one instance I do not recollect that Grotius in his *Florum Spariso* 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 ius Justinianenum* (Naples, 1777), (and are part of ten lines composed by Grotius).

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

intelligo Antonium Fabrum ad hoc institutum se contulisse
natum, an nos viginti quator, neque manuscriptis intru-
ctum, nec etiam magnopere subnixum collatione veterem
monumentorum, quae lectionis suo tempore recepta fide
facere potuerint. Enimvero non adfectior Bachovio, qui
cum elementer loquitur, eum appellat hominem corrupt-
pendae jurisprudentiae naturam; rametii Wischenbachi
nofter hoc nimir avide convitum arripuerit, auditoresque
uos a lectione conjecturam ejus graviter dehortari sit solum.
Id tamen eximio, emendationes ejus esse plerisque non ne-
cessarias, atque ista comparatas, ut ab aliis, sic ut ipse fate-
tur in prafatione sue, refelli non nequeant. In hac autem
ego summ hærefi & libertæ quævis tibi, in fluctuationibus juri-
dicis esse duas fácias anchoras, quibus non sit utendum, nisi
extremà necessitate cogente: sunt autem hæ meo judicio,
confeßio antinomie & mutatio lectionis Florentine. Sunt
qui hæc modos tollendi difficultates legum appellant viam
Regiam; sed quibus Artis fuis honos & integritas cordi cu-
raque est, non poßunt alteri arbitrari, quam hane esse
viam militarem solvendi nodos gladio, decus autem Artis
prostituendi ludibrio & ipsam dilacerandi. Nimir hæ acer-
ba dixit Crußi auribus accidebant, quam ut diu itus ea silen-
tio tranfmittere poßet. Atqui ego, mi Hubere, modo non au-
bam presumere, ait, quod nimir aperte jam profineris, esse te a-
verso animo abilla parte studii, quod inde à renatis literis ve-
ras jurisprudentiae delicias fecit, & clarissima nomina supe-
rioris fæcula externa posteritatis admirationi conscrivit. Imo
vero, replicabat ille, nemo praecarius de illo genere, nemò ma-
gnificentius de auctoribus, quorum tu laudem demonstras sen-
tit. Ita enim eximio & semper arbitratus sum, Professionem
studii Juris critici, quod in emendandis mutandisque legum
dies consilium (ia utimur verbo) habendam esse pro futiligio &
Q q q q quae
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 ευχομαι ειναι (and I gladly boast that I am), that in legal questions of doubt there are two sacred anchors which are not to be touched except in dire necessity. These are, in my opinion, the admission of an antinomy and the alteration of a reading in the \textit{Florentina}. There are those who call this method of removing difficulties in the law the Royal Way (\textit{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 (\textit{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 \textit{Conjectura (Epistula)}, Faber mentions his age and also writes that his emendations are not essential. \textit{Nonque tamen ita necessarias quin possint etiam refelli ab ipsis qui felicior ingenio et maior 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 \textit{Rationalia Fabri}. In his \textit{Ad lectorem} Bachovius launches a vigorous attack on Faber, lambasting both his \textit{De erroribus pragmaticorum} and his \textit{Rationalia}.

\textsuperscript{93} Van den Bergh Noodt, p 140 ff 89 writes that Huber’s remark Id tamam existimo, emendationes eis esse plenissimae non necissariss atque ia comparatas ut ab alis, nisi ipse jactetur in praefatione sua nefelli non sequantur, is directed at Noodt’s comment in the \textit{Praefatio} to Book I of his \textit{Probabilia} (1674). Probabilitates quippe edere institui opiniones, non dare decreta, nec definire quae sunt ambiguia sed quid mihi videatur verissimului enarrare. (My intention is to give plausible opinions, not decrees, not to determine what is ambiguous, but only to explain what seems plausible to me. Transl. van den Bergh.) However, here it seems that van den Bergh is overprotecting Noodt. It is clear from the context (1688, p 41) that Huber is attacking A. Faber. See Faber’s \textit{Conjectura (Epistula)} as cited in ft 82.

\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 \textit{Alexander} § 18. The metaphor of untying knotty problems was introduced in 1684 pp 71-72. In 1688, p 4, it is replaced by \textit{in fluctuationibus juridicis}, presumably because the 1684 mixed metaphor of knots and anchors jars, whereas waves and anchors are natural companions.

\textsuperscript{96} For more on Huber’s attitude to textual criticism see \textit{Digressiones}, 2.1.24. p 549 f.
De Ratione docendi & discendi
quasi complemento doctrinae legalis, fere, sicut Censora
fuit habita, respectu Magistratuum Romanorum: Sed ut
optima quaeque prælimo modo corrupiuntur, ita nihil exi-
tiofius arti Juridicae, quam temeritas & luxuria Christoph
esse mihi videtur. Nam reliqua docendi vitia, sive in methodo
praepositar, sive in conciliando pigritia, sive in ipsa senten-
tiarum perverSitate confitant, ipsos Artis libros intactos re-
linquunt; Critica male exercita leges ipsas corrupit & fæ-
rum Juris corpus violat ac immittit. Ne vero hujusmodi
infinita oratione preslantissimum institutum maligne a me
putes arrodi, ducam, quod pace tua fiat, quid in vestró,
Crufis, instituto potissimum mihi duplicat. Primum atque
precipuum id esse puta, quod occupavi dicere, vos prima
docendi juris rudimenta ponere in emendationibus, nec
aliae credere ianuam famæ patere, quam fì receptas pro-
bataque ab antiquissimis codicibus lectiones fœlicuetis ac in-
vertatis. Tamen quem ego de antiquis Codicibus loquar;
cum sitis constat, non habere nos alium antiquitatis veneratione commendatum, de Pandectis saltem, nisi quod ex-
tat, Florentiae vos, inquam, adolecentum, qui le vobis
committunt, initia talibus conjecturis earumque subtilissi-
mis probationibus occupatis, antequam terminos & regulas
artis universalis methodica institutione, quam penitus impro-
batis, percepistis, quæ re nihil inutilis & à verâ docendi
discendique ratione alienius esse potest. Ex quorum genere
non eft mirum nacifi tales Juris criticos, quales illud vetus
dictum notat, emendandis legibus neminem se dedere, nisi
qui de legibus nihil intelligat; quod eundem si de omnibus,
quae in hac provinciâ lauræcum quattuorunt, interpretati sint,
injurium falsumque esse non negaverim. Enimvero, si quis
in indagandis legum fenibus eiusmodi quid reperiat, quae
temulentó fed elegantis ingenii Baudio occurrerit, 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 endorsed by the authority of antiquity other than what exists in Florence.† You, I say, fill up the first lectures of the young men who entrust themselves to you, with such conjectures and the most subtle proofs thereof, before they have learned the terms and rules of the subject as a whole, by that methodical teaching which you utterly denigrate. Nothing is more useless than this, nothing can be further from the true method of teaching and learning. It is not surprising that from that kind of teaching and learning we get such criticism of the law as was noted in that old maxim, 'the only one who devotes himself to emending the law, is one who understands nothing of the law'. If this was said of all who have sought honour in this field, I would not deny that it is injurious and false. [A10] For, if anyone in investigating the meaning of the law fell on something of that nature as happened in the case of the drunken but highly intelligent Baudius, in the text from Ulpian’s commentary, which has just been cited,98

\*† Tametsi quid... Florentiae.

97 Cf. Böckelmann’s Compendium Praefatio p [6 ff] where he discusses the flaws in teaching under the headings “without order, without limits and without reason”.
98 D.43.16.1.43. See p 40.
modo Ulpiani responso, bene se res habet & feliciter! acclamationibus. Nec minus si quid simile vobis hæret, applaudamus & gratulabimus. Ipse quoque non minus gratus, vobiscum, si quid occurrat ejus generis, communicaturi.

Tu vero, (interrumpere Crustus) fatis infolenter, dum praefatus admirationem. Cricos, utum ejus & studiosos auctoresque nimirum spernantes nes, ut nec beneficium in Artem, quod satere, collatum, sine convitio emendatoris commorare poteris. Mi Crusi; Huberus subridens, noli in te dictum putare non habere, quod de Badio minime profecto; neque exedit: est tu quoque, sic noti sumus inter nos, gaudeas hac parte mortem præci Catonis, quam toties fibi Baudius ultro apud amicos addixit. Sed nec ego Baudi contumeliam neque tuam, facillime Crusi, possessam, magis in conspectu habui, quam quod ab aliis fæpe notatum est, ejusmodi laus ingeniorum, felicioresque divinationes & amena cricos libentius inter pocula vel a poculis, quam inter occupationes succedere concatenatas. Forstian inde contructum est, quod mihi sic potius animo sedet, libros juris evolvere, ut inde regulas & exemplariter agendarum colligam, imitarique cupiam Antonii Mornacii inter alios multis institutum, qui rarus erat in Doctóribus Accursianis & Bartolístis, rarus in novitiis Interpretibus communibusque fententiis inter se comparandis; sed ipse Juris corpori incumbebat, ipse leges memoriam judicioque fugigebat; & tamen idem rarus in emendationibus censurique juris antiqui; unam hanc, pulcherrimamque facultatem acquisivere, quibuslibet factorum speciebus applicare textus legum; exactè singulis convenientes, omniaque ad usum humane societatis referre; neque minus tamen eloquentiis omnino literarum cultu excellebat, suaque scripta talibus ubi-

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

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

“My dear Crusius”, said HUBER with a smile, “don’t think that this was said against you, μη χολωθης (don’t be angry)99 and don’t think that what I said and, in no way μησικεκοιντι (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 Mornacinus who was unique among those after the Accursian and Bartolist doctors, and unique in comparing the new interpreters and the ‘common opinion’ one with another but he relied on the actual corpus of the law, he committed the actual law to his memory and judgement, and nevertheless he was unique in his emendations of and opinions on the ancient law. He had acquired this one most beautiful facility, to apply the texts of the law to each and every kind of situation matching each case exactly and to refer all to the benefit of human society; and he nonetheless excelled in rhetoric and in all the refinements of ancient literature, and he adorned his writing throughout with such

*† Nee minus . . . concatenatas

99 On μη χολωθης see Homer Iliad IX.33. ἡ δειμίς ἔστιν. οὖν μη 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 ἄρετη σοι πρώτα μονησομαι ἄφθατουν, but has the right to speak his mind.
De Ratione docendi & discedi

que decoravit elogius. Nifi me vehementer opinio fallit, hac ratione Jurisconsulti officium melius impletur, quam perpetuis finemque contendendi non habentibus emendandi conjecturis. Maxime, quando ita conjecturalis illa Crisi excercetur, ut propriae opiniones veltras de juris controversii adjuvetis, rationesque adversantium & obstantia legum argumenta refellatis; quod quidem loco secundo animadvertere cupiebam. Nam si toleranda fine manusciptis est emendandi licentia, duntaxat tam evidens esse debet, ut minus facile refelli quam adhuc & approbari posset: quod de talibus, quae tuendis opinionibus, in quibus Interpretex discrepant, adhibentur, nullo modo licet adfirmare; cujus rei luculenta specimina dedit Antonius Faber, dantur hodieque similia. Constituimus inde ab initio de singularibus inter nos discrepantibus haud agere; quamquam tua de articulo set: Lege 101. = de verb. obl. sententia, pro obligari legendum esse obligare, hic loco nimir pulchre conveniet. Vidimus & Salmasium de mutuo cum Jurisperitis disputationem eodem genere pugnandi utimur; neque dubium, quin hac licentia inaleccente, quilibet Artis imperitiissimus idem jus sibi in Infiniam, quod in alios sua notitiae scriptores exercerent, brevi sit arrogaturus. Quid dicas, anicipes celebrefique diversis auctoribus sententias in partes rapi, aperta via et patula porta, quam videmus, adscribendi conditoris Artis sententias ab e quo bonaque alienissimas, Republicae infestas plane nec suae. Dicam, et emendandi facro artificio dictantes faciam Jurisconsultos, nullam cedem mortis paenam multitudinum esse, nisi quae more latronis alto confusio animum predestinatione commissa fuerit; in rixas quae fuit homi

idia, subitus animi motibus, eti cultra, sicca, gladio extra ordinem leniendo, quam capitis supplicio adjiciendi. Ergo fas fit, 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 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{(ἀθεμιστος)} 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} \ldots 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} \ldots (see Appendix A) but this passage is omitted in 1688 and the 1684 (p 76) version \textit{quod quidem terti loco} \ldots 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 praescriptionibus. Puberes sine curatoribus suis 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{Disseratio ad constitutionem Divi Marii 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 exposé 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.
45 Iuris, Dialogus.

& promiscua cæde cruentata fine metu mortis celebrare: qui rapidó furore fodalium sanguinem duellis hauriunt, nihil amplius utorem gladium metuent. Quin tu, si ituc alius prætextu criticae auctoritatis obtinebit, aliunde probes, ordinarià furti poenà eximendos, qui subitá cupiditate accenfi res alienas absolverunt: Qui matremfamilias alienam improvisà libidine motus corrupt, eum expressà legis Juliae sanctione non teneri: neque Textus deerunt, e quibus mutatis lectionibus hæcaliaque posset evincere, si lex Cornelia violentis hominum affectibus eoque violentioribus, quia subitis, in atrocissimi criminis temperitate ignotis, aut, si hæc sententia façacitate criticà legibus inferri poterit.

Nefcio, ad illa CRUSIUS; quorum haec ultima spectent, nec imaginari possunt, quis ad habiliendam opinionem, ut mihi videtur, inaudita, articolum ulla veterris Jurisprudentiæ velit immutatum. Possè equidem singularibus & exquisitis perfônarum rixarumque circumstantiis judici mitigandæ poenæ cauam dari, fæteor, ut apud Alciatum me legere memini, de puero, qui fortuitâ irâ collüferem flum cultro percuferat. Verum si quis inde colligendum putet, homicidia quælibet subito rixandī iudicio fætus & gladius admissa, mitiore quam capitis supplicio adscienda, ne ille parum incolumitati generis humani confudecerit, quod salvum essè non possèt, si violenti affectus rigidis pœnarum frenis à facinoribus non cohoberentur. Cætera tua, Mi Hubere, nunc quidem prætereo, quis enim finis contentionum! Dicere mdeoio, quam inflicetos fæpe præbeant, qui Auctoribus nonnullis sententerias, de quibus illi ne fominarunt quidem, adstringere malunt, quam levium vocula aut literæ aliquando unus subtrahere, vel additione vel mutatione sanum veteribus fœnorum Artique honorem.
and indiscriminate killing. Those who, in a sudden fury, draw the blood of their companions in a duel will no longer fear the avenging sword. Certainly, if someone maintains this on the pretext of some critic’s authority, you may prove from somewhere else that those who steal another’s property, when inflamed by a sudden desire, must be exonerated from the statutory penalty for theft. You may say that he who rapes another man’s wife, moved by an unforeseen lust, is not liable to the express sanction of the *Lex Julia*. For, if in the rash fury of a most atrocious crime, the *Lex Cornelia* pardons men’s violent emotions, and they are the more violent for being unforeseen, and if this opinion can be imposed on the law by sagacious criticism, there are no lack of texts from which by changing the reading you can prove this and other things.”

To this CRUSIUS replied: “I do not know at what this last statement is directed nor can I imagine who, in order to establish an opinion which seems to me to be unheard of, would wish one article of the old jurisprudence to be changed. I indeed admit that there can be reason for mitigating a penalty in singular and specially selected cases of persons and of brawls, as I remember reading in Alciatus\(^{105}\) of a boy who, in a flash of anger, had struck his playmate with a knife. But if anyone thinks one must deduce therefrom that ‘any homicide committed in a sudden urge to brawl, and with daggers and swords, must be punished with a penalty less than capital’, truly such a one would not be considering the safety of the human race adequately, for it could not be safe if the low passions of a violent man were not restrained from crime by the immutable reins of punishment. Now indeed, my dear Huber, I am passing over your other points, \(^*\) for what end would there be to our controversy! I would otherwise say how stupid those men often appear who prefer to attach to our authors opinions about which those authors have not even dreamed, rather than trying, with a light hand, sometimes by the subtraction or by the addition or by a change in one little word or one little letter, to achieve good sense for the ancients and honour

\[\text{*}^{*} \text{ quis enim... retardabor (p 46).} \]

\(^{105}\) Alciatus *Dispunctiones*, 1.17.
De Ratione docendi & discendi

conciliare malunt: Sed his ego minime retardabor, nihiloque fecus Crin juidicam, faventibus Mufis, dum spiritus hos reget artus, alacriter exercebo, neque morabor;

Si huc obreretam curam voluerit,
Donec seculum crimini sui pudet.

Colliganus igitur vela, regerebat HUBERUS, propinquuo portu; neque libet mihi reciprocare ferram, a qua Tu manum generol conspetum contemptu amovisti. Unum addam, aquam me cenfere, ne vos folos effe, quos aquus amavit Jupiter, reputare in animum inducatis; omnes autem qui in exercendis emendationibus fere conficiendos non praebent, quid de sensibus legum sit, peripicere non posse. Sed manum de tabulâ, ubi addidero, me sequutum effe in adolescentia secat hominum, qui variae eruditionis liquore non incontinenti leviter sed imbuti, tamen in correctionibus legum venditandis auditoribus suis non praeverunt: Vinnius, Mathaeus, Wiftenbachius, moti, fat ficio, rationibus a mepri- dem expositis, tum vero hoc inprimis, quod fatis comper- tum habeant, eos, quibus hac praecipua Crisicos profectio arriret, ab omnibus systematicâ doctrinâ, denique ab omnibus, quæ civelem prudentiam tradunt, disciplos alienos aterfoque effe; cujus speculum habuimus Ænæ Salmaâmus, quem fatis contulit, cum alia hujus generis, tum divinum Grofii de jure pacis & belli opus insolenter adspernari, atque ad omnem politicam civilemque doctrinam tantum non naueret confuevisse; quod & alius, si non omnibus eujusdem instituti rigidos culturibus evenire notabiliter animadvertimus, eujusque contemptus Salmaâmus fruñtus in succeflui de- fensionis Régis confitit haud omnino gloriosus. Preceptores illi me fit arbirrabantur, officii eëf fui, facere Jurisconsultos, id eff, homines qui de quolibet facto consulti respondere, cavere, scribere possent; quas boni Jurisconsul- fulti
for the subject. But I shall in no way be impeded by these considerations,† and notwithstanding, while life shall rule these limbs, I shall, with the help of the Muses, keenly practice judicial criticism and I shall not be deterred, If envy wishes to carp at my careful work

Until our age is ashamed of its accusations.”†106

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

*† aequum me...ubi addidero.

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

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

fulti esse partes, ut olim Cicero tradidit, ita hodieque faculaties eadem illud nomen atque munus implent, a cujus gravitate cos, qui folis verbis & syllabis inherent, mirifice videbant esse alienos. Enimvero non debo preterire, Wissenbachium nostrum fusisse maximum sui temporis Criticum, idque ei haerisse a preceptore suo Mattheo Seniore, Groningeni; sed prorius alio genere Crifos, ac illud eft, quod in siglos & notarum enigmatibus occupatur. Tenebat homines clarissimos immodico confuetudo demonstrandi navos juris, vel potius, ut loquentur, detegendi flagitia Triboniani, errores veterum Iuris magistrorum, omniaque inbenefti, absurdi, falsi notae, ut ipsi videbatur, deformati passim indagandi, in locis communes redigendi atque exagitandi in auditoris & in libris suis. Habet huc Facultas spectem libertatis neque vulgare famae Ienocinium; falsi videlicet animi esse Iuris Interpretibus, ipsos Artis fues Conditores vocare sub cenfuram; ideoque res hae admodum late patet, ut ingentes libri cenfure Iuris Romani extrent in lucem dati. Ego nunquam aliter de hac parte Crifos fenli quam de Antinomiis & emendationibus, non utendum illis, nisi extremam cogente necessitate. Non puto faciilegum, reprehendere Justinianum, vel antiquos Iustitiae facerdone, quales se merito appellari possit credebant, sed hoc affectare gloriamque exinde captare, sicut facere videntur, qui numerum Iuris nevorum tam immantate augent, alienifimum ab officio boni Interpretis esse videatur. Nefcio, quâ mea simplicitate fiat, ut judicium meum à judicio communi, quo jus Romanum nititur, admodum raro deflecat. Ideoque dedi toto biennio in publicis lectionibus operam, ut demonstrarem, pleraque loca Iuris nofi, que ut iniqua, inbenefta, falsa, absurda traducuntur, sano fenfu intellecfa, nihil ejusmodi continere, cujus
lawyer as Cicero once said\textsuperscript{108}, so today too these same abilities are required for the name and office of a jurist. From the importance of this those who cling only to words and syllables seem wondrously far. For I ought not to omit to say that our Wissenbach was the greatest critic of his day and that he learned that from his teacher Matthaeus senior of Groningen, but this is a completely different kind of criticism from that which is concerned with sigla and the problems of notae. Very well-known scholars were bound to the unrestrained practice of exposing the blemishes of the law or rather, as they said, of detecting the sins of Tribonian, the errors of the old legal masters, and of generally sniffing out everything which is inelegant (as it seemed to them) and marking it as dishonourable, absurd or false; of restoring them in general arguments and discussing this in their lectures and books. This practice has the appearance of liberty and not the vulgar and meretricious appeal of fame, namely it was enough for the interpreters of the law to subject the actual founders of their discipline to their criticism and this topic is so extensive that huge volumes of \textit{censura Iuris Romani} (critical judgments on the Roman Law) have already been published.

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

\textsuperscript{108} See Cicero \textit{De Oratore}, 1.48.212. His words are: \textit{Sin autem quaeretur, quisnam jurisconsultus vere nominaretur, eum dicere, qui legum et consuetudinis eius quia 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 \textit{Oratio II} p 64.
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cujus à claris hominibus insinulatort. E quorum lectio-
num memoriam necio, an non aliquando censuram Censura
Juris Romani & Anticriticam hujus generis incorrupto
eruditorum judicio sim propositurus. Quae mea de criticā
studii Juridici professione fuit sententia, fatis abundoque
differuile videor, in historicis similibusque veterum scrip-
tis, ubi nulla dogmata in humanae societate stabilita tra-
duntur, res non habet tantam: neque tamen, si quae mihi oblatae fuerint, abrupte averfatus ef-
sum; quo pertinente exempla, quae modo mihi est differ-
tionibus illis historicis objiciabeas. Quod ad sytematacom-
pendiose univerfi juris attinet, non discrepat instituti mei
ratio a communi omnium temporum confuetudine, nec
ab iis quae modo in hanc rem luculenter à Böckelmanno nofro
prolatas sunt in medium, modo à duobus scopulis diligenter
caveamus. Primo, ne studiose compendia, jecca, jejuna
& arida proponamus, verum tali, quae gustum melioris
doctrinae, simulque initium exhibere possint; tum vero, ut
adisdus hortamentis exemplo praevamus, ne in his e-
lementis subfittere feceret, nec posset praestare. Denique
nollem, mi Cruci, tantopere plauflagisc tibi, ut rem ab o-
mini studiorum ordine judicioque remotiflimam, cum atro-
ci invidiä secus agentium, tam fidelienti oratione prosecu-
tus effici. Nec eft, quod dicas, ut postremo definebas,
te paucos notare voluisse nondumatores sanctissima Artis,
qui Juris Doctores intra paucos mensis perficiundos impu-
dentem fufcipiant. Nam hi profecto sunt pauci, nec, si
aliás bene fere haberet Ars Juris, horum causā, de corrupta
Jurisprudentia queri in mentem tibi venisstet. Tu latē pa-
tentem errorem universalisque vituperasti, qualem vis
iliam
that are alleged by well-known scholars. I don’t know whether on the basis of these lectures I shall not some day propound a judgement on the ‘Judgement of Roman Laws’ and an *anticritica* of this kind with the correct opinion of learned men\(^{109}\). 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\(^{110}\) 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.

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

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

Iuris, Dialogus.

illum esse preparatoriam Compendii Institutionem. At vero
nollem illum diisse frueor, generofum illum spiritem, qui ad
instructandum Juris disciplinam tanto cum impetu adiurgit,
inde reformatione aulpicari, quo maxime obtento, refor-
missionem in se ipsam ruere oporteret.

Ego vero, CRUSIUS, actum agere nolo, & fermo-
vende fuit amplius ratiuncula veltræ, quod in procli vi fo-
ret, hujus quidem colloqui odium, sic ut vos ininituitis,
jampridem me habet; aliaς dabitur occasio; nunc ad alia
transcamus: Cavendum enim, ne materia novi diaolgi su-
crefcat, neve reliquis convivis parum officiosi longiore fe-
ceffu videamur.

Ili quidem, excipiebat Wijngardenius, fuis quoque fa-
bellis detinentur. Sed antequam digrediamur, ne plane
in hac scenæ esse videar, date mihi quoque lo-
cum, non dicendi sententiam, neque refellendi quicquam
à vobis dictum & decepuntum; fécis rogandi te potissimum
Hubere, non quæ cauæ corruptæ sì jurisprudentia, nec,
an compendia sint dispensia juventutis; fécis quoniam me
favor studiorum, potius quam meritum eruditionis mea:
in partem aliquam docendi, seve indultu seu connectivită
Amplissima Facultatis Juridicae receptæ, fecer cuperem,
quod potissimum ordine, quibus studendi gradibus adolescentes
mihi commissos ad Themidos sacrarium deducere possum.
Quando autem Cii. Bökelmanni Crusique humanitas semper
ad illos aditum mihi præbet, Tui maxime consilii prefcri-
ptum ad exempli copiam mihi relinqui defiderarem. Intel-
lexi equidem genus univerfuni instituti, quod in studio Ju-
ris excolendo probes atque commendes; sed opus est mihi
exeat magis et speciali descriptione, ac quas manuduci-
tione a carceribus ad metam, quod ajunt; Et si enim tuus ali-
quandiu fuerim Auditor, idque ordinis quem ferves, ra-

R r r r r tio
is teaching by means of preparatory compendia. But I would not wish that ἡγεμόνα ἡμίον (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 κωφον προσωπον (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. *Bonnens Leidse Universiteit* III, p 320*.
De Ratione docendi & discendi

tio mihi non plane ignotus esse queat, haud tamen dubito, quin longa dis- cendi docendique experientia colo- geris & se- creveris monita non tralatia, quae in promiscuo studiofo- rum concerfu profierre non solas, quaque mihi hanc doc- cendi viam primum ingredienti, multum conducere posse cre- diderim.

Ergo Tu quoque, HUBERUS, in eodem verar is er- rore Wyngardeni, quo vulgu studiorum tenet? Enim- vero saper mihi usus venit, ut adolescentes discendi cupi- di privatim me adirent atque ad interiorem amicitiam aditum affectederent; haud alia gratia, quam ut peculiarem metho- dum secretamque viam sibi panderem atque monstrarem, per quam celerius & felierus eruditionis iter conficere posse. Respondere sum solitus, maximum quod illis suggere pos- sem arcanum, esse laborem indefessum in eia via, quam pu- blice ilium praerem; pararent se diligenter, antequan ad audiendum venirent; auscultarent attente, notarent quod non lection prius audirent, cuncta repetere domi, confer- rent cum fontibus legum, mandarentque memoriae; ruribus offerrent se examini, quoties occasio foret, hoc agerent, ut tyriconium suum paucis oneraret preceptis, attamen u- niversae artis, eaque validissime sua facerent, & in causas fontesque rerum ubique penetrarent. Quando tamen ejusmo- di summâ cohortatione non videris esse contentus, utcumque nihil inuitati arcanie polliceris habeam, nolo tamen deesse facilitatem meam desiderio tuo, quod ex animo, veteris a- micitiae disciplinae memore, proficiet, facilis mihi per- utiliza. Caxerum, non est quod expectes ita Jurifconfulum à me formatum iri; sicut Stoici suum sapientem, describunt, neque ut Cicero suum oratorem esse voluit, cui nihil defsit, qui quod summum est, quod nemo fortior unquam aditig- te, sit confeclatus, nec ad studiofo tantum laboris durique
of the order which you observe cannot be entirely unknown to me, nevertheless, I do not doubt that from long experience of learning and teaching, you have collected and distinguished your own private rulings which you were not accustomed to make known to the general body of students and which, I believe, could contribute much to me as I am first starting out on the path of teaching.”

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

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

in femet imperii exigam, sicur alii plurquam heroico insti-
tuto faciunt, ut merito vix esse tanti, eruditum esse, inex-
erti arbitrentur. Aegam civiliter, atque ita, ut adolescen-
tes ne desperent effici posse, quod ipsis præscribatur. Sic igi-
tur ego fuisse \textit{qui animum ad studium Juris applicat,}
eum primo adniti decter, ut literas ac artem,\textit{ fine quibus Ju-
ritis prudentia non potest valde percipi, medio criter addi-
O literas intelligo Latinas \& Graecas, proiores exáctius \&
cultius; alteras ita, ut scripta veterum, fältem interpreto
ope distincte \& cum ratione træctari posstant; sub literarum
studio \textit{Historicum} me complecti facile præsumet: Artes
que ad Juris studium praerant requiro \textit{Logican, et hic hac
pene jam obsolecet, atque \textit{Ethican, Mathematicas ar
tes \& Physican, si quis addat, laudo, exigere non audeo; neque
politicam præmiti feci potius comitari volo studium Juris,
de oratoriam quoque nihil dixi; nam præcepta \textit{Rhetorica li-
terarum studio implicita sunt, \textit{Facultas scribendi habendi-
que orationes mihi videtur omnium difficillima, ideoque in-
ter preparatoria non collocanda; fæd alia \textit{stylis exercitia in
hunc ufum soleo commendare; vera eloquentia ex omnium
rerum notitia exundat \& exuberat, ideoque majorem po-
stitutum eruditionem, quam ab adolecentibus, qui neendum ju-
ritis prudentia maturi sunt, præfati posset. Plura de \textit{propa-
denticiis non dicam, nec enim dubium credo cuiquam es,}
quid \textit{liberalia Literarum \& Artium studio Juris præmit-
tenda sint; quomodo autem in illis fit verandum, \à me
hoc quidem tempore non expectas ut ediffeream: nisi unum,
quod alii forstian omnium minime expectas ut ediffeream:
nisi unum, quod alii forstian omnium minime expectabant,
omendum videatur; adhibendas esse literas \& Artes fane,
pruquinam leges aggregiare, \fed tamen hic quoque locum
habere Terentianum illud, \textit{Ne quidnimes. Intelligi, non
R r r 2 fine}
control over themselves as do some people with a more than heroic programme, so that they are rightly considered to be scarcely worth so much, to have been taught but to be lacking in experience.

Let me behave in a less ambitious way so that the young students do not despair that what has been prescribed for them can be achieved. And therefore I shall advise as follows: he who applies his mind to the study of law should first work to learn literature and the arts tolerably well, for without them jurisprudence cannot be effectively understood. By literature I understand Latin and Greek literature, the former should be learned more precisely and thoroughly, the latter in such a way that the writings of the ancients can be handled clearly and rationally at least with the help of a translation (into Latin).

Under the study of literature it is readily assumed that I include history. I require the subjects, which are preparatory for the study of law – logic, even although this has already almost died out, and ethics. If anyone should add mathematics and physics, I am in favour but I do not dare to demand them. I do not wish Politics to be studied in advance but I wish it rather to accompany the study of law. Also, I have said nothing about the art of oratory, for the precepts of Rhetoric are implicit in the study of literature. The ability to write and to deliver speeches seems to me the most difficult of all and so these subjects must not be included in the preparatory courses, but I usually recommend other written exercises for this purpose. True eloquence flows exuberantly from knowledge of the entire field and so requires more learning than can be shown by young men who have not yet come to maturity in jurisprudence. I shall not say more on propaedeutics, for I am sure that no one doubts but that the liberal studies of literature and the arts ought to precede the study of law. You do not indeed expect of me at this time that I should explain how this is to be treated in these subjects; unless it would seem good that one warning must be raised, a warning which some people will perhaps not expect at all, namely that literature and the arts must indeed be learned before you attack the law, but nevertheless here too there is place for that remark of Terence’s *ne quid nimis* (nothing in excess).

I perceive that I have said this, not

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

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

115 See Terence *Andria*, 1.1.34.
De Ratione docendi & discendi
fine offensâ Crucis, forte nec fine admiratione Bœkemann-
iti tæque id à me defirmatur. Quis enim non potius stimulum
ab hac parte quam suflamen opus esse arbitretur? Certe stimu-
ulum multò magis esse necessarium juventuti, res ipfa lo-
quirit, nofque jam publice privatimque facto confetti fumus.
Attamen generosis animis, qui philosophie literarumque a-
mores capti se toto illis dedunt, ego modum imperare non
dubito; saltem haetens, ne legale studium inhóare cum-
inctur, ubí primum ingenio judicioque ad accipientam Ju-
ris disciplinam maturi facti videantur; et si in Artibus alíis
humanitate literis nondum eo præcepti sint, quo pervenire
possunt & debent, qui harum laude confici atque cenfere
cupiunt. Ratio conflat ab experientia, quæ sic fere me docu-
cuit evenire, ut qui dux multumque philosophia, litera\tique
ac historiae immoran tum, earum amicitia vel facilitate, eo
modo in sinu suo adficiuntur, ut cum ad Leges se conferunt,
earum studium patent esse tetricum & asperum, agere ab
animis suis imperare solent, ut euram disciplinam liben-
ter & alacriter sciépient: Nemo autem dicit aut proficit
invitus & reluctante naturæ sua ingenio. Velim igitur, qui
studiofoius Juris esse cupit, idem agat, quod mihi Wissenba-
dius noleæ auctor fuit, ut cum annum integrum in præ-
paratoris studiis commoratus esset, Institutiones Justinia-
ni audirem atque deinceps in perciendis integre Artis el-
ementsi perseverarem. In illo anno vellem studiofum meum
audire Logicam & Ethicam, edificare compendium historiae
univerfolis & dare operam, ut plane pleneque Suetionem
intelligeret, In quò plerque ad antiquitates Romanas &
Juridicas spectantia facilis ordine atque historico offerent se
explicanda: Nam in omnibus vivam præceptos voceos, si
copia daret, adhibendum esse non est ambigendum. Interim
in legendis aliis Historiae antiquae cryptonibus vacuo tempo-
re
without offending Crusius, but perhaps with some admiration from you and Böckelmann. For would one not think that in this respect there was rather need for the goad than for the brake. Certainly, it is self evident that the goad is much more necessary for young people and I have often admitted such both in public and in private. However, I do not hesitate to recommend a limit for those high-minded souls who, fascinated by love of philosophy and literature give themselves over entirely to them, at least to this extent that they should not hesitate to begin their legal studies; that is as soon as they seem to have become sufficiently mature in ability and judgement as to understand jurisprudence, even if those who wish to be acknowledged and recognised as praiseworthy in the other subjects and in humanistic literature have not yet advanced to the point which they can and ought to reach. My reason is based on experience which has taught me that the almost inevitable result is that those who linger long and much with philosophy, literature and history are so entrapped in their toils by their pleasantness and grace, that when they betake themselves to the law, they think the study thereof boring and harsh, and can scarcely force their minds to undertake the learning of it gladly and with alacrity. No one, moreover, learns or makes progress unwillingly and contrary to his natural talent. So, I would like those who want to study law to do the same as my teacher Wissenbach advised me, recommending that when I had spent a whole year in preparatory studies, I should attend lectures on the *Institutes* of Justinian and then continue with reading the elements of the whole subject.116

I would like my first year student to attend lectures on logic and ethics, commit to memory a *compendium* of universal history117 and see to it that he understands Suetonius clearly and fully. For in Suetonius most things relating to Roman and juridical antiquities present themselves to be understood in an easy and historic order. Moreover there must be no doubt that in all matters, the oral discourse from a master118 should be heard, if the chance should offer. Meanwhile, in his spare time,

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117 e.g. Vossius’ *De historiis Latinis libri tres*, 1627; *Dissertatio particularis de ratione universam legendi historiam* in Vossius’ *De Studiorum ratione opuscula*, 1651.

118 Cf. Quintilian *Institutio Oratoria*, 2.2.8.

Licet enim satis exemplum ad imitandum ex lectione suppediet, tamen viva illa, ut dictur, vox alit plenius praecipueque praeceptoris quem discipuli, si modo rete sunt instituti, et amant et verentur. Vix autem dixi potest quanto libenter imitemur eos quibus favemus. (For although [the teacher] may provide sufficient models for emulation from their reading, nevertheless the living voice, as it is called, nourishes [the mind] more fully and especially the voice of a teacher whom the pupils both love and respect, provided they have been properly brought up. It can scarcely be said how much more readily we emulate those whom we like.)
53 Iuris, Dialogus.

re pergendum; neque minus, in continuo styli exercitio, non modò lectione sed & imitazione veterum eloquentiae Auctorum. Si qui sint, quorum ætas & ingenia non habeant eam facultatem, ut unius anni decursu his rebus mediocritet defungi possint, his, sìlicet, tantum temporis adiciendum puta, quantum opus est ad capiendum talem profection, quæ validioribus intra annum spatium contingere potest. Neque deurunt, qui & de physis deque mathematicis codem anno primitias capere possint. Ubi vero studium Juris anno fecundo inchoatum fuerit, nolo novum Justinianæm ita fœtorum folis legibus dedere, ut inchoata bonarum artem litterarumque studia defesar, nec amplius ad fæ pertinere putet. Nihil æquæ deleçat quam varietas, nec est alia dignior studiose recreandi animi ratio, quam in amanitatem doctrinae faciœris. Atque hanc viam, quæ conficit in continuatione studiorum primi anni, per omne tempus descendit juris, eò fidentiæ commendare fœleo, quod per eam non modo ad Artis Juridicæ peritiæ felicius perveni, sed & eloquentiæ ac Historiarum professioni deinceps admissus, ci qualitercumque satisfacere visus sum. In hoc autem praefato illa, diversæ rationi, quæ plures annos preparatorii studii praebuit: quod & notabile temporis compendium facit, cujus summæ ratio confert studiosis, & quod illam aversiónem, quæ fere laborant, qui valde sunt philosophi & critici, antequam jus didicerunt, antevertit atque consumit. Porro ipsum Juris studium hoc modo inprimis decurrentum exílimo, ut id quodammodo duplex effe meminerint studiœ. Primum certis gradibus confectum sufficit ad forenses exercitationes cum fructu fulcipientias; alterum ad interiorem Juris antiqui notitiam & ejusmodi facultatem acquirendum pertinent, quæ ad Jus explicandum docendumque sufficier. Primum duobus intervallis ablœvitur, Institutionibus atque
progress must be made with reading other writers of ancient history, and also in continual practice in composing, not only by reading but also by imitating the eloquence of the ancient authors. If there are some students whose age and talents do not give them this ability, so that after the passage of one year they can only perform moderately well in these subjects, consider that they should be given as much extra time as is necessary to achieve such progress as the better students can achieve within the space of a year. And there will be no lack of those who, in the same year, can master the basics of physics and mathematics. Then, when the study of law is begun in the second year, I do not think that the new law student (novus Justinianaeus)\(^{119}\) 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.
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Pandectis. Institutiones velim bis tractari audiendo atque respondendo. Nam sola audito nequaquam sufficit ad expromptam validamque Juris scientiam consequendam; praequoque statim ingreffi qui serio vult proficere, non debet inutili veracundia superbiaque animi deterveri, quominus examini fe quotidie committat. Juxta secundam auditorem, disputandi exercitium sedulo inchoandum & omni tempore, quod juri impedatur, continuandum censeo, cum nihil co sit efficacius preparando animo, sermoni, ori ad publicas actiones, in quibus aliquando se Jurisconsulti exhibere atque prestare debeant. Expositio & disceptatio fundamentorum Juris in hoc primo deo non potest alter regi, quam secundum positiones compendijs alicujus systematici, quia in re nihil addendum habeo, ad ea que Boekelmannus nolter in hanc rem exactae differuit. Nam quia primus studii Juridici curfus adolescentes aptos reddere debet ad respondendum, cavendum, scribendum; quibus partibus officium Jurisconsulti novimus absolvii; palam est, eodem modo nobis in hac via esse procedendum, quem Graecos tribus post Iustinianum feculis tenuisse modò probavimus, & quae in superiori disputatione Luculentor sciteque demonstrata est. Primâ deambulatione hujus itineris, quod ad Institutiones dirigitur, nihil aliud ab adolescentibus exigo, quam ut dieàtata Preceptoris sui memorii judicioque subigant, eaque cum textu Iustinianeo Regulisque Juris & præceptis de verbo- rum significacione presse accurateque conferant. Secunda auditione textus ceteros, qui es Pandectis & est Codicis magnus numero in explicandis Institutionibus adducuntur, inspice- re, examinare, perpendere debent, quod nemo aliter, quam fudante cerebro, fatiscio, praefabil. Atque hic est annis integri juftus labor, accedente, quam dixi, continuatione studiorum liberaltiorum & 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\(^{121}\), 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)\(^{122}\) and to the rules of *De verborum significatione* (on the meaning of terms)\(^{123}\). In the second course of lectures they ought to look at, examine and assess the other texts, which are cited in great numbers from the *Pandects* and the *Codex* in explaining the *Institutes* and no one, I know well, will achieve this without intellectual sweat. And this is the proper work for a whole year, accompanied, as I have said, by a continuation of the liberal and humane studies.

The next year

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\(^{121}\) See Cicero *De Oratore*, 1.48.212. ft 109 supra.

\(^{122}\) i.e. D.50.17. See Böckelmann’s *Compendium*, at the back, pp 68–102.

\(^{123}\) i.e. D.50.16. See Böckelmann’s *Compendium*, at the back, pp 1–67.
Iuris, Dialogus.

Pandeëts impendere oportet, eâdem præennte methodo summariae institutionis, quæ materiam omnem Artis definitionibus & partitionibus exaurit, eisque decisiones questionum, tam quæ ad integritatem Artis antiquæ, quam in primis, quæ in uß rerum humanarum hœc século verfántur, ex iphis juris fontibus addit & inneêtit. Quia autem mea licet ratio, Quam Artem aliquis omni vita sua tempore vult profiteri, quâ fortunam rerum suarum fulcire cupit, hanc eum prompte valideque seire atque in habitum, quod Philosophi crebris aëribus fieri docent, convertere debere; censéo, repetita praëlectione audientiâque & examinatione opus esse. Prouîde biennio non minus in Digestis, eo modo transfigendam: Etiæ enim Pandeëts ego ita tradere fœco, ut quæ in Institutionibus exposta sunt, illic denuo per novas positiones non traçtentur aut explicentur, tamen annus utilis Academicus opus est ad summam quinquaginta librorum interpretationem. Interea tamen temporis, opera danda est Studioâo, ut non modo leges, è quibus positiones Juris probantur, addido intenteque perlegatur dolque inde, quæ ad intelligendam Artis doctrinam faciunt, colligat, sed & observationes ad illustrandam augendamque eam pertinentes, quarum materia gnavo scrutatori literarumque & philosophiae perito decræ fœci, à notitia receptarum sententiarum sègregat atque recondat. Quod autem omnium ego praetentissimum in hoc instituto confilioque meo esse comperti, id eít; quod quæ in illo triennio, Institutionibus & Pandeëcis occupato, vacuum tempus evolvendis scriptoribus antiquis impedunt, inde iam Artis fœgniari, sebgerere & ad idemos locos referre possint omnia, quæ ad illustrandum jus Romanum in Philosophis, Oratoribus, Historicis atque Poëtis reperient, quod facere non possint, qui ad legendos antiquos fœci totos conferunt, antequm 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 is necessary for a summary explanation of 50 books. Meanwhile, however, the student must take care that he not only reads assiduously and carefully the texts on which the legal positions are based and diligently deduces from them what they contribute to understanding the principles of the discipline, but from his knowledge of received opinions he should also separate observations which pertain to illustrating and augmenting this discipline and set them aside. There can be no scarcity of such material for the conscientious searcher, who is thoroughly acquainted with literature and philosophy. I have found that the most important factor of all in my practice and programme is the following: namely that those students who, in the three years, which are occupied with the Institutes and the Pandects, spend their spare time in reading ancient writers, and hence are already acquainted with their subject, are students who can select and refer to the appropriate texts all the material for illustrating the Roman law which they find in philosophy, rhetoric, history and the poets.

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

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124 *Annus utilis Academicus*. The term *Annus utilis* (a year that can be used) refers to a period of 365 days when a party was able to act in court, and exercise his rights. The term *Annus utilis academicus* refers to a full academic year.
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Artis, cui fe potissimum dedere cupiunt, universam compositionem teneant. Quando enim omnibus excellere multitudo rerum infinita & ingenii humani imbecillitas non patitur, optima ratio est, in una duntaxat scientia, quod sumnum est affeceræ, de cæteris excerpere, quod ad illum utiam pertinent orandum & illuistrandum; hoc facere non potest, qui compendiariam Artis illius notitiam animo non præceperit; ideoque nec Jurisprudentiam ex antiquis augere & expoliare poterit, nisi qui prius Arte cognità, fixærit terminos, quibus obvia quælibet includere debet. Triennio in Jure, quadriennio in Academiâ fìcaboluto, studiofus, cui ratio temporis fui bene confitæ, ad alterutrum finem fe comparare debet, ut vel ad forum fe conferat, cujus exercitationibus parem doctrinam adiütiæ iam potuit acceperit; vel ut alterum Juris descendì stadium renovato studio ingrediatur. Pars equidem multa maxima finem Laborum in illo primo stadio ponit, nec aut ipsi cupiditate proficiendi, aut parentes sumptum prorogatione, ad alterum d. currundam sufficeræ vel durare solent; nec ideo tamen posterius prior antevertendum esse quidquam rectè atque ordine fituravit. Nam qui Jurisprudentiam forensè animo suo proponunt, his solum & totum jus antiquum in omni ùta subtilitate critica tenere non expedat neque sufficit, opus est illis institutionè moribus feculi ad temperata. Talis cum eloquentiæ Latinæ, Graecæmi notitìæ, Philosophiæ ac Hultoriæ literisque reliqua humanitatis conjuncta, quam hac nostra methodus requirit & praestat, in exitu quadriennii laudabilem Jurisconsultum, etiam satis criticum exhibere potest: modo Politicam & juris publici doctrinam in illo triennio non omiferet addere privati Juris institutioni; denique, tunc etiam fecit mens cognitione rerum gravissimarum justis orationibus eloquentiam exercere potest. Ænimvero, 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 stage.125

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

125 Cf. Veen Recht en Nut, pp 38-39, especially ft. 15, for Huber’s comment on his expenses on clothes. On p 39 Veen expounds Huber’s desires for an academic career. See also p 251, where in his Historia Vitae Huber writes: ‘Schrijvens ontfangen 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 novissimae’ in Pro Memorie, 3.1 (2001), p 148-153.
Iuris, Dialogus.

hac ita generose persequatur & impleat, ut nostra methodus dicitur, eum ego non dubitem, pari alacitate fladium alterum, quod diximus, interioremque studi partem aggregaturum: quod, videlicet, confiit in attentà lectione totius Juris antiqui, sicut à suos man nobis est reliquum, ejusque collatione cum reliquis eorum scriptor, equibus Caesar corpus suum colegit; quae quidem hodiè perquam exiguar superlunt, fragmenta Caio, Pauli, Ulpiani, collatio Ruffini, Codex Theodosianus & Basilica Leonis. Quae to-tum Jus compleverentur, abundantius huic instituto fervent, eti nunc eadem fatis luculentam conferendi copiam præbeant. Debet etiam hic est novæ lectionis atque collationis universi juris: opus, ut quæ dicitur boni & aequi in positionibus systematis questionumque decisionibus apud eas tractati solitus nondum percepta sunt, hac est recellibus integri corporis legum, etiam ubi de rebus ab usu hodierno remotis agitur, fedulo conquirantur & ad loca summa, quæ pridem formata fuere, singula redigantur. Dum hoc autem studiostus naviget agit, novimus aliter fieri non posse, quin ubique incidat in crupulos & difficultates intricatissimas, quibus tamen resolvendis & amovendis inde defension operam navare debeat. Interpretum in hoc obfuscar viam lucem affatim praebent; sed ego tam. n ita compr. ri atque ita meus annicos suader e folio, ut eo modo textibus intricatis, etiam prodi feratis aut damnatis, ut loquentur, habitis, incumbant, quasi nullus Interpret. esst in mundo. Nam si prius interpretationes varias confulere & expendere voluerint; in singularis paulò minus difficultatis inventum ac in ipsa Lege perierunt, parumque aberit, quin idem illis eventorum sit, quod Patri Comico, qui consultis tribus Jurisconsultis, discrepantibus, ita abibatur illis, Fecis, inquit, probe; incertior situm nunc multo quam dumum. Ubi vero Tu vices
follows and completes this course as my method dictates, I do not doubt that he will attack with equal alacrity the second phase, which I have mentioned, namely the inner aspects of the subject, which, naturally, consists of a careful reading of the whole of ancient law, just as it was left to us by Justinian, and a comparison of that with what remains of the writers from whom the emperor gathered his Corpus. Indeed, today very scanty remains survive, fragments of Gaius, Paul, Ulpian, and the Collatio of Rufinus, the Theodosian Code and the Basilica of Leo. If these works were embracing the whole corpus of the law, they would serve this purpose better, but even now they provide a sufficiently rich source for comparison. [A12]

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

De Ratione docendi & discendi

ingenii judiciique tui expertus fueris, tui inveneris, quod
fatis tibi videatur, seu nihil expedieris, tempus in%
terpretat adae, quo vel in tuis cogitationibus firmere, vel
harum defectum ex corum commentariis suppleas. Heve ve-
ro suave juvendumque spectaculum præbent, qui negebät:
priore viâ, quam per melic et alpes systematicam, incen-
tinenti hoc examen universi juris occupant: quando loca,
que non intellegunt, inopiae doctrinae juris, continuo
fuis coniecturis, interpunctionibus, additionibus, subtra-
essionibus, transpositionibus ac omni genere emendationum se-
pes tam subtilium, ut uno spiritu diffili possint, in suis in-
tellectus sollicitant, cogunt, variant. Plura Doctissime
Wyngardeni, non habeo, quæ hac horâ inter nos super hoc
quefite communicari possint. Dantur equidem & alia, quam
momentum in utraque studii via non spernendum faciant;
Sed cum in aetu magis & demonstratone praebenti quam in
oratione consilere videantur, dabis veniam, heic ut subfi-
terere nobis liceat. Wyngardeni novam parabat infamiam.

Quando Bökelmannus, ut abрушaret hos nimir studiosos
ferones, libellum proferebat, cujus præfixus erat titulus
talis, Ephemerides Eruditorum, gallice conscriptus. Ratio,
instituti notior est, quam ut eam pluribus exponi necesse
sit. Verum Bökelmannus aperto libro incidit in huicmodi
titulum, Venetrici Querele & opprobria, operâ A. S.
Med. Doctoris Amstelodam. ruribus aliis, Cariesinus Mosai-
zans, Autore N. Amerpoel & idgenusa; qua autoria ephemeridiun illarum prolixo eologio profequabatur. Ad hoc
Bökelmannus, Nonne vobis indigna res videtur, hos ho-
mines, qui scribendis hucce diarisi Reipublice literariæ dant
operam, ali quidem illis infere re atque laudare nullius
momenti scripta, ruribus alia magnet frugis & solide erudi-
tionis omniter vel frigide commendare, coque modo fer-

bisros
of your own intelligence and judgement, you will either have found what seems good enough to you, or you will have found nothing and then it will be time to go to the interpreters so that you may be confirmed in your surmises or you may supply the necessary from their commentaries. Here indeed these provide us with an agreeable and pleasant sight as, having neglected the former route, which I allow you to call the systematic route, they immoderately busy themselves with an examination of the whole law, for they are constantly worrying at the texts, which they do not understand because of their lack of legal training, tearing at them and pulling them this way and that, with their conjectures, punctuation, additions, subtractions, transpositions and all kinds of emendations, ones which are often so fragile that they can be blown away with one breath. [A13] Most learned Wijngaerden, on this topic I do not have anything more to say which can be shared between us at this time. There are, of course, other things which make for significant moment in both ways of studying. But since they seem to consist more in action and visible demonstration than in speechifying, you will grant me permission to stop here."

Wijngaerden was preparing to press on, when Böckelmann, in order to break up these excessively academic discussions, produced a little book\textsuperscript{127} to which had been affixed the title \textit{Ephemerides eruditorum} (\textit{Journal des Sçavans}), (originally) written in French.\textsuperscript{128} The prevalence of this type of book is too well known to need further explanation. But Böckelmann, opening the book, began with a title of this kind \textit{Ventriculi querelae et opprobria, opera A.S. Med. Doctoris Amstelodam}.\textsuperscript{129} Then again somewhere else \textit{Cartesius Mosainzans, Auctore N. Amerpoel}\textsuperscript{130} and other things of that type. These works the author of that journal presented with a wordy eulogy. Referring to these, BÖCKELMANN said "Surely it seems to you unworthy that these fellows who devote their energies to writing these daily pamphlets for the Republic of Letters introduce and recommend some writings of no significance, and again omit or only mildly commend others of great value and solid learning and that thus

\begin{footnotesize}
\begin{enumerate}
\item The use of the title \textit{Ephemerides Eruditorum}, argues for the German version. See Chapter IX.
\item \textit{Gallice conscriptus}. This is part of the title of the \textit{Ephemerides Eruditorum} which in the 1665–1666 and the 1671 editions reads \ldots \textit{Ephemendes Eruditorum \ldots} \textit{Gallice primum editae, Jam vero in Lingua Latinam versae \ldots}
\end{enumerate}
\end{footnotesize}
Iuris, Dialogus.

bitros ferre meritorum atque famae eorum, qui nomen aliquod inter literatos afferat? Mihi certe res non toleranda viderur, hujusmodi quoque nostratum libros, quorum inscriptiones vobis prælegi, & quos in his locis rarus lector inspeccionis dignatur, illic ut opera consideratione literati orbis digna commemorari, nec quicquam ineptiarum Gallarum omittis, quod fallingo aulicorum aulicorumque otio servatis; interea commentationes hominum doctissimorum in uramque Germania & alibi silentio damnari, vel frigida negligentique mentione, quasi quæ legantur dignas, tantum non ludibrio exponi: Neque sunt, quibus juftior hac parte caufa fit indignationis, quique iniquius sint habiti, quam Jurifconsulti. Ad hæc Crucius; nolim, Bökelmanne Clariflime, tam parvi animi querelam à te fério intelligere emissam. Quid enim quæfo reftet, tuum de Actionibus vel ad Pandæcas, meumque ad Legem, Si Paterfamilias, commentarium ifi Ephemeridi infertum vel non fuiffe infertum, magis quam si Novellis hebdomadalibus, ut fit, eorum nomina subiecta fuissent, aut non fuissent. Nifi tu putes, multum intereffe, menstrui an hebdomadales sint falti, de actis literatorum, an de Regum & Principum, de pacis & bellorum fint compositi; aut nifi putes, invidendum esse Medicis & Artium Magiftris, quorum laudes in novel- lis decantantur, præ aliis, qui modesti contenti famam ipsi non faciant, aut fieri curant, fede expeìtant. Enim vero non eft difficile è lecìone Ephemeridum iftarum animadvertere, conditores illarum fère ex eorum effe generes, de quibus Fabius scribit, parva facile. Sane jurisperitos adhuc quidem inter eos fuiffe nullos, ipse ephemerides maniféto præ fè ferunt. Proinde faciant id quod fieri confentaneum eft, ut de rebus, quas non didicerunt, aut nihil, aut valide parce tenuiterque loquantur. Et mea quidem auctoris si S f 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 Actions131 or on the Pandects132 or mine on the fragment si pater-familias, [D.28.5.41(40)]133 has or has not been included in that Journal, any more than if the titles of those works you cited had or had not been added to those weekly news-sheets, as has happened. Unless you think that it is very important whether these monthly or weekly reviews pass judgement on the actions of men of letters, or whether they are written about the doings of kings and princes, or about peace and war. Or unless you think that medical doctors and Masters of Arts, whose praises are sung in these news-sheets, are to be envied above the others who, content with modesty, do not themselves create their reputation or see to its being created but await it. For it is not difficult from reading those papers to realise that their contributors are almost all the sort of people of whom Marcus Fabius Quintilian wrote parva facile (it’s easy to do little things).134 Certainly those papers show clearly that as yet there are no jurists among them. Forsooth, they do what is to be expected, that is they speak superficially about matters of which they have learned nothing or at most a little and that of little worth. And if my authority
De Ratione docendi & discendi

quid apud eos valeret, rogarem Viros cordatissimos, ut Jurifconfultorum ordinem ephemeridum fueratorum memorialibus factis eximenter, singulorumque fato committerent, utrum famam habarent, an merentur. Quod si tu in aliquà parte gloriae ponis, nomen tuum in illis diariis, cum amplo elogio cunctque speciosa scripturis tuae historia conpici, ita cento ; scribas cum in procinctu es edendi alicum librum, tuo vel typographi nomine, ad compilatores & autores, quid pares emittere, que fì libri tuo summa, quid in eo praecipue exerpi laudarique cupias, inprimis ipsas Ephemerides earumque Scriptores fac aliquo sublimi charactere laudis adpergas.

Sic tibi nullam caufam fore pollicior hac parte Salvio & Amerpoelio similibufque Heroibus invidendi. Necio, regebat Bokelmannus, quid ex meis verbis argumenti sùmferis, ut mea potius unius quam Jurifconcéltorum communi causâ queflum me esse putares. Quod si torum hocgenus iti, bi contemnendum videtur, non habebis me tam confiantem adversarium, quam modo in caufà systematum & Compendiorum expertus es. Proinde facile patior, nihil esse commune Jurifconcéltis, cum diariis & Novellis itis eruditorum, nisi quid Huberus dissentit. Ego vero dissentio, Ille, venerables Symmystae, nec ullo modo consuetum duco, ut homines elegantibus ingenii & pari fama notos ordini nostro inimicos reddamus. Nee enim ipsis ulciscendi ratio deflet, si intelligenter, nos de instituto suo tam iniquem ferire, quam vos in animos vetros inducere vultis. Credo, non amyllis silentio nos omiserent, sed cum aliquà notà vel contemptus argumento scripta nostra suis factis immiferent, vel ommittentes, qua magnà labore conlibitissent, si quid tibi forstian abortivi fœsus tuoque nomine minus decori excidisset, nomine licet preslo, tamen, illi hoc suis compilationibus, nomine tuo palam faceto inferere non dubitarent. 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 γενικὸν (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 mark or contemptuous comment. * or make no mention of works which have come into being with much labour but, if perhaps some abortive work which brings no honour to your name, has come out, even although the author’s name has been suppressed, they will, however, not hesitate to insert this in their pages, clearly under your name.† I do not know whether they would not perhaps write intemperately about my

*† vel omittentes . . . duharent.

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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.
61 | *Juris, Dialogus.*

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

\textsuperscript{136} Menagius, Iuris Civilis 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 fort.) 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 compendiarum on p 20 to velle videbant on p 22, which contains the reference to Menagius. This was presumably added in 1688.

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

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

fiturum. Germanorum, ingeniis propitia magis est Juris-
prudentia Belgicae fecundum illos aequae familiaris. Hi de-
fectum, quem Bokelmannus in Gallis arguit, forsitam sup-
plebunt, ordinemque nostrum pro parte aliquã literati or-
bis, habere non gravabuntur, atque, si juvat & refer, in
iphis suis diariis nihil magis obliviscantur. Ego quidem hac
gratia libenter illis utor, quod ex is per compendium iei
icet, quibus Authoribus studia nitantur. Favendum est in-
genius feculi nec solis mortuis utendum magistris; neque de-
cet esse tam fastidiosos, ut quæ maximo labore clari homi-
nes, aut qui incloescre cupiunt, opera doctrina compon-
serunt, ea non modo legere, sed ne argumenta quidem
nummaque librorum cognoscere dignemur. Nolim igitur
contendere, ut ordo noftr, quâs interiecto ab hac fecin
Reipubl. litterarum excludatur, neque sœce etiam ambre
muito minus, ut ratio nostrum habeatur. Facile patior, au-
cetores uti arbitrium suum duntaxat, ne faciant Criticas gene-
rales, sed ut simplicitate narrationis, quæ est propria dia-
riis & novellis, contenti, abstinent omni judicio omnique
criiti: hanc enim integrae exiitque scriptoris lectioni publi-
cæque affiliatione relinquere oportebat. Quod quidem eo
magis requiritur neceffarium est, quo difficilior evitatur; si-
quidem observare licuit, aliquos id fœro in praefationibus
suos pollitos, in progressu relationum calore scribendi ab-
reptos nihil minus praebuisse ac etiamnum praebere. Scribant
igitur, CRUSIUS, argumenta librorum suorum & amiant
elogia, qui volent pascantque fœdelis imaginaria. Ego ma-
luerim, homines rogent, cur Crusius non comparat proce-
ribus pernixtus achivis, quam ut elogia rationefque me-
orum qualiumque scriptorum, juxta tot dignas pariter in-
dignaque reverentia polteritatis chartas, comparentur atque
cenfiantur. Non defecerat adhuc materia dialogorum, sed reli-
Jurisprudence is more suited to the talents of the Germans and, next to them, is equally natural to the Dutch. These people will perhaps provide the lack which Böckelmann finds in the French, and will not be reluctant to regard our profession as some part of the world of letters and they will not forget in their papers what pleases and is relevant. I, personally, am grateful to them for this reason, that thanks to them one can learn as if through a compendium, about the authors who are relevant to one's own studies.139 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,140 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 book141 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

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 allegiert auteuren, ende die refuteert sonder dat hij se gelezen heeft. See van den Bergh Noodt, p. 56. ft. 90 and Veen’s article on Stolte’s Brenkman p 383 ft. 9.
63 Iuris, Dialogus.

reliqui convivæ Bökemanni, qui magis verecundiā nos interpellandi, quam sua sponte in alio recessu amoenissimi horti subliterant, tandem affluebant, ut nobis valedicerent, hospitique gratis actis, in urbem se reciperent, quod & à nobis, poti aliquot ultimæ civilitatis complementa mutualique amicitiae contellationes, 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.