Ulric Huber (1636-1694) : 'De ratione juris docendi & discendi diatribe per modum dialogi : nonnullis aucta paralipomenois' : with a translation and commentary
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PART II

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

Latin text with English translation
PRAEFATIO
Summam Diatribœ exhibens.

ULRICUS HUBER

Auditoribus suis S. D.

Unc dialogum initio feriorum estivarum calamis effusum vobisque præmissum serius exhibeo, quia rursus vnum, mutato consilio, abjeceram; ut fit, ca quæ cum voluptate scripsisse seris, absoluta minus placere. Sed quia postitum ejus illà prævia pollicitatione numis innotuerat, alienique à meo consilio sermones de eo cedebantur, nisi non esse integrum mihi, supprimere editionem: nihilque potius esse credidi, quam ostendere, nihilin eo à nobis actu esse, nisi ut sentientiam, de re ad utilitatem vestram pertinentem, juxta alios innocuà Libertate dice-rem. Si argumentum præsumere vultis; est hec Colloquium in horto Clarissimi Bökelmanni apud Lugdunum Batavæ ante complures annos habitum, cui occasione dedit ejus Colletr Cælius vir egregius, qui fatis acrioratane Compendia Juris civilis in privatis scholis adhiberi solita inventabatur, eorumque loco studiosos, inde statim ab ingressu auditorii, legere totum jure antiquo obviasque difficultates et enigmata conferendo, conciliando, emendando, inter-pungendo, omnique ad criticas artis instrumento solvere voluebat. Quas res Bökelmannus non nisi ab illis, qui prius universalis jure paratili methodo prompte validaque dierigisset, 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 Leidse Universiteit III, p 342), it was decided to hold a convivium pisciculorum extra urbem ad quod Nobil. D. Böckelmannus praeidium suum concessit, ibique celebratum (a fish lunch party outside the city for which purpose the noble professor Böckelmann made his property available and it was held there.) Is this the occasion of the Dialogus? See the Chapter VII.

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

PRÆFATIO.

jocisque, sicut erant homines liberis animique, salvâ
tamen dignitate, videbitis, & de meritis singularum exi-
stitibus. Me quoque tandem vocaverunt in partes, nec
taliud a me dicitum, nisi quod rationes docendi dispensande
juris variar, indeo à Jutiliani aëvo recensuerim, atque ex-
inde, que mihi præstantissima videretur, collegerim; de-
nique usu absum unque criticos, quam vocant, in jurispru-
dentia demonstraverim. Postremo, rogante Hadriano Wijn-
gardenio, qui nobis aderat, atque tum scholas domesticas
Lugduni habere instituebat, totum studii juridici cursum,
sicut ego illum studiosus praecedentes censeo, fümplici oratio-
nis filo dimensüam. Donec Böckelmannus prolato ephemer-
idum literarum libello, has disceptationes abruptit, ea-
que occasione de instituto illorum diariorum sive novellarum
paucis inter nos actum. Non ignoro quam exigea laudis
redobimentum à patrocinio Compendiorum sit expectandum,
et si nemo paulo prudenter usius illorum abstineat, imo qui re-
prehendunt, sepe contentius utantur, nihil tamen proficiens,
si maxime cuncta illorum vitia, quique in illis summam studi-
diam collocant, ferenve vituperes, tamen non decretunt, qui
dignationem neficio quam, sicilicet, in compendia deriva-
bunt. At vos legite multis, & nostrum sequimini, quod hec
dabitur, consilium. Si illum fœriori leges nobis prescribent,
quem methodum discerni hoc pretextum pervertunt, nullum sa-
itis scio, presbant, 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 Wijngaerden, who was with us and had himself already begun to give private lessons in Leiden, I spelled out, in a straightforward statement, the whole course of legal studies, just as I reckon they should be undertaken by students. Until at length Böckelmann, producing a booklet containing learned newsletters, interrupted this debate and so, on that occasion we briefly discussed the practice of those journals or news-sheets.

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

† Non ignoro... posse videatur.

5 See pp 46–58.
6 Böckelmann produced a copy of the Journal des Sçavans. The articles referred to (see p 58) appeared on 18 January 1666 and 30 August 1672.
7 This idea appears in Huber’s address to the students in his Positiones, 1682. It does not feature in the 1684 edition of the Dialogus, only in the 1688 edition.
8 The 1684 text places legite saltis after inter nos actum i.e. after the reference to the news-sheets, implying read the news-sheets “if you want to”. The 1684 text concludes with ‘et valete’, ‘and so farewell’. For the 1688 version, see the Latin text and the translation.
from the *Digressiones* 1688
Æpe mihi venit in mentem, Auditores Ornatismi, ambigere, qui fiat, ut cum ad Artes studiorum facultateque doctrinæ opus est Antecefloribis in scholis illustribus atque in Academias, adeò pauci ad eam rem administrandam idonei reperiantur, quique reperti sunt tam raro auditorum Meeenatumque expectationi satis faciant; maximè, cum, ut hodiè res sunt, Academicæ functiones sìbì paulo felicius tractata, nec honoribus suis neque commodis quibus, ut ajunt, alumnar artes, carere videantur; adeoque parum abhît, quin id praebet, quod olim Marco Tullio in summâ votoorum suffìce legimus, ut in otio cum dignitate vitam sìbì transfigeret. Verum tæ rationes non faciunt, ut difficile sit, re diligentius expensâ, causas reddere, quær Profissiones Academicæ tam paucos habeant sìbì pares, à quibus cum aliquo gloriaæ publiceque approbationis fructu exercantur. Nam primo omnium, ex immensâ multitudine adolescentium, qui ad capienda ingenii cultum mittuntur in Academias, sìfis confat, effiæ paciïfiœs, quos æquus eò usque Jupiter amaverit, ut ingenio memoriatque valeant ad eüsimodi apparatum eruditionis acquirendum, quem ad docendas artes literarum fœcimus esse necessarium. Quorum autem ingeniæ quandoque suflecerint, horum voluntatem fere ab ea studiâ intentione, fine qua excellens doctrina haberì nequì, remotam effiæ videmus. Ut autem sint, quibus & naturæ vis & patientia laboris adeût, his pletumque fortunæ rationes, sive anguiæ sive hilarioris, negant tam longam descendè moram, ut ad arduum docendi munus,
It often occurs to me, most excellent students, to wonder how it comes about that when there is need of professors for our illustrious schools and for our universities to teach the humanities and the skills of learning, so few suitable men are found to carry out this task and that those who are found so rarely satisfy the expectations of the students and their patrons; I am especially surprised since, as is the situation today, those academic functions when performed somewhat more successfully, lack neither the honour nor the profits by which, as they say, the arts are nourished. And it is almost as if they were examples of what we read was once the greatest wish of Marcus Tullius namely that he should be allowed to live his life with leisure for literature and with honour. But these arguments do not explain (as it is difficult to do, even when the matter has been weighed up rather carefully) why the Academic profession attracts so few competent persons to undertake it and win some glory and public approval. For first of all it is well known that of the great number of young people who are sent to universities in order to develop their natural talents there are very few whom benevolent Jupiter has so loved that they have sufficient talent and memory to acquire the foundations of that sort of education which we know is necessary for teaching the liberal arts. Moreover, we see that of those who sometimes have the ability, the desire to make the effort to study is lacking and, without this, first class knowledge cannot be achieved. On the other hand those who have the natural ability and dedication to hard work, generally, because of financial considerations – be their circumstances constrained or comfortable – are denied a long span of time for learning, so that they can mature, by the lawful steps of study, to the arduous task of

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

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

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

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

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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,

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 Gils. 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 pulcinam meam condixerunt. Rogo, comites vos & convivas, & si libet, confabulones præbeatis. Annuentibus nobis, rhedam ejus penfilem, quam habebat more beatorum hominum, confitendum, breviqve itinerare villam ejus urbanam ad antiquum Rhenilitus ingressi, convivas illic, ἐκαθάρτι recens adeo factos offendi mus. Inter quos, præter Wyngardenium Auditorum olim meum, nemenem mihi notum reperiebam. De apparatu & tralatitio epularum solennibus fabulisque nihil referam; sed mensibus sublatis, animisque a fidentiariia fatigatione, per hor tum ambulando, recreatis, accidit, ut nobis quatuor, nam Wyngardenius se adjunxerat; sub platano quadam confidentiibus, fermo per ambages ad inquisitionem de flatu Academiarum studiique juridici modo methodique deducerebatur. De flatu Academico frequentiisque fidenter illi & magnificè loqui, nec obscura mirari sè meas rationes, quæ fecissent, ut tam illustri theatro me subduxissent, tamen, ut erat hominum candor & liberalitas, videri volebant, eo factum esse, ut ipsis locis tanti honoris & emolumenti patuisseret. Inde Crucius de meis Digressionibus, quas superiores anno de Praelectionibus ad Institutiones Justinianæ excerpissent incipere; probabat earum institutum, et si nonnulla vißum mihi effec in illis collocare, quæ ab ipsiis fententiæ judiciorque abhorrent; de quibus indicavit, se per literas mecum agere confituisse, nifi nunc faciendum mihi videtur, ut coram de illis familiariter diœceptaremus. Ego non recuère; sed Bökelmannus & Wyngardenius intercedebant, eo quod ille locutus, & congruus ad disputaciones de opinionibus juris, fententiaque discrepantium parum idoneus neque faciæ, & institutus videtur. Atqui, regerebat Crucius, L111 2 non
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BÖCKELMANN interrupted and said: "I have some agreeable friends who are, unless I am mistaken, very congenial to you. They have engaged themselves to lunch with me at my riverside garden. I ask both of you, if you please, to give us the benefit of your company and conversation". When we agreed, we climbed into his sprung travelling carriage which, being a prosperous citizen, he kept available and after a short ride we entered his country house on the banks of the old Rhine and met up with our fellow guests who had recently been conveyed there by boat. Among them I found no one known to me except Wijngaerden, a former student of mine. I shall say nothing about the table setting or the formal courses of the banquet or the conversation but when the tables were cleared and, being tired of sitting, we were refreshing our minds by a stroll through the garden it happened that while the four of us (for Wijngaerden had joined us) were settling at the foot of a certain plane tree, the conversation developed in a roundabout way into an in-depth discussion about the state of the universities and the manner and method of studying law.

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

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

non erat, quod scholasticas argumentationes de magistralibus controversiis aut profundis legum fenibus 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 sius hac platano, quæ mihi ad dialogos literatos confecerat videtur, agamus, non venit in mentem. Nihil abnuere cæteri.

Quare Eρυφετε, Haud facile dixerim, mi Hubere, pergit; quam mihi volupe fuerit, animadvertere è tuis Di- greffionibus, te non effè ex corum numero, qui systemata nobis & compendia Jurisprudentiae, quæ nihil quum totidem dispensia sanctissimæ artis sunt, omni die obtrudunt & secundum ea juventutem sibi commissam instituunt an corruunt. Verum id mihi praeter expectationem accidisse fato, quod in omnibus quatuor libris observationum illarum humanorum, non incidit in ullum speciem emendandi, textus vitiosos Juris nostræ, cum tu ignorare non possis, dari adhuc plurima loca quæ in turpibus scripturae mendis hæretant, & videmur jure quodam nostro expectaret, dum Tu illud studium críticos juridicè jam pene situ & 互利ore obliteratum, inter paucos alios excolas, atque in ullum honoremque pristinum reducas. Cuju instituti propositiæ nulla me vestigia in hilce tuis Di greffionibus, quæ nihil alius fere, quam Observationes Juris Humaniores, uti ipse quidem eas appallalti, continent, reperisse, non potui quin agere ferrem. Nescio enim quid taciti argumenti hocc tuum de criticis silentiniam, in tali opere, praè ferre videatur, non effè tibi consilium, hanc docendi juris viam infiltère, 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.15 For I do not know what tacit argument this silence of yours on textual criticism in such a work is presenting, except that it is not your plan to institute this method of teaching law, which consists in the emending of corrupt texts by means of an examination of all the texts of ancient jurisprudence 

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

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

15 In the second part of the Digressiones which was added in the 1688 edition, and is not linked to the Institutes, textual criticism does feature, eg Pan. II, lib. I cap. xxiv, p 531.
Iuris, Dialogus.

emendatione textuum depravatorum definit, ac ita nobis antiquam Artem nitori suo genuino integritatique restitut.
Nam si hic in iis meditationibus, quae pertinent ad politiores litteras cum Iurisprudentia conjungiendas, faciendum non putasti, quando & ubi fas sit hoc a te praetolari, mihi quidem sperare difficile est. Eaque res tanto minus exceptata mihi contigit, quod jam olim, cum adhuc in genere Historico verfarere, criticus emendandi conatisbus non abfuisse, sicutem recordor, te in dissectionibus, quas edidisti de Temporibus ante Cyrum observavit, nec non correxit vitia in locis quibusdam Diodori Siculi atque Orosii, quae nec cum ipsis nec cum aliis incorruptis rerum gestarum monumentis convenire judicabas. Deinde vero cunctis bonis mentis amatoribus optimae spei signum extulisti videbiris, in oratione, quam habuisti, cum ex Eloquentiae & Historiarum Cathedra solemnit in Iuridicam transires. Id enim unice in universa Oratione illa agere videris, ut conjunctio nem politioris criticaceque literaturae cum Juris prudentia, studio inculcarent. Proinde gaudeo, hanc occasionem mihi oblatam esse, quia confilio hujus occasionem de te ipso cognoscerem, sperans futurum, ut quidvis potius quam inutitus adeo praecellari mutationem in causa tibi fuisset intelligam.

Dux res sunt, ita regerebam, Clarissime Crufo, ad quas responsum debeo; Prima quod tibi mihique gratularis, me potius edidisse Digressiones & Praelectionibus Iustiniacis, quam systematicum Institutionis Imperatoriae, Compendium; Alterm, quod in Digressionibus meis f伸 quam de criticis observationibus, quae huic operi in primis convenire viderantar, seselem. Quamquam autem contentus esset poteram eae laude, quam mihi in invidiam systematum & compendiorum adscripti, habeo tamen rationes, quae nec hac in parte tibi penitus adeunti possim vel de-
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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)\(^1\), 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.\(^2\) 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.”

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\(^{1}\) The *Tractatus de Temporibus ante Cyrum* first appeared in Huber’s *De genuine aetate Assyriorum et populo Medonum disputationes VII*, Franeker, 1662. A slightly different version of this work appeared in 1663. The *Tractatus*, in an altered version, is included in Huber’s *Institutiones Historiae Civiles*, 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 Civile* p 31b for a critical comment on Orosius; *ibid*, p 34a for a similar discussion of Diodorus Siculus.

\(^{2}\) 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 Franekeræae cum ex ordinaria Eloquentiae et Historiam cathedra sollemnit in Iuridicam deduceretur, ex historia uris romanii 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, comprehensam lectori manu mea, Quin tu, mi Hube re, quod ad hoc caput attinet, inquit, huic homini cede tuas partes; nam id ego meliori iure vindicare mihi debeo, ad cujus invidiam vel contemptum, hoc orationis Cruianæ pars, si quid inde contemptus invidiaque poterit oriri, in primis redundat. Novinum nos inter nos Cruius & ego, atque libertatem oris animique ejus, utpote Zutpheniensis ego vicinus Westphalus, & jam Collega familiarisque amicus tam bene perseverat habeo, ut nec ego caufam irascendi habeam, quod coram instituta mea vituperat, nec ille sit aegre latus; si pari libertate rationes ejus refellam; libentius id Te communi amico praefente & arbitro facturus, quam si cum solo ipso vel sceorlem apud ignorantem aut minus intelligentem faciendum foret. Aequum Bokelmannus petere videbatur, ideoque & cum defiderior meo celfi respondendi Cruifo tranfiendum putavi, donec illi de compendio & fytematibus aboluisset, id unum stipulatus, ut quam æquitatem animi praefertet Bokelmannus, hanc utque in orationis progressù fidelter praefaret, Utroque blando cum risu annuente.

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

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

BÖCKELMANN began. “If there were anything in this case which should anger me, I could not unjustly complain that already exceedingly hateful rumours have been spread among the common herd and it has now almost developed into an epigram that “Böckelmann’s compendium (epitome) is nothing other than a dispendium (squandering)”19. Perhaps I would also have grounds for complaint if the outcome did not clear me and my compendium20, and if the glory of public approbation and support did not remove all cause of my grievance. For it is right, I think, to speak proudly against those who speak contemptuously and to suppress with high praise the calumny of the envious. And I rather think that within a short time I ought to gratify my students’ continuous demands that I publish my compendium in print.

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

debeam. Sed adhuc quidem Crusi doctissime, de compendiis & institutio methodicae Juris, quantum nihil quam dicta peremptoria, summaque inrisionum & scommit na percepit; nec factis difficernere potuist, sitne vobis propositum, omne genus compendiorum & syntagmata eliminare, vel an in meo libello sit, quod displiceat & quod adseverioris disciplinae legem emendatum cupiatis. Quod si placet, ut hac quaestionis defungamur, faciendum tibi cenfeco, ut de hoc generem totam animi tui sententiam & quo pacto in docenda juventute procedendum putes, exponas. Cum enim Tu Aetoris, ego Rei partes sustiner e videar, non habet ressalvamentem, ut defendendi rationes ineuntur, antequam litis intentio aperte, certo, clare peracta & absoluta fuerit, siquidem haec tres proponenda intentionis suae virtutes a syllogisticis nostris acceptimur. Dein ego, hic potero, contradictiones vices peragam litemque eo modo apud hanc duas, si videbitur, arbitros contrefabimur.

Quando res eo deducitur, ajebat Crusi, age, non displicet condition, quid enim jacundius, aut facilis mihi, quam agere cauam, quae tantopere ad animum meum pertinent, & eloqui apud amiciissimos homines, quod jam olime me coquet & verum sub peccore fixum! Nihil enim minus agitur in hac displicatione, quam de causis corrupta jurisprudentia, quarum ego principem maximeque in oculos incurrentem hanc compendiariam docendi rationem effe, non verear profiteri. Credo, non vocabitis in controversiam, Artis nostrae gloriae a patrum nostrorum memoria vehementer esse diminutam. Quis enim nostrum sine dolore animi potest comparare nomina studiisque eorum, qui superiores feculo jus illustrarunt, cum his qui hodie familiae inter jurisconsultos ducere creduntur? Vere dicerc postum, Juris Artes his diebus nihil quam supervacuum atque alienum ab omni
But till now, dear Professor Crusius, I have received nothing [from you] but destructive remarks and the utmost derision and mocking concerning compendia and the systematic method of teaching law which we are using and I have not been able to decide properly whether it is your intention to eliminate all kinds of compendia and systems, or whether there is something in my little book which displeases you and which you want changed to a policy of more rigorous teaching? But if we decide to deal with this question, I think you must explain the whole of your view on this type of textbook and say how you think one must go about teaching youth. Then, since you are assuming the rôle of plaintiff and I am upholding that of defendant, the situation will not arise where the case for the defence is begun before the indictment has been appropriately, specifically and clearly stated and brought to a conclusion, if indeed we have adopted from our authors of systems these three steps in a proposed indictment. Thereafter I shall, as best as I can, raise the counter arguments and, if it seems good to you, we shall in that way submit the case to these two arbitrators."

When that point was reached, CRUSIUS said: “Come on then, the proposal does not displease me, for what could be pleasanter or easier for me than to argue a case which is so close to my heart and to say before my most amiable colleagues what for a long time already torments and, fixed deep in my heart, racks me21. For in this debate nothing less is being discussed than the reasons for the decline of legal science22, and I am not afraid to state that the chief and most obvious reason for that is this method of teaching by compendia. I’m sure that you will not dispute the fact that the glory of our discipline is much less than it was in the time of our fathers. Which of us can, without mental anguish, compare the names and scholarship of those who elucidated the law in the previous century with those who today are believed to head the legal profession?23 I can truly say that in these days the science of law appears as nothing other than empty hair-splitting, far removed

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21 Cf. Ennius (BC 239-169):

\[
O Tite! Si quid ego adiuno, curamve levasso,  
Quae nunc te coquit, et versat in pectore fixo  
E liquid erit pretii? 
\]

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

These words from Ennius’ Annales, 10.340, were addressed by a shepherd to Titus Quinctius 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 jurisconsultiom incoluntur, nostrum potissimum obscurum atque ignobile, vix paucorum lumine et gloria illustretuer. (Why, when earlier times were celebrated by the names of so many eminent jurists, are our times in particular dark and undistinguished, and illuminated by the light and glory of only a few?)
De Ratione docendi & discendi

omni non solum elegantia doctrinâque, sed & à communi ufu preferre subtilitatem. Quam nobilissimae disciplinae contumeliam non utique ipsius ineptiae, sed inficiarum aedificiwm ego quidem imputandum censeo. Quod enim ciff, quod impediret nos ad cando Artis perfectionem eniti, modo eadem contentione viaque procederemus? At nunc studiois juris beatos se valdeque eruditos credunt, si brevia, quae venditantur, Artis compendia vix animo comprehenderint, & definitionum partitionumque summam & actio-
num solennia carmina memoriae mandaverint, artemque om-
nium principem & latè diffusam in angustas tabellas pau-
casque & sepe ineptas quæstiones coarctaverint. Interim si quis siglorum & notarum ænigmata, si interpunctiones, si Glo-
ssas, si varias lectiones judicet atque discriminat, si lacu-
nas librorum juris legumque suppleat, si virtute, incoetia, luxata detergat & refituat, si Leges, plebiscita, Senator
Confulta, formulæque actionum conccinet & fugitiva retra-
hat, id omne nimis anxia flurœque diligentia effe opinantur. Nec ita vulgos tantum imperitæ juventutis per inermiam aut ignorantium, sed etiam Praefectoris ipe mercedis aut ambitio-
ne frequentis auditorii in traniverium aguntur, ut nihil pen-
fi habcant, animos juvenilis credulitate fluxos atque obnoxios
corrumpere, pulcherrimamque artem subvertere & parentum
vota frustrari. Hi sunt, qui falsis esse jactant, li velbinas
god idie horas studiois libris incumbant; Id enim spatium
temporis sufficere abolvendo penfo quotidiano, quod illis
cum compendio preceptoris sui secundum ordinem lectionem
privatarum injungitur. Quod denique frequentius auditur,
quam viam illam veterem ac regiam, asperam & præruptam,
etiam obfuscaram & multis anfractibus detortam, coquelon-
gam ac molestam effe; illam à paucis, quamquam sedulis
atque ingeniosis vix multitæ lucubratione & immenso labore
vinci.
not only from any elegance and learning but also from every-day practice. I indeed think that the contumely heaped upon our most noble discipline is certainly not to be attributed to its inherent triviality24 but to the blameworthy ignorance of those who do not comprehend it. For what is there which prevents our working our way up to that same perfection of our discipline as our predecessors, provided we proceed with the same rigour and along the same path. But nowadays students of law believe they are fortunate and truly learned if they have barely mastered brief (for it is as such that they are recommended) compendia on the subject and have committed to memory the main points of definitions and partitions and the set 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.25 Meanwhile, if anyone were to critically examine and distinguish between the enigmas of sigla and marks, punctuation, glosses and variant readings, if anyone were to fill in the lacunae in the books of law and in the individual fragments, if anyone were to identify and restore faults, omissions and misplacements, if anyone were to reconcile laws, plebiscites, senatus consulta and the formulæ of actions, and recover the missing words, this is all considered to be excessively solicitous and stupid diligence. 26

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

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24 Cf. Noodt’s inaugural oration p 616 . . . videri supervacuam atque alienam ab omni non solum doctrina atque elegantia sed et 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 latre porrectam, in angustas tabellas, pascaque et sape ineptas quaestiones coarctaverint. (Thus indeed they think that they are truly learned and fortunate if they have barely mastered short compendia of the science and have committed to memory the formal words of definitions, distinctions and actions. They have compressed a widely extending science into short notes and a few and often silly questions.)

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

27 Cf. Noodt’s inaugural oration p 619 . . . verum multi aut inertia aut ignorantia aut spe mercedis et ambitione frequentis audienti adae transversi opulentur: ut nihil penit habeant . . . animos juvenil endulgate fluxos atque obvios coronare, 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 flegnibus quidem recondibusque inviam aut inferabiliem esse, eaque ad jurisprudentiam brevissimae certissimeque perveniri. Ego vero cenféo, plures illa nostrá via praecíaram scientiam obtinuísse, quam qui vulgarem & compendiariam inicre, qui etiam tum mihi, cum in Portum fiúm pervenerunt ac spera confecuti sunt, naufragium feciisse videntur. Scilicet, fallit ambiguus vocabuli; eae fentitio dicitur, ea mora est, & quod compendium vocatur, Sapientiae damnum est. Quod sitantopperé Compendia expetant, ea privatim legant & habeant Studiosi; Antecessores publice private alterius spirent; & positis his in Institutionum enarratione totus operis fuisse inlibus fuisse membris, poft deinde aptar & diligenti & accuratâ Panderarum & Codicis interpretatione, tanquam nervis ac thoros masculum illum prudential vigorem contignant pariter atque intendant. Verum quia plerisque puniuis tam praestatiss discipulce, eae anguulis inclua Jurisprudentia est; quae quibus ipsi, quod tam eximiae disciplinae deinceps futurum ariditramini? Atque utinam exempla deessent huic tam juto metui? Quid Livium imminuit præter Annéi Flori, quid Dionem Cassium, præter Xiphihini epitomen? _St Polibium_, _Trogum Pompejum_, _Salios non_ contraxissent aut exerçisissent studiosi homines, fortissimintegrís uteremur, neque in antiquarum rerum memoria tantus hiatus pateret. Eloquentiam videamus, quid eam perdiderit, nonne compendiaria, per quam eloquentiae laudem afféctant, qui nec dum benè loqui didicerunt? Quid multis? ipsum _Papianum_, _Paulum_, _Ulpianum_, quid abint? aut accidit, nonne Compendiaria Justiniani? Quod si illa veterum extarent scripta, quantum ad rem literariam conferrent, quantum ad publicum, quis ignorant potest; 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. 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

** 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 excurratiae Institutionum totius operis sive ossibus sive membris, post deinde Pandectarum et Codicis lectione apta, diligente, accurata, tamquam nervis ac thoris, masculum illum prudentiae vigorum constringat pariter atque intendat.* (but having set up as it were the skeleton or limbs of the whole work in a detailed exposition of the Institutes, let them then afterwards by an appropriate, careful and accurate interpretation of the Pandects and Codex, as it were the sinews and muscles, bind together and at the same time extend the virile strength of legal science.) Here, too, Huber takes words which Noodt directs to the student and applies them to the Antecessores. Note Huber replaces the *lectione* of Noodt with *interpretatione.* The rest of Crusius’ speech is an abridged version of Noodt p 621, *Sed quid dissimulam to luci restituta sunt.* Crusius/Huber omits a passage criticising Justinian which leads into the remarks about the benefits obtained from discovering the fragments of Ulpian, Paul etc.
De Ratione docendi & descendi
qui intelligit, quantum potuerint erudita praefare ingenia, postquam illa Theodosiani Codicis, illa Licinii Rufini, Ulpiani, Pauli, & Caii fragmenta luci restituta sunt. Hæc eo pertinent, Viri Clarissimi, ut veras corrupta jurisprudentiae causas, simul quibus viis ea constiituta, his & florentem facile retineri & omnisam restitui posse, intelligatis. Atque hæc quidem summa fuit eorum, quæ Cruius, majore copia verborum pro instituto suo, differebat.
Ad quæ Bokelmanus: Satis fecisti, inquit, Candidissime Crui, postulatione nostræ; neque mutatum controversyæ nostræ statum, ab eo, quod inde ab initio profellis es, animadverto. Proinde hæc etsi summa quæstiti nostri, rectene Tu corruptæ collapsæque jurisprudentiae causam aiunnaveris hanc systematicam seu compendiariam institutionem, quæ nunc in Scholis Juridicis utimur, & cujus me sectatorem audiremque, denique, sic enim tibi placet, Reum effe profiteor, siquidem maleficium id oporet tet effe non tralatium, quod inertia, avaritia ac ambitionis macula deforme, corrumpenda jurisprudentiae causam praebuerit, ac etiamnum praestet. Denique, id animadverterundum erit, an ita faciendum sit, quemadmodum tu praecipisti, ut si quis omnino sibi necelarium putet ejusmodi compendium, quod definitiones partitionisque rerum, quæ sunt in Arte Juris, actionumque solennia tradat, illud sibi privatum habeat ac legat; Antecessores autem publice privatimque ne seque ad talia demittere, nihiloritam, idque vix, in Institutionibus enarratis. Ubi vero ad Pandectarum & Codicis interpretationem transferint, procul habitis id genus breviaris, ipsos veteres integros & illibatos aggrediantur. Ego igitur exsultito tibique contentio, Crui, non effe perfectum jurisconsultum, 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

\textit{Juris, Dialogus.}

que legendis evolvendisque non dedit, sed nego id esse tentandum, priusquam paratitlariis notitia omnium librorum Juris antiqui, exprompta memoria judicioque comprehendit, Nec arbitror ejus sententiae te fore, quasi \textit{Pandectae} Principumque \textit{Constitutiones}, auditu primo ab adolescentibus & disciplinæ juridicae ignaris intelligi possint. Nimis enim manifesta omnium quia suscitatur, quique medio in curru defeceret, vel qui defunctoriæ id aliquando inspexerunt, expetientia te refutaret. Infinita rerum actionumque humanarum varietas superans etiam \textit{Græce}, neda \textit{Latinae} Linguæ divitias, fecit, ut antiqui Artis hujus conditores, aliarum more disciplinarum, nativos plurium verborum usus ad diversas abstræfæque significations transfluerint. Quis fine eorum, ut vocantur, \textit{Artis terminorum} prævia notitia, quibus referunt sunt veterum nostrorum scripta, gravissimas & difficillimas eorum commendationes intelligat, quis species factorum ab illis subtiliter involuteque subducat, si verba necundum singula percipiat, memoriam judicioque subigere, neda explicare & applicare posset. Nonne id perinde foret, ac si \textit{declamaret} (que te comparatio delectat) antequam \textit{Latinae} loqui didicilient? Ne dicam eos, quibus summe rerum differentiae, perfonarum necessitudines, obligationum vincula, successionem judiciorumque ordo non innotuerunt, eos intricatiissimas de his rebus disputationes veteribus occurrentes nihil magis intellecturos, quam quilibet nostrum enigmata vel arcana mathematicum, quibus nuncum imbuti fœrimum, perciperet. Necio, quæ fit illa tua \textit{Cruss}, aliorumque paucorum intermixeri, ut omnibus in universum comperdis adeò sitis intesiti; quibus nulla unquam ætas, nullus auctor erudiendi juventutem carere se posse credit. Ipsè \textit{Infimianus} jura populi Romani hau aliter à se tradit posse judicavit, nisi primo \textit{levi ac simplici viæ, posse dixisse dili-
to the reading and unravelling of the ancient writings, that is the actual Pandects and the Constitutions of the Emperors in their entirety, but I say that this is not to be attempted before a summarised knowledge of all the books of ancient law has been understood, and committed to memory for easy recall and assessment. And I do not think that you will be of the opinion that the Pandects and Constitutions of the Emperors can be understood at a first hearing by adolescents who are moreover ignorant of legal learning. For you would be refuted by the exceedingly clear experience of all those who have studied law but have dropped out in mid-course or who have at some time looked into it cursorily. The infinite variety of topics and of human actions, exceeding the riches of the Greek, much less of the Latin, language, brought it about that the ancient founders of this discipline, as was the custom in other disciplines, applied the original use of many words to different and abstract meanings. Without previous knowledge of the technical terms (termini Artis) as they are called, with which the writings of our ancient authors are packed who would understand their most weighty and very difficult treatises? Who could commit to memory and assessment, far less sort out and apply, the types of acts introduced subtly and obscurely by them, if he does not even understand individual words? Surely it would be (and I know you’ll like this comparison) just as if students were practising declamations before they had learned to speak Latin. Let me not say that those to whom the major classification of things, the relationships of persons, the bonds of obligations and the order of succession or of trials are unknown, will no more understand the intricate debates on these matters which occur in the old writers, than any one of us would appreciate the enigmas and secrets of mathematics in which we have never been steeped.

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

\textsuperscript{32} The following passage and several subsequent passages refer in summary to the Emperor Justinian’s views on education as expressed primarily in the Constitutio Omnem as well as the Constitutiones Deo Auctore and Tanta. Huber does not cite Justinian directly but adverts to his statements, sometimes using the same words, sometimes paraphrases.
De Ratione docendi & descendi
gentissima atque exactissima interpretatione singula comple-
teretur. Quin cum prudentissimus Imperator commenta-
rios ad Pandectas Codicemque sub falsi peñae feribi vetuerit,
Paratilia tamen, id eft, singulorum titulorum summas &
compendia, quibus non posse carere distantes intelligebat,
illis fuppeditari permiffit: Contra quae vos, præcifis reje-
citique compendiis, tyriones veftros ad ipfa, quæ vocat Ca-
far, immensa volumina commentanda producitis. Porro
quid ego hic de Aristotele, Cicero, Quintiliano alii-
que hominibus doctissimis auctoritatis & testimonio profe-
ram, quid de hoc & superiore feculo narrem; cum nihil fit
manifestius, quam id effe omnes a compendiis ut inciperent
aliterque in ullâ studiorum disciplinâ facere solutum effe nemi-
nem. Tu adolescences nullis, inquam, preparatos initis
gravissima juris antiqui volumina vis aggregi? Sic Me-
dicinae admovendos doce confellum totos Hippocratem atque
Galenum evolvere; Philosophos Aristotelem atque Pla-
tonem edificare, Rhetorices Historiæve studiofos immen-
ner veteris eloquentia rerumque geffarum monumenta feratur,
Sine dubio pari, quâ nos, infatia dabis insignitos artifices
compendiorum Historia universalis & Systematum Rheto-
ricorum. Nemo pejus de politiore literaturâ meritus erit,
quam Iohannes Gerhardus Vossius, qui de omnibus huma-
nioris doctrinae partibus compendia atque systemata fecit,
etiam de Arte Historica, quam ante eum nemo in Artis
formam redigi posse praefumpferat. Tibi quoque Theologia
da doctrinae corruptores videbuntur, qui compendiis &
Systematibus rudium adolefcentum animos ad diffuam re-
rum facrarum notitiam introductorum atque etiamnum in co-
dem instituto perfeverant. Quid mihi adverfus hanc neces-
sitatem de Livio, de Trogo, de Dione, de Polybio nar-
ras, quafi breviariis illi nobiles Auctores interitum adjiijent.
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\(^{33}\), 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”\(^{34}\) (as Justinian calls them) volumes.† Indeed, why should I here provide examples and evidence from Aristotle, Cicero, Quintilian and other most learned men? Why should I tell of this and the previous century? For nothing is more obvious than that everyone has used compendia as a beginning and that no one is accustomed to do otherwise in any programme of study. That’s why I say ‘Do you wish the young, without any initial preparation, to attack these most weighty volumes of the ancient law?’ Thus you would say, ‘Teach those who are to be trained in medicine right from the start to read Hippocrates and Galen in their entirety; teach philosophers to commit to memory Aristotle and Plato, and rhetoricians and students of history to examine in detail the boundless records of ancient rhetoric and ancient achievements.’\(^{35}\)

Without doubt you will label with the same ill repute as us, the distinguished authors of the compendia of universal history and the systems of rhetoricians. Do you say that no one will have deserved worse of the liberal arts than Gerardus Joannes Vossius\(^{36}\) 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.

\(^{33}\) See Constitutio Tanta § 21.

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

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

\(^{36}\) This eminent scholar’s name is Gerardus Joannes Vossius, not Johannes Gerardus Vossius as in the text. See further Rademaker Life and Work of G.J. Vossius.
13

Iuris, Dialogus.

Quid habent simile Compendia, de quibus nos loquimur; cum iis, quibus antiqui Scriptores coactati sunt? An nos Digesta Codicemque contrahimus, ita ut Livius à Floro Dion à Xiphiino, Trogus à Justino contracti fuerint. Adeone Tu dividere necis compendia Notionum & regulam; quibus percepitis, Arse qui sequae facilius intelligi potest; ab epitomis, quibus ipsi libri angustā formā describuntur & exhibentur? Quanquam ego ne quidem studium faciendo tales epitomas damnare putineam, quibus fàipientis simos Viros intelligo uus esse, multique etiamnum maximò cum fructu utuntur.

Et enim, me aut omnia fallunt, aut omnigenæ lectionis memoriae definit in compendiariam rerum dictorumque notabilium, quae legendo audiendoque percurrimus, intelligentiam. Quæ si meditando ruminandoque subiecta scripto comprehenderit, verbiqve suorum Auctorum expressa signataque fuerint, quæ preflior efficaciorque proficiendi, animoque res pulcherrimas imprimendì methodus excogitari possit, ego qui dem non intelligo. Etiam vero judicium, quod omni rerum humanarum doctrinae genere longe maximus esse momenti, hoc modo accerrime validitatemque exercetur & confabili tur. Quin etiam qui à fæ lecta perceptaque alis tractere & inculcare cupiunt, si, quæ memoria intellec tuique complectuntur, ea in compendium diœtis exigitur ea quibus auditoribus succinæt ob oculos exhibere non posint, nisi quoque discipuli audita secum ipsi colligere & contracta recolere animoque reboundere quaent, neuti unquam res eadem latius explicare & ad usu applicare poterunt: Adeoque si qui in eo praeeptores auditorfique gloriam ponunt, quod compendiarii non sunt, eadem operis licet, ad docendum dicendumque, pene dixerat, ineptos fæ fateantur. Ego quidem nihil prius studiois, qui valde

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

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

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

Etenim... putaverint (p 16).

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

peremptorieque, ut ita loquar, difficile volunt, auctorum, quam compendia facere scriptorum, qui pleniore manu res ipsis seius necessarias tractant. Horatius, si unquam aliter homo quinquam sapiens rationem putavit, idem monerit, Quicquid praecipies, esto brevis, inquit, nec metuit doctrinae sterilitatem. Namque ubi cito dixit perceperunt animi dociles, tunc omne supervacuum pleno de peceore manat, ut idem adieverat. Quin docetimus homines, maximos esse condonarios, neque maiores ullos, quam qui meminerimus, bibliotheca ambulantes vocantur, oportet, argumentumque praetantiae hujus instituti vel maxime praeberet, quod ab omni antiquitate, quanto quique minus ineptus sapientiae videtur esse consummatarioris, tanto majorem in dicendo scribendisque compendio habet rationem, ut olim Lacones & Homericus Nestor, qui nimi quam admiranda regia, compendio sed efficasimo rationis utibatur. Quod autem, Optime Cruis, ab eodem Epitomis, insignium aliquot scriptorum elades lacunaeque, summo cum orbis literati detrimento, causam accepisse quereris, an auguratis, Mirum est equidem, hanc rationem non modo non deterruiisse veteres ad compendia eodemmodi faciendis & publicandis, sed eodem etiam, tot seculorum experiit, talem inde pestem oriri non fuisset conviciss. Nam ut aliarum artium historiarumque epitomatores antichos silentio prattiscam, inter Jusconsulti ipsoque gravissimae sapientiae conditores non modo Hermogenianum epitomias scriptisse conflat, verum etiam, Paulum inter auctores Pandectarum antepingignantum Alfenn Varì quadraginta libros Digestorum in epitomen re degiisse, idemque Involum fecisse de libris decem Labeonis posteriorum, inscriptions exerptorum in Digestis loquitur; que tamen ipla opera principalia postquam erant excerpta, nihilominus salva integraque ad etatem ulque Justiniani,
who stoutly and resolutely, if I may say so, wish to learn, to make summaries of
the writers who deal over lengthily with material that it is necessary for them to
know. Horace\textsuperscript{38}, (indeed expressing the opinion of all wise men) gave the same
advice ‘Let whatever you teach’, he said, ‘be brief’ and he did not fear that his
words would fall on stony ground. For, as he himself avers, ‘when impressionable
minds grasp what is said concisely then everything that is unnecessary runs off
from the full mind’. For it is right that the most learned scholars should be the
greatest workers with compendia, and none more than those who are called
βιβλιοθήκηκα έμψυχοι (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 παυς μνάλα μάλα λέγως (few words but spoke very clearly)\textsuperscript{39}.
Concerning your complaint, most excellent Crusius, or your guess, that the
destruction of the works of certain outstanding writers or the gaps therein, a
great loss to the world of letters, is caused by epitomes of this kind, is it not
indeed amazing that this reasoning not only did not deter the ancients from
composing and publishing epitomes of this sort but that these same ancients, with
the experience of so many generations behind them, were not convinced that so
great a bane arose therefrom? Now, to pass over in silence the ancient
epitomisers of the other arts and of history, it is agreed that among the jurists and
the actual founders of our most venerable jurisprudence not only Hermogenian
wrote epitomes but also Paul, one of the chief sources of the \textit{Pandects}, is said to
have reduced the 40 books of Alphenus Varus’ \textit{Digest} to one epitome; and
Javolenus did the same for the 10 books of Labeo’s \textit{Posteriores}, as is evident from
the inscriptions to the fragments in the \textit{Digest}. And we see that these original
works, after they were epitomised, nonetheless survived unharmed and intact,
right until

\footnotesize
\textsuperscript{38} Horace \textit{Ars Poetica} 335 \textit{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

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

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

 finiam, qui omnia suppressit, ut volunt, per annos quadringentos & amplius, ex iisdem titulis capitum in Pandectis, remanissent videmus. Quanquam si autenticis scriptoribus compendiorum instituto præjudicari poterat, id ab ejusmodi metuendum fuisset epitomatoribus, qui doctrinâ laudatique universâ opinione veteres illos prolixioresque auctores, quos contrahebant, omnium hominum reputatione superabant. Ego vero nihil errere me putem, si Labeonis & Alfeni Vari scripta ab ufu temporum Pauli & Iauoleni remota, ex quo à tantis viris contracta in oculos hominum reducita sunt, frequentius libentiusque à studiosis, quam prius, lecta fuisset dixer. Vulgaria quidem ingenia folis epitomis ut contenta fuerint, neminem tamen, cui studia ad animum pertinerent, extitisse credo, qui non est lectione compendiorum ad ipsa veterum illorum majoraque scripta videnda & exploranda inflammaretur. Neque fane quod Hilligerus & Vinnius Donellum nostrum, alius Thuanum, feiplum Mezerayus, alique multi alios hodieque contraxerunt, ullum adhuc periculum imaginari possum, quo ipsi Auctores illi è manibus hominum doctorum excutiantur minorique pretii, quam alius unquam, habeantur. Quin si quem id genus scriptorum compendia, diffendi voluptate afficiunt, aliter evenire non potest, quam ur, qui praefitarum operum illorum, quasi per transtennem viderint, in ipsa ufque penetralia intimoque receffit & latifundia progræderi & exspatieri velint. Ceterum, quod inter antiquos aliquot praecipui scriptores, quorum adhuc integra compendia extant, (Iuris hic alia ratio est) grave detrimentum passi sunt, id ipsis epitomis accepto ferendum esse credam, ubi que causâ populos omnes nationesque in Europâ sedibus suis excvivit, urbesque & regiones ista evertit ac immutavit, ut plerumque ne nomina quidem superfint, 

hanc.
the days of Justinian who suppressed, as they say, all the writings of jurists of the past 400 and more years. However, if the use of compendia was prejudicial to the original writers, surely the same fear would have threatened these epitomisers who in the opinion of all men far exceed in learning and generally acknowledged merit those ancient and more prolix writers whom they epitomised. I would think I would in no way be wrong if I were to say that the writings of Labeo and Alfenus Varus which were comparatively unrelated to the practice of the times of Paul and Javolenus, by whom they were excerpted and re-introduced to scholars, were thereafter read more often and more readily by students than previously.

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

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40 Huber made “compendia” of his own works. The second edition of De Jure Civitatis, 1684, Franeker, was summarised in his Institutionis Reipublicae liber singulantis which was first published in Specimen Philosophiae 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 Hredendaghe Rechtgeleenthety (1686) in the Beginselen der Rechtwende (1684). See Veen Exerentia, 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 belii in humana divinaque omnia graffantae, non suffecisse cognovero; aut si alii Autores, quorum nulla suae compendia, clementius habitus esse magisque integros, ad nos perveniisse, compertum est, seque eadem belli clade cuncta fuerint involuta, seque Christiani veteres religiosae infestgentilis sapientiae monumentis, quod belli incendium evaporat, id imprudenti zelo piatur in temperie supprimendum perendumque putaverint. Ne Justiniani quidem Caesaris propitium in Corpore Jure contra hinc tam mihi reprehendione dignum quam necesse fuisse videtur, si in modo contracionis rectam viam tenuisset. Nisi tu putes Iulii quoque Diculatoris conilium eadem notae cenoria prosequendum, quod ille Romani juris, suam tum magnitudine laborantis, compendium publicare decreverat. Ego vero magis Hubero nostro adfensorem, qui in oratione, quam modo laudabas, inaugurali, non putet esse nefas iraeci Marco Bruto, quod nimirum crudo ferviti odio & improperia fellestionem faluberrimi comatus fructum humano generi studiisque Juris intercepsisse videatur. Etenim quanto cultius Justiniano Iulii Caesaris ingenium, quanto melior & doctior Tribonianus fuit Trebatius, quanto beatiora florentis Rome quam jacentis & & Gothis oppellit tempora, tanto concinnius ac eruditus Iulianum prae Justinianae compendium extitit. Verum, te arbitro, Cru, est quod gratulemur Iulii Caesaris manibus qui seque, dominum infandum satum, quod clarissimi nominis memoriae compendi Juri titulo non dehonestavit.

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

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

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

41 See Suetonius Caesar § 44. Nam de ornanda instruendaque urbe, item de tuendo ampliandoque imperio pluta ac maioria in dies destinat . . . ius civile ad certum modum religere atque ex immensa diffusisse legum copia optima quaese 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 multituidine et Interpretum copia non sine magna judicium dispendio et omnium rerum confusione laborabat. Adeo quidem, ut Caesar Julius inter praecipuas ordinandae Respublicae curas, huic morbo nonnisi magni et andae remedia succurrendum judicaret. Quippe ex infinita Legum et disputatuum mole tollere supervaxa, seligere et in pausos conferre libros (sic) ut multis postea saeculis a Justiniano factum, probatisima quaeque decrevet. Quod nisi mori cum infirmita et hac utique parte insapiacia occiperet, co paucos mensibus inercedi cum potentissima fructa absolvisser. Per me quidem frure consuetudina tuae Brute, et quantum vis, imputa Idus Martius populo Romano. Consulatiis tamen immortalitati tuae potius quam orbi terrarum . . . O quam praecelvo Magni Dictatoris beneficio Jurisprudentia freuetur! Quanto oleo Justiniuno (ignoscant sacratissimi manes) Caji Caesaris ingenium, quanto melior et doctor Triboniano Salpicius, quam disparis Donotho nescio cui, vel Theophilo, Saevolae atque Trebatius, quanto beatiora florentis Romae quam jacenti et a Gothii oppressae tempora, tanto elegantias, tanto conscius et eruditus (confessionem vis veritatis extinguet) Julianum prae Justinianae Compendium extaret. (And legal science also suffered from the great number of laws and the
...Iuris, Dialogus.

me nolle dixi, ut Antececessores illis explicandis operam datent, Studioi vero quominus ea domi haberent legerentque, non intercessi.

Bene recordor, ait, Bökelmannus, cum tu modo, indignabundus, Quod si tantopere comendis delectantur, ajebas, studiosi, habeant ea privatim ac utantur, ut libet. Non obstaret significans, gratioem tibi fore studiorum viam, quae fine comendis, tanquam bona mentis remoris, veteres ipsos incontinenti aggregantur. Et sic, noli dilatulare, Cruj, qui se partum tuam sequentur, de nostra methodo sentient ac in vulgus opinantur; meum Compendium, dicunt simpliciter, esse dispensium studiorum, quod tu vix regnavis fugiens felicet, damnum esse dicebas. Sedulo id agunt, ut studiis jam juventatem ex auditorio meo, tanquam Scylla vel charybdi, ut in Cebetis tabulâ senex ille facit, qui pueris vitam ingredientibus rectam viam praemonstrat, quâ ad veram sapientiam pervenirequeant. Sed bene habet, quod rationes veltræ a fœnsi communi abhorrent & prejudicio generis humani damnantur; nec minus primo intuitu, quam experientiâ docente, liquent in hoc esse comparate, uti rudes & infirmos animos studiorum multitudine ac varietate rerum onerent; duorumque alterum, aut deserta studiorum efficiant, aut cum magno labore serius ad id perdant, ad quod leviore vià ducti, maturius perduci potuissent, ut sapientissimus Imperator de hac ipïa institutionis disceperant loquitur. Idque te ipsum Cruj, non puto negaturum, quin tibi fie eveniat, quando fatis confatat, te hanc ipsam ob causam, duntaxat in Institutionibus, eadem vià definitionum atque partitionum, velis nolitis, procedere cugi, alioquin omnibus a primo limine deserviturs auditorium tuum. Adeone vero facilis tibi videatur hæc compendiorum doctrina, tam humilis, ut Professori...
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 *παρονουμασια* (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 lead sooner by a less arduous road’, as the most wise Emperor said about this very problem in basic legal education⁴⁶.

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


⁴⁴ 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 See the *Series Lectionum* of February 1671 and of September 1671 (*Molhuysen Bronnen Leidse Universiteit* III p 234*, 236*); there are no *Series* for the years 1672-1676; Crusius taught the *Institutes* in 1671 and presumably in 1672. He died in 1676.
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rie vocis officio non indigna sit? Miseret me conditionis tuae, qui, licet invitus ad tam humile schola ministerium, ex parte satiscaque infima te demittere sis coactus; quod tamen ante nos, quotquot jurisprudentia claros & admirabiles posteritati fecit, gnavor inquituerunt. Denique, non possum fatigis mirari, qui stat, ut in re tam obvia, tam prostrata viri undique docuitimi tam raro satissacere posse intepetitationes desiderioque studiose juventutis, cujus quidem judicium universae conspicientis, in hoc gene-re nullo modo spernendum esse, communis famae experimentis jam pridem abunde compertum est. Sed mittamus judicia studiose forum, quanquam his arbitris parum abest, quin sint fata fortunaeque Professorum, compendia ipsa, si placet eorumque indolem consideremus, an ea tanta facilitatem vilitatemque praestet, ut Professoriis indignum sit, ea privatim adolescentibus interpretari. Nam de publicis praelectionibus concedo tibi, non esse faciendum, ut in is compendia, vel sytemata, vel quicquam, praeter antiqua juris monumenta, celebretur. Verum non infra, ut olim vocabantur, summæ institutiones, quibus privatim exerceremus adolescentes, breviarum, sic ut vox fornat, esse debent, parvisque dictis universi juris fundamenta complecti regularique tradere, quibus judicium in difficiliis rerum argumentis controversiisque regatur. Quod nec fine obsecuritate aliqve collocari, nec fine inductione usus & exemplorum intelligi, nec omnino fine Interpretis opus confilioque perfect potest, ut ego & Huberus & Wyn- gardinus, & quicunque non gaudent insulsâ philiali à communis viâ recedere, fabeuntur; se sine inquam, non modo tempore, continua laboris intentione, fundamentales Institutionum Pandectarumque regulas & rectà rerum, quibus instruxi leges ipsas cum fruendum 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,\(^{48}\) whose universal judgement in this matter is in no way to be scorned. It has already been abundantly ascertained by common experience and report.

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

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\(^{48}\) Cf. p 1 where those sentiments are voiced by Huber.
bene valideque didicisse. Non quod ego, vel quisquam
fanus homo studiosus tum grandi temporis spatio ab iphis
legibus liberilique veteris prudentiae exclusus velimus. Posi-
tiones compendiorum vel imperimis ad hoc comparata sint
oporet, ut indices legum praetent perpetuoque studiosos
ad fontes remittant, ne quicquam de principiis juris crede-
re in animos inducant, nifi quod et Textibus iphis clare fo-
lideque probatum videant. Qui verò in id sedulo incum-
bit, ut summarias positiones illas Artis universae, cum le-
gibus allegatis quotidie conferat easque judicio distinguat me-
morieque infigit, hunc ego non unus alteriusve horæ spa-
tio sed magnà parte diei noctiisque vix possit defungi certus
& expertus sum. Quod velim, habes, Crusi, ad sàlùm
comma tuum, quo me, felicem, insigniuium est iussit; nec
enim me fugit, quid hac de re in invidia facilitatis meæ
fparum sit, quasi auctor fuisse studiosis, bene f habere, fi
vel binas tansve singulis diebus horas studiis privatis meo-
que compendio impenderent. Hac, felicem, est mollis illa
Bökelmanni disciplina, quæ juvenitam affectam fìbi fre-
quentiamque conciliat, ut invidia criminatur. Sic est ratione
mea, Crusi, res hominesque civili considerare & expendede-
re judicio, consilia machinalique adhibere, quibus exitum
cuique negotio convenientem sperare liceat; non morosia
non attinet, infinita, sublimia loci, non quarrere vias
in terris fecundum signa syderum, ubi lapides monumenta-
que ob oculos extant; non inculcare studiosis grandia, mag-
nifica diicta, sed uti casta & inania rebus, denique non Her-
culis cothurnos aptare pueris, quod tu in oratione modo
effusa, si quis unquam alias, fecisse videris; Id agens, ut
qui recenter studiis legum attingunt, mole doctrinæ, quam
portant non posseunt, ut Justiniannus ait, obuanter, repu-
diatis cum supercilium 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 sources⁴⁹; 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 (μετεωρεύω); 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’⁵⁰ since with your arrogance the basic elements of the initial study are swept away. It is these elements which underpin and support the

⁴⁹ Cf. Huber in the address to the students (Praefatio, in fin.) to the Positiones.
⁵⁰ Cf. Constitutio Tanta § 11.
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juvenes suffuti possint graviora & perfectiora scita legum suffecture, ut iterum fanctissimus Cæsar.

Incendebatur Böckelmannus, quando Crusius, Nātu, inquit, in impulso, quod ajunt, junctus excitat, & necio, quo paço, parum aebst, quin Majestatis violatae reum apud Cæsaris tribunal agere me velle videaris. Atque ego, magne compendiorum Patrone non magnorum, non omnìa, quæ de systematibus ventris in animo fuere, simul unoque spirito effusivi; nec omnii, Tu, quæ modo in hanc rem à me dicta sint, repsonfionibus tuis confessi. Conceffi ego, si meministi, Antecessores in Institutionibus explicandis non male facturos, si prima Juris fundamenta per definitiones divisioneque exequerentur; In Pandectis non arbitrabar id expedire. Quod antequam latius prosequeam, non possim silentio præterire, quod Tu compendiariæ Institutioni ventrae speciem Imperatoris æutoritates àe tum jam tertium praebem, quæ paratiæ quæ secundum libros suis componi permiserunt Jústinianus, ventra forent Compendia. Scito, quando fecit in animum inducis, errare tevehementer.

Eundem te potuit Johannes Leunclavius (in proloco de prisco paratitlorum usú ad Collectionem Constitutionum Ecclesiasticarum Balsamonis) qui mentem Jústiniani de ratione docendi Juris per paratitla, docet hanc effe, ut licet, quemvis ad titulum adnotare, quæ aliis in Titulis ac locis illum ad titulum pertinentia requirantur. Hic priscus scriber, germanusque paratitlorum usus. At vero quid ei simile traditum a nosbris paratitlorum hoc exo scripnonibus? ait Leunclavius, quorum tu videlicet errorem fequeris. Idem fāsus à CostaVir solo Cujacio minor (in summaris ad ii. prior. tit. lib. i. decretal) idem Carolus Annibal Fabrottus. (in not. ad d. Conssit. Ecclesiast.) qui Cujacium, quid paratitla sint, ignorâtque non dubitat adfirmare; quod
students ‘so that they can undertake the weightier and more perfect knowledge of the law’, to cite the Emperor yet again.’’

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

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

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

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

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

Aegidius Menagius Vir Cl. ad omnes qui Paratitia scripserunt, extendere non dubitat. Quare definis Imperatorii praecipi auctoritate tam humile institutum, cujus te laudatorem profiteris, docendi jussi est compendiis, extolle re praeconioque non suo exornare. Bene habet, replicare Bokelmannus, quod me cum Budaeo, cum Cujacio, cum tot eruditissimis etiam in ipso genere politioris literatura, hominibus, comparare suftines, in non pudenda infinita, quid paratitia Justiniano significent. Verum si me oppositis in harere non pateris auctoritatibus, ego me tuis nihilis magis obligatum sentio, quominus ipsi meis oculis, quid apud Justinianum paratitia sint, percipiam. Verba Cæfaris haec sunt, Sufficiat, per indices tantummodo & titulorum subtilitatem, quae ¬ ¬ nuncupantur, quaedam admonitoria ejus facere in præf. de concept. Digest. Interdict Imperator commentarios fieri, permittit facere singulorum indices capitum, subtilitatem titulorum, admonitoria quaedam. Nihil me omnia & senilis ipsa communisfallunt, Indices titulorum nihil sunt aliud, quam breves rerum declarationes, quæ singulis capitibus tractantur; neque simplices indicinæ, sed etam admonitoria, quid res singulae sibi velit, idque per subtilitatem verborum, hoc est, tenuem levemque expositionem, quam proprae subtilitatem esse non ignoras. Quo pacto summaria nostra compendiaque melius & expresius degignarentur, expekte dum ratione vel auctoritate probe. imo nec hoc velim obliviscaris, ut haec verba tuis juris fugitivis, hoc est, e fideu remotis, quorum adnotationes paratitia vis esse, tam bene convenire doces, quam nostris ea summariis sive Compendiis, exacte convenire probavi. Quod autem ad vocem ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬ ¬¬
Aegidius Menagius\textsuperscript{54} does not hesitate to extend to all who wrote \textit{paratitla}. And so why do you not cease to extol, on the authority of an imperial order, and embellish with someone else’s commendation, so humble a practice, as teaching law by compendia, which you claim to eulogise?"

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

\textsuperscript{54} Much of this section of the Dialogue (p 20, especially the words in italics) in the 1688 edition is borrowed from Aegidius Menagius (Gilles Ménage) 1613-1692. The citations are taken from Book I, chapter XV, \textit{Quid sint Paratitla} of Menagius’ \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}. 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 Ecclesiasticarum} and Janus à Costa’s (1560-1637) \textit{In Decretales Gregorii IX summariæ 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.

\textsuperscript{55} The reference here is to the \textit{Constitutio Deo Auctore} § 12 the words of which have been reproduced almost verbatim. The same sentiment is expressed, but in slightly different words in \textit{Constitutio Tanta} § 21.
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in non magno discrimine ponam. Ego vero, Crusiun, nullo modo id agebam, ut de vocis hujus notatione litigarem: sed utrovis modo eam interpretari velis, mihi ad rem ipsam progesidi fatus visetur. Nam ille modò intonabas, quando me contempti Caesaris reum peragere velle videbaris. Qua quam ego Te Bökelmane meliore jure, si non hoc torum ineptum est, læx dignitatis Caesaris defere postem. Nam si omnino libellus aliquid primæ institutionis ad inchoandam Juris disciplinam opus est, quæ vos agitat infamia, ut alius compendium queraris, quam Caesar ipse Justinianus composuit & Juventuti sollicitate commendavit? Quis neget, hunc effe contemptum Caesarei instituti, quis neget fieri non posse, quin detrimentum studia tyrnonum capiant, si alius discendus principiis, quam ipsius Jurisprudentiae conditoris, imbuantur? Quid aliud neoterici compendiorum Suaiores & Autores agunt, quam ut publicam Academiam ipsoi'n illo notabili honore, quem Justinianus tam magnifice illis imputat, cum ait, Digni tanto honore tantâque reperti felicitate, ut & initium vobis & finis legum eruditionis, & voce principali procedat? Quan tum vero illud est, quod Studio his loc perversa methodo eripitur, quod qui Justinianum veteresque Juris Autores adiduo legunt, eorum dictâ fententiaque intro familiare redditas, semper & ubique non modo in Scholis, sed etiam in foro laudare & allegare posstant, multo certe luculentius & efficacius quam regulas ilorum compendiorum, quibus fœ vulgus Candidatorum, si diis placet, magnificare solent. Denique, certitudo fententiarum Juris non potest haberis ex hodiernis systematis, cum autores eorum alii ab aliiis ex ā se munitur, & quod ex uno didici, si ad alium te transferas, iterum bene dediscendum sit. Ex adverso, qui folos veteres sectantur, quicquid didicerunt, immutabili auctoritate ad extre-
both meanings.”

CRUSIUS said: “But I was in no way concerned about arguing over the meaning of this word but which ever way you wish it to be understood, it seems to me better to proceed to the actual issue. Just now you sounded off mightily when you were trying to accuse me of denigrating the emperor. Although, if it weren’t completely stupid, I could with more right accuse you, Böckelmann, of insulting the dignity of the emperor. For if there were at all any need for some beginner’s text-book to introduce the study of law, what madness drives you to seek a compendium other than that which the emperor Justinian himself composed and solicitors 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 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 (διὰ διὰ πᾶσῶν) 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 juventutii sollicitae commendavit) and the following passage from ‘what are the modern . . .’ to . . . they trust . . . ’ (Quid aliud neoterici confidunt, p 23, are taken almost verbatim from Oratio IV p 90–91.

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

extremam usque senectam in doctrina scholarum usque fori perseveraturum esse confidunt. Præterea, ex eo, quod Tu ipse confessus & professus es, illa compendiá, stylos scribenda esse brevi atque conciso, fieri non potest, quin eorum, qui talibus adiuvant, ingenium atque oratio sterilitatem & necertio quan contrahant ariditatem, per quan adolescunt, quos maxime decet ubertas & florid dicendi copia, degenerant & corruptantur. Notum est etiam, qui Juris studium feliciter exercere volunt, eos amaranthes historias humanioresque litteras, cum eo conjungere debere, quemadmodum fieri oportere Te ipsum ticio & alias tempore effe retinatur & modo mihi contendenti ulter esse largitum. In tum, Ars ipsa juris ea methodo pervertitur aliumque induit habitation, quam a Juris conditores accept & quam habere debet. Repletur novis Principiiis terminis, ut audent, seminbarbaris atque fictitionibus definitionibus & partitio in systema scholasticum deformatur. Quæ refit, ut studiobis inde ab initio novis immixi fundamentis, in progremfú & in ipsa praxi rationes decidendi non tam ex limpidis antiqui juris fontibus, quam ex lamis & lucinis, e praeceptis regulisque systematicis petere confecerint. Quis non abominetur hos compendiárum fructus & specimina!

Respirante Crusio, Mirari equidem liceat, Crus; respondet Bokelmannus; quod cum ha rationes tibigraves valideque videantur, in primâ oratione tua nihil ejusmodi mifcuris, sed abrupta severitate nihil quam nigrum theta compendiis inuendum putaveris, quo nihil omnium temporum hominumque eruditorum exemplo, judicioque magis adversum poterat fingi. Unum, fateor, adjeceras, quod me fugirefellentem, Indignabundus, si quis omnino compendiis delestaretur, ægrec concessâres, ut ea privatiorem.
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. [A4] Who does not abhor these
consequences and evidence of the use of compendia!

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

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

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

60 The passage from ‘... it is inevitable... ’ to ‘... from the precepts and rules of the systematists’ (fieri
non potest to consueverint) is taken almost verbatim from Onatio IV, p 90.

61 θ (theta) stands for θανατός — death, condemnation, mark of censure. It was used by the Greeks on
their voting tablets as a sign of death.
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tim haberent legentque studiosi, ceterum juxta Pandectas atque in Codice nihil ejusmodi usurparent. Sicut in omni hac disputazione, Curi, pro tuo potius quam pro communi rationis captu differis, ita nihil imprudentius, nihil à discendi docendique juris ordine alienius adfirmari potuit; quam in Institutionum explicatione compendium Artis usu venire posse, in Pandectis & in Codice non esse seerendum. Quis non contra videt, si quis abhorreat à novitiiis sysltematicis, eum quod ad Institutiones attinet, in promptu habere Justiniani compendium, quod Imperato-rem ad hunc ulum parati & prescriptissi juventuti, intel-leximus. In Pandectis autem & in Codice, cum seiret ali-quad esse necessarium, quod femam eorum librorum do-étrinam exhiberet, industriæ Professorum commilit, ut paratilia, id est, singulorum titulorum summarias expositiones (hunc vocis fenium, velis nolis, jam mihi concede-re debes) in ulum discipulorum componentur. Quid autem Te movet, Curi, ut secundum Institutiones methodum finiendi partiendique tandem aliquomodo ferre queas? cre-do, quod intelligis, studiosos fine talibus adjunctis cum fructu in Juris oceano non posse verari, nisi, inquam, no-tiones rerum necessarias & summa doctrinæ reser-sæ praefum-ferint. Si jam in Institutionum libello, quem Cesar publi-cavit, elementa omnium capitum, quæ in Jure tractantur, extant, nihil intercedo, quominus utendum sit tuo consi-lio; atque itatim, ubi Institutiones perceptive fuerint, inte-gros Pandectarum Codicisque libros aggregi & ingenio memoriäque subigere liceat. Quod si facile pars æqua totius Artis in Institutionibus Caesaris intraçta manerit, manife-stum est, earum rerum initia nihilò magis ignorari posse, quam que in Institutionum libellis ab Imperatore collocata sunt. Non exspectabilis, 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\(^6\) (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

\(^6\) See Constitutio Deo auctore § 12. sed sufficiat per indices tantummodo et titulorum supplitatem quandam admonitoria eius facere. (But let it suffice to make notes thereon only by means of indices and explanations of titles.) See further Constitutio Deo Auctor § II, section 2.
25 \textit{Iuris, Dialogus.}

nobilissima difficillimaque \textit{Juris capita sunt, de quibus altum in Institutionibus silentium; Nihil facilis erat, ni super-vacuum & apud homines, quibus hæc in numerato sunt, tædioium foret. Nihil est igitur, quod in instantem Terforius audio; sufficere in usum preparatorie doctrina Institutiones Æ Justinianno reliquias; non sufficiunt, inquam, Sed ad Pandectas intelligendas, ejusmodi libellus æquè neceßarius est. Præterea, inanis columna impingitur meo ad Institutiones compendio, quæst id ageretur, ut juventutem per illud ab ipso Æ Justinianno abduceremus. Nam meum Compendium (non pudet hunc titulum prætere; licet alius speciosius prætexte poßiem) Auditoribus meis alter uti esse non potest, quam si Institutiones Caesaræ juxta eas continue legant eandemque methodum premant; idque tantum abeat, uti contemptus inde juventutì adversus Auctoribus Artis subnàci querat, potius ut ageat corum hominem venerationemque, dunt à dictatis nostris ad eos, tanquam ad Principales auctoritates, continuo remittuntur. Ceterum, hoc mihi Sacratissimi Caesaris manes largientur, id etiam vos mihi, ut dicam, largiœmini, non esse faciendum his diebus, ut methodo, quam ille quondam præscriptit, in omnibus adamœlim præcieæque inæreamus. Nam quod Ille primò omnium voluit, ut nesstudiæ ultra semelæ sæpitium in Institutionibus detineatur, quæso, quam hæc res hodie facultatem haberet. Factor, Institutiones semelæ sæpiæ explicari posse; verum quis veltrum de ingenio memoriaque fuit tantum fiducia conceperit, ut una deambulatione, se argumenta Institutionum ita posse üerint, ut super illud fundamentum totam Digestorum molem adstruere posuisse confidat. Accedit, quod nemo negare potest, expedire studiose, uti mutationes, que universæ Europæ moribus indi-

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most noble and most difficult chapters of law there are, about which there is complete silence in the Institutes. Nothing is easier if it were not unnecessary and boring for men to whom this information is common knowledge.

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

In addition, which no-one can deny, it is necessary to explain to students how the changes which in the customs of all Europe...
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...
have been introduced into the discipline of law are fused into the rules given by Justinian. The satirical comment that 'youths in schools become very stupid because they hear and learn none of those things we have in daily use'\textsuperscript{64} can be applied to no students of the humanities more rightfully than to law students. This argument alone suffices to prove that another manual to be read in the same way and using the same method does not supplant Justinian's \textit{compendium}. Further, it now occurs to me to wonder that before all else in your objections, this method of teaching and learning is accused of lack of sound knowledge in the case of the students. For if, as I may rightly say is the case, I have found by more than one experience, and especially in examining students for the degree of candidate of law, that those who have hurled themselves headlong along a road, different to mine, have been found in seminars and legal dissertations to be so doubtful about, let me not say ignorant of, the foundations of law that they were judged to be worthy of pity rather than to be scorned and reproved because of their different opinions. 

\textit{[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 \textit{Institutes}, should we have to fear not only that the students would become dry and arid\textsuperscript{65} (as, Crusius, your other objection alleged) but (as you wish and as you therefore believe) that we are so enamoured of compendia that we want our first year\textsuperscript{66} law students (\textit{Justiniani novi}) to commence and to conclude all their efforts on them? As a result would there not be the danger that they would abridge and impoverish their spoken and written style on the model of these compendia? But I, for my part, wish that before the students think about the science of law and the compendia thereof, they should so completely train their minds that, by reading good authors and by copying the same and, by the assiduous practice of good style, they should acquire a happiness of expression and a richness of oratorical style so that it becomes a habit with them and finally when they study law and work with these actual compendia I advise them not indeed to relinquish these more elegant writings\textsuperscript{67} completely but to seek in them a relaxation by way of variety in their actual studies.

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

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

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

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

varietate querere studeo. Ade, quod & antea dixi, compendia illa systematum, esse tantum indices, secundum quos textus Juris, quibus nihil uberius, nihil amoenius, inquiri & legi possunt atque etiam omnino debent. Quae ratio facit, ut in Pandectis, inquam, absolutè necessaria sit hæc preparatio paratiilaris, eti nihil Justiniani Institutionibus addere velles; siquidem manifestum eft, non modo univerfam methodum in illis esse difficilèm & obscuratam, verum etiam singulos titulos sine direcione compendii alicuius methodici, neque perdici neque doceri poftè; Quamobrem Caesar ipse difterè voluit, ejus generis indices & summas capitum describi, quas utique breves atque concisas esse debere, negotii ipfius naturâ indicat, nec metuit Imperator illud prætextum corrumpendæ eruditionis & eloquentiae periculum. Ex his credo, jam præsumi poftè, quid ad illam objecitionem, quâ per hanc methodum praedictæ volebas communicationem Juris cum literaturâ humaniori, fit respondendum. Non contineri in hoc genere compendiorum observationes digressionesque Historicas & literarias fatemur, impediri prohiberique negamus; nec unquam effamus hortari studiofos ad hanc conjunctiōnem varie Eruditionis cum Arte Justinianae. Denique, nihil magis de eo laboramus, quod tu etiam, Cruji, præcipue difficultatis loco poneras; siclicet, his neotericis Institutionum imitamentis, non praerere Themidem suam faciem nativam, sed ejus formam cultu advicito corrupi. Profiteor equidem, si per hæc compendia fieret, ut Ars nostra terminis, quos vocant, exotica impleetur licentiaque finiendi partiendoque scholastica in aliam transieret speciem, me tam alienum ab illis futurum, quam cuiquam Themidos amantissimo esse confèntaneum sit. Ideoque curatissime id operam dedi, ne quid tale meo quidem com-

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

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

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

68 This passage from ‘Finally we also nonetheless’ . . . to ‘we see has been done . . . ’(Denique nihilomagis . . . fecisse videmus (p 28) is taken almost verbatim from Oratio IV, p 95.)
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pendio objectari posse, adeò ut religio mihi fuerit, uttas
in eo ponere definitiones aut divisiones, quae non aut è ver-
bis, aut è mente sententiaque legum evidenter colligi po-
sent. Fuit, inquam, religio; nam superstitionem non debui
dicere, qualemuisse futurum egeo quidem arbitror, finihil
estmodi collocare voluisset, nisi quod totidem verbis à
Juviniano veteribusque Iurisconsultis prescriptum esset;
tamen si ignorare non potestis, literatissimos superioris ævi
Doctores, Cujacium, Duarumum, Donellum aliosque Jur-
ris antiqui & intaminati cultores fere filios eosdem inti-
titule viam, quam in nobis tam inquit animadvertitis. Dum,
feliciter, proprietates rerum à veteribus fusè expositas neque
semper in finiendo partiendiique formam redactas succinitis
positionibus enuntiand atque declarant, quod omnium Ar-
tium, quæ ab antiquis ad nos profecte sunt, magnitos se-
cissè videmus.

CRUSIUS; si, quemadmodum Tu, inquit, Bökel-
mannæ, comendii tui utrum studiose commendare te nar-
ras, ita vulgo aut à majori parte haberetur, non erat quod
dispensi quicquam in illis esse fitum existimaremus. Sed
per communia facit te, an non Auditores tui, tam fre-
quenter aquæ notabilia, in illa Compendii disciplinae proram
atque puppis studeorum seuorum collocat, exque conceperit
illos, egregios esse Iurisconsultos arbitrentur, neque de ip-
phis antiquis jurisprudentia libris evolvendis examinandisque
curam ullam fuçipiant, & an non hoc res ad sumnum do-
tirne Iuris:ce detrimentum pertineat, adeoque an imme-
rato compendiarium illud institutum, veluti causa corrupta
jurisprudentia, vituperetur. Quod si Tu, sicut nobis se-
det consilium, devorum Themis juventutem, ad ipsa ve-
tula Artis penetralia deduceres, si exemplo praebres, ipsa
veterni repones commentariam, sicut à Juviniano in
deorni
so much so that it has become a matter of conscience with me to include only such definitions and divisions as can clearly be derived either from the words or from the intention and purport of the law. I say ‘it has been a matter of conscience’ for I ought not to say ‘excessive scruples’. I indeed think it would have been such ‘excessive scruples’ if I had aimed at putting in nothing except what was written in so many words by Justinian and the old jurists; [A6] even although you cannot be unaware that the most liberally educated doctors of the last century, Cujacius, Duarenus and Donellus and other most rigorous teachers of the ancient and undefiled law established the same method which you so unfairly criticise in my case. Namely they state clearly with succinct propositions the peculiar nature of the material which the ancients expounded at length and did not always reduce to the form of defining and partitioning. This we see has been done by those who taught all the subjects which have come to us from antiquity.” [A7]

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

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

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deformi illâ, quam habemus, epitome reliâta sunt, idoneâ metodo legere, examinare, conferre inter se, iliâque immorari, dum plane penetrâque intelligerentur; aut si non præberent se intelligendas, veros sensus emendandi congerituris indagare. Equidem, si quod res est, fateri vis, eo modo, quid amplissimum Jurificultis nomen requireret, & quid ibi deesilet, et si jam vestra compendia tenerent, agnituros esse crediderim; denique, res ipsâ compelleret eos veram proficiendi viam inisse, neque cellare, donec universum jus antiquum in memoriam poteâlatem redegissent; neque nos profero pro Jurificulitibus habereus illeque nomen illud venerabile plôniicûe adscriberemus, qui sèriem quandam definitionem, divisionem illeque adherentes neâcio quas, ac heri nudasse tèrrius natas questiones excipere atque resolvvere possent; ne de alios, qui nec id ipsum didicerint, cum dedecors publici confessione loquar. Enim vero si compendiis abolitis, tam egregium mutati confilii fructum capere liceret, credo, tibi ipsi nullam visum iri cañam, quare nobis ad invenuita illa &cinamena compendia, penitentiamque pulcherrimi confilii, redeundum foret.

BOKELMANNUS: Si nihil aliud à mutatione penitentiaque tueri vos poterit, quam ille speratus succédi, credo fidem praehergio meo constiteram. Quod si potes animum inducere, ut res tibi proponas, sic ut exïtunt, dabo operam, ut intelligas, ërmones tuos abhorretre abùfûciïli, plôniique vel ostentationis esse vel ineptiarum. Quod uerûbi vel saltum hicxe viris Clarissimis persuadeam, necesse erit animadvertermus, quomodo parata, quibus studiis exculta sit juventus, quæ ad persciendam Iuris disciplinam scholas nostras ingreditur, & an ëranis hominibusconfilium videri pollút, eutmodi auditoribus committere fundamenta juris paratiliaria proprio marte difcenda; nihil autem illis
which we do have) and if you were working with them until they are clearly and fully understood; or if, when they proved unintelligible, then you were striving to discover the true meaning by emendation and conjectural readings, indeed, if this is the method you wish to adopt, I would believe that, even if the students still retained your compendia, they would by that method perceive what is required for the most glorious title of Jurisconsult and what they themselves lack. Finally the actual situation would compel them to embark on the true road to accomplishment and not to cease until they had mastered and memorised all the ancient law. Thus we indeed would not regard as jurists and indiscriminately give that venerable name to those who can only state and explain a certain series of definitions and divisions and answer some questions, originating yesterday or the day before which attach to them. Not to speak of the other students who have not even learned that. This is an admission of a public disgrace. For if, once compendia were scrapped, it were allowed to pluck the excellent fruit of a changed curriculum, I am sure even you yourself would see no reason why we should have to return to these unattractive and unpleasant compendia and to regrets for a most beautiful teaching plan.”

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

But so that I may persuade you or at least persuade these professors, it will be necessary that we take note of how the young people are prepared and by what studies they have been educated before they enter our schools in order to take up law studies and whether it can be deemed sensible by reasonable men to give students of this kind the task of studying the foundations of the law, even with paratitla but without any other assistance; and, moreover, to explain to them nothing
30 De Ratione docendi & discendi
exponere, quam ipsa veterum responfa commentariosque, non quæ ex illis facilita, sed obscura, difficilia nodofque continentia vindice dignos. Tu quidem de qualitate humani ingenii nihil humile, nihil infra captum rerum maxima rum præfumis; nec ego naturæ fum accusator: sed ita de felicitate ingeniorum philosophari, ut ocuous animumque non adertas, ad eos, quibus cum res sit, nihil alud est quam splendide nugari. Non est hic locus de miúmerâ eëholarum priæque institutionis consciudine queri, sed hoc palam est, novos JUSTINIANEOS, qui se nobis offerunt, pleroque rudes esse politioris literaturæ, rudes historiae & omnis Antiquitatis, rudes Graece linguae & proprietatis eleganterque Latinæ, ne dicam Philosophiae, præfertim moralis. Nec igitur, quæ te perverfitas agit, ut causam corruptæ Jurisprudentiae, vel studii potius Juridici, (nam ipsam, opinor æque adhuc integram esse quam fué adum) potius non prodideris ignorantiam Romana Graeceque linguae, quam uium preparatoriae institionis. Et quidem de Graeco fermone facis prudenter, quod nullum verbum de ejus peritia in Juris studiis requirendà protulisti, perinde ac si nihil magis quam Svedica aut Laponica dialæctices notitia ad Juridicam Crufin exercendam pertineret. Quod si paulo durius Munkero nostro, hac in parte, Delfis, elementarius Doctor, operam navassès; credo, non minus severè in contemptum Graecarum literarum, quam modo in compendiorum & systematum Auctores invectus fuisses. Nunc auûs es Licinium Rufinum, Ulpiani, Cajii, Pauli fragmenta, Codicumque Theodorianum memorare; Graecum Jus & Basilicos thesauros, è quibus tot tantique valoris cimelia viri Graece docti eruerunt, atque adhuc invettigare possum, tristi, ne dicam pudendo, silentio præteriit. Neque teagnosco, Crus, tam superbum eruditionis vulgate cænorem
but the responses and commentaries of the ancients, not those of them that are comparatively easy but the obscure, the difficult and knotty problems requiring attention. You indeed assume that there is nothing lacking about the quality of human intelligence\textsuperscript{70}, nothing unable to comprehend supreme concepts. Now I do not cavil at nature but to philosophise thus about the fruitfulness of intelligence so that you do not turn your eyes and attention to the actual persons with whom we are concerned, is nothing other than \textit{splendide nugari} [to talk highfaluting nonsense]\textsuperscript{71}. This is not the place to complain about the most wretched condition of our schools and preparatory education but it is quite blatant that these new law students who present themselves to us are generally ignorant of polite literature, ignorant of history and of all the Ancient World, ignorant of the Greek language and of the proper elegance of Latin, to say nothing of philosophy, especially moral philosophy. I do not know what perversity drives you to attribute the reason for the corruption of legal science or rather for the corruption of legal studies (for I reckon the former is still as sound as it ever was) to ignorance of Latin and Greek rather than to the practice of our preparatory education. And indeed you are acting shrewdly with regard to the Greek language, because you said not a word about knowledge of it being required in a law student\textsuperscript{72}, just as if it was no more relevant to legal criticism than a knowledge of Swedish or Lappish dialects. But if after you had been recently created a doctor you had assisted our friend Munker in Delft for a little longer in this regard, I believe you would have inveighed no less severely against the contempt for Greek literature than now you do against the authors of compendia and systems. Now you have dared to mention Licinius Rufus, the fragments of Ulpian, Gaius and Paul and the Theodosian Code, but you passed over in a sad, or should I say a shameful, silence Greek law and the treasure house of the Basilica from which scholars who know Greek, have dug out many jewels of great value and can still discover them. And I do not see you, Crusius, as the proud censor of common knowledge

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

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

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

& exaeque critices, sine tulla Graecarum literarum notitia. Tametii Graecos Jurisconsultos basilicamque paraphrasin contentus sis omittere, vel interpretibus fidere, quod in re critica seimus, quam tum aurque decorum sit; tamen, inquam hujus itudini, quod laudas, profeslio, qua ratione potest alienari ab illa parte Juris Justinianae, quod tum diximus Graec compositum est? denique in antiquis latinitatrum scriptis, quis unquam sine mediocri Graec literatura periti feliciter in exercenda Crishi versatust est, aut Criticum se profiteri sufinuit? Sed mittamus Graec permittamusque non tantum Accursianum, sed etiam criticum pace tua diece- re; Graec sunt, legi non possunt, quoties se nobis obtulerint; vel si criticam ne haefenus quidem omittere placeat, imitemur Illum, qui cum in Ulpiano legisset hae verba, pros epos, fagacitate vere criticæ, monuit legendum esse, sta, pro se poscit. Sed revertamur ad institutum, Contemplare mihi, quefo, Cruft, adolescentes, vix tantum Latine doctos, ut animi sui fensa, quod fatis fit, efferre queant, Philosophia & antiquitatis & Historiae Latinae ignora; adeone te praecorporitus amor inritui tui tenet, ut his cum aliquo fructu eruditissimos & difficillimos antiqui juris commentarios exponi posse flatias? Nofti & experimis, fieri non posse, tum ut corpus Iuris auditibus inibus illustres; obscuriora & ardua quaerere, sine dubio excerpenda sunt, ut digna Interpretis ope, digna publice vocis officio videantur. In his tu adolescentes ita, sicut dixi, preparatos cum valido profecto verlari, siccinne Iureconsultos inde fieri posset credas? Non dices, opinor; sed in tuis auditibus suppleftilem humanioris literaturae prius, credo, requiri. Quid facies igitur illis, qui non habent eam nec adferre posse, quemadmodum decimus quique non repetitur, qui mediocriter, neque centefimus, qui ut debebat, 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 paraphrasing 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 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 pro epos (according to the word) in Ulpian, with his true critical sagacity, recommended that it be read as pro se poscit74 (he demands for himself).

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

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

74 Clearly the great man, whose identity was known to Huber’s readers, (but is not yet known to me) being unable to handle the Greek προς ἐπος = according to the word, read it as Latin pro se poscit and translated accordingly as ‘demands for himself’. Prof J E Spruit suggested to me that the text referred to could be D.11.1.11.5.
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hac parte sit instructus. Non inculeabis tamen illis compendia; domi legant, si velint; Professor altius spiret, Illa figlorum & notarum enigmata, Ille malas interpunctiones emendare ac interpolare, glossas variaque lectiones a textu genuino separare, luxata restituere, viuata sanare, plebeicta atque Senatusconsulta concinnare; fugitiva retrahere locisque suis reddere doceat. Hac enim visagere Professores, haec tradere sectatoribus suis jubes. Mihi vero quid ineptius quid fanis hominibus indignius videri queat, nullo modo apparet; siquidem nec adolescentes ita, sicut diximus, instituti quicquam ex iis rebus percipere, nec si queant, ullus inde fructus ad eos redundare potest. Noli putare, me effe eum, qui spernam vel reprehendam instituti illusiones; sed quod haec a Professorebus doceri vis adolescentes, antequam paratiit totius juris ab illis perceptra fuerat, superat omnem ftultitiam; ignotum dicenti quod res est & scapham, scapham. Nec quisquam fanis ratione preditus iterque potest Anteceisse haec rudibus animis inculcantes, atque eos qui Compendia talibus præcirribunt corruptæ jurisprudentiae eos peragentes. Quid volunt tandem agamus cum iis, qui nihil quam latini sermonis & fenuis communis intellectum habent? ut remittamus eos in scholas atque ad Parentes: an ut definctamus immani sumptu in Academias, ut enigmata, quæ tu dicis? an potius, ut eummodi non nam Juris in illos transferamus, per quam de causis responde re, cive regere consiliis operamque foro navare possint? Atqui hoc est in potestate compendiorum nostrarum; qui illa tenet memoriam, dixit juxta judicium, probare po test legibus, ut nos ducimus Auditores nostros, hi non ineptis præditi ingeniis eae quæ dixi, praebere possunt & feliciter omni die præstant. Non est quod mihi credas adfirms, specta Viros Clarissimos è disciplina mea pro du-
You will not, however, press upon them compendia which they may read at home, if they wish. Let the professor aspire to greater things. Let him teach the riddles of sigla and notae. Let him teach them how to emend and how to interpolate faulty punctuation, to distinguish glosses and variant readings from the genuine text, to restore dislocations and to emend corruptions, to reconcile plebiscites and senatus consulta, to retrieve fugitive texts and restore them to their correct positions. For this is what you wish professors to do, this is what you bid them to hand on to their disciples. But it is in no way clear to me what can be more senseless, what more unworthy of intelligent men. If indeed young men are taught as we have described, they cannot gain anything from this teaching and, if they could, no benefit would redound to them from it. Do not think that I am one who spurns or finds fault with that system of teaching but the fact that you want young students to be taught this by the professors before they have grasped an outline (paratitla) of the law as a whole exceeds all stupidity. With respect, this is the position, I am calling a spade a spade. No-one endowed with any intelligence can accept professors teaching this to immature minds and then accuse of corrupting jurisprudence those who prescribe compendia for these students.

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

75 The Latin idiom Scapham ichapham is from the Greek τὴν σκάφην σκάφην λέγειν (lit. ‘to call a boat a boat’ or, more probably, ‘a tub a tub’). For the spelling ichapham, 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.
33 \textit{Iuris, Dialogus.}

ductos, per omnes Germaniae Belgicæque republicas spar-
fas, & aude negare, \textit{Compendium Institutionem} esse effi-
cacorem ad utilitatem publicam, illa tuorum fìglorum, in-
terpunctiónum & conjecturarum demonstratone. Quam
quidem ego nunquam, ut tu facis de methodo nostrà, con-
tempi, vituperavi; sed, quod toties repeti, sequi debere
paratitkarem \textit{Institutionem}, fèntio, fìadeo, contendo.
Nec credo, quenquam adeo bonus mentis inopem fore, qui
non mihi potius, quam tibi hac parte fidem fit habiturus.
Infare te quidem, atque hoc unum minus incepì, in haerê,
intelligo, postquam illa compendiaria in Academias & Au-
ditoria Juridica introducìa est, juventutem in ea fùbsìntere,
nihil alius siìi proponere, nec ulterior provehere studiorum
suorum curas. \textit{Hoc igitur te quiri, te incusare & exprobra-
re juventutì nostìre, etiam verò Professòribus, si qui Au-
tòres fè taliς focondìx præberent, aportebat; non etiam
detonare contrà, quod nemo sapiens, aut juris prudens o-
mittendum putat, neque contendère \textit{Pandèelas} sine com-
pendio paràtiitlari essè docendas.} Non ignorò, pleròque
Juri dedicò, ut studia & ingenia sit, tantùm temporis in
hac compendiosà totius Juris docèrinà consumere, uti per
fortunas suas integrum illis non fit, alius deinde stadiun in-
gredi novoque curfu de ultimà coronà denuo certare. Quod
profectò non hujus methodì, sed hominin & fèculi esèvit-
tium plù quam manifestum est. \textit{Eoque vires eloquentiæ &}
\textit{auuthoritas veßtræ, Cruòì, intendere debuìtis, ut generosi}
juvenes \textit{perfecto eruditionis amore novaque discedi capi-
ditate inflammanteur; non ut præcipites darentur in cjuìf}
modi laborem, \textit{quo farsà tantum infinitàque lectione me-
roriam impleant; neque præceptis ullis regulisque universis}
\textit{forment frumentque judicì reetùtudinem, quod tanullìs in-
nixum fundamentis vagà legum notitìa diffìluère; suèque}
\textit{p p p}
scattered through all the states of Germany\textsuperscript{76} and the Low Countries, and then
dare to tell me that teaching by compendia is not more productive of public
benefit than the identification of your sigla, punctuation and conjectures. I
indeed have never despised and denigrated your textual criticism as you do
regarding my method but, as I have so often said, I feel, I persuade and I argue
that it ought to follow on after the paratitular method. I do not believe that
anyone can be so lacking in sound understanding that he will trust you rather
than me in this regard.

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

\textsuperscript{76} Cf. Böckelmann Compendium Praefatio sub fin . . . testatum faciunt sexcenti Viri Clarissimi qui in hac
nostra atque celeberrima Germanorum Academia Palatina, mea methodo non infeliciter . . . usi, fuisse praemium
quod Caesar studiis statuit nostris, Republicam sibi servitum 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 Not p 38 ft 13, on Huber’s feelings about an academic career.
De Ratione docendi & discendi

simmet intentione frustrari necece sit. Quod si alterutrum à
Juris studio abeas oporteat, vel criticam subtletatem, vel
summariam universi Juris notitiam, & si facultatem non
haber utraque methodus, quà conjungatur; age, videamus,
utra minore cum incommodo publico adhiberi negligique
possit. Eocompendiis & fyllematibus, ita ut ad nobis propo-
nuntur & explicantur, palam eff, haberi posse jurispruden-
tiam, eo cum fructu copiâque, ut ad cauas agendas, scri-
benda consilia judicandique munus sufficere possit, atque
sufficiat; clarissimis atque vivis exemplis argumentum undi-
que prebentibus. Veltri nullis compendii imbuti univer-
fam quidem Artis scientiam, qua subnixi prompte & expe-
dite in foro hominumque societate verfentur, nonquam
perciuint, &rgutationes quasi &am, observationesque rerum
ad ulium nihil pertinentium, serupulos vulgatum lectioni-
um conjecturâque plerunque superflus movent jacant-
que, & omnino talem sibi doctrinam comparant, que su-
pervacuam alienamque â communis usu vitâque subtilita-
tem, ut tibi verba tua reddam, praerre videatur. Deni-
que, sic ego, sic omnes, qui jurisprudentiam magis in re-
rum gravitate, quam in verborum captatione confuler cre-
dunt in animum inducimus; neminem sine compendiariâ
totius Juris intelligentiâ valide promteque Jurisconsultum
efficient; nec aliter sapientissimos antiquitatis & hujus, &
superioris fæculi Juris Interpretis exitimâque videamus. Quod
si tu hiæce rationibus necdum tibi persuaderi pateris, du-
taxat hoc admitte, singuli ut suo sensu abundant, & sine
detractione, sine convinco quisque bono publico fænulas
manus vocisque miniferum commodet; nec alius cor-
ruptæ jurisprudentiæ, neque compendia primæ institutionis,
ut dispersa juventutis probroœ acceptæ.

Crusiæ: Ego quidem hucuique, ictv volubis, dispu-

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

CRUSIUS replied: "To this point, Böckelmann, I have followed you, as you

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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.)
Juris, Dialogus.

tantem te Bökelmannne conscuitus fum, tametsi plus è ver-
bis meis, quam in is erat, deduxeres. Nam si recte ani-
mum illis advertistis, non id mihi confilium fuistì, colli-
gere potuistis, ut utum compendiorum, fictum à Te, fictum
ab alius homibus claris ulinquatrum, veluti causiam corrupt.e
Eloquentiae traducendam; sed festinationem nihil quam Com-
pendia quaerentium in digendo, nihil aliud in docendo pre-
ferentium infectatus sum. Quid autem? censeo faciamus
ali quando finem hujus atercationis & rogemus Huberum
ut & ille suffragium iuam edere animique fententiam & ex-
perientia exemplum declarate velit; forte an medium al-
quod confilum, periculis seu veris five fictis utrimque va-
cuum, ab illo suppedietetur. Recte; mehercle, regerebat
Bökelmannus: Nisi enim respondingi vices ab illo mihi
commotatas penis intercipere & confumere velim, tem-
pus est, ut desistam; quod eò jam proclivius accidit, quod
tu, latere male tecto, abscedis, & plus in alieno auxilio quam
in propriis viribus fpei collocare videris.

HUBERUS. Ego vero, si plura, de compendiis & sys-
tematibus Juris in medium proferre velle, potò quam vos
in utramque partem copiosaflime hoc argumentum execute
e-fis, mihi ipsi vobisque gravis & inepte verbofus haberer.
Nolite à me aliud expectare, nisi, ut simpliciter expo-
nam; quæ sit ratio methodicum institutionis, quam juventu-
ti, cujus fpei admodum fum, impertior; atque exinde,
quam partem vestra contentionis ego probem vel impro-
bem, si res tanti videtur, colligendum relinquet. Enim-
vero non possum fitis laudare nobilèm Cursì indignationem
adversus pravum fèculi noftrì miorem, festinandi studia ju-
ventutis nihilque is quam Compendiariorum Systematum li-
bellos exponendi. Sed hæc longa querela nulloque bono à
nobis iteranda. Permittite mihi, ut repetitum 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, but I was inveighing against the superficiality of those who look for nothing other than compendia in learning and those who prescribe nothing other than compendia in teaching. What then? I think that we should now make an end to this argument and ask Huber if he would be pleased to cast his vote and tell us what he thinks and what he has found by experience and perhaps whether some compromise solution, free from the dangers, whether real or imagined on both sides, can be supplied by him.”

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

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

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

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

porum memoriam, diversas docendi discendi rationes vobiscum recensem, atque exinde, quomodo ad hanc methodum, quae nunc utimur, perventum sit, denique ex omnium viarum comparatione, quae praetentissima sit, animadvertamus. Primo omnium ante Justini tempora, ut ipse narrat, cum ad studium iuris abiolvendum quadruplum omnino definitum esset, ita ulius ferret, ut 6 vices centesim versus millibus, in quos libri de jure scripti, erant distincti, studiofis vix rexaginta millia proponentur, reliquis omnibus tanquam ab usu remotis, penitus neglectis, atque ex illo ipso Compendio, adhuc non pauca velut superflua praeberantur, quod erat Compendium Compendii. Imperator deinde novum iuris epitome ex duobus librorum millibus composita, methodum studendi hoc modo dispersit, ut omnium fiorum librorum institutio quinquenni spatio absolveretur, initio ab Institutionum libellis facto, monitoque, ut ad reliquos libros paratitla quidem praecipuerentur, vel ipse leges è latino in Graecum esse mereas verte rentur, commentarios autem facere ne licet Postea Caesar Leo Philosophus Compendii Justiniastic Deus itid breviarium, in quo selectas leges & Constitutiones è corpore Justini vertit in Graecum fermonem, eti non ubique tam religioso observerat, quam Justiniasticus volue rat. Atque ex hoc basilico Compendio, latis amplis tamen, rursum idem Leo fecit epitemum, opus meris definitionibus & regulis coftans, prater alia, five manualia, quae Constantinus Harmonopus, Michael Attalot, Michael Psellus, Antiochus Balzamon aliquae plures in notitiam Basilicorum à Suaregio recensi, ipsi quoque rursum Leo nis filius Imperator Constantinus Porphyrogennetes publicaverunt, licet & peculiar Compendium Novellarum edidit Julius Patricius Excönfl & Anteexcell Constantin...
A Dialogue on the Method of Teaching and Learning Law

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to review with you the various different methods of teaching and learning law and then, how we arrived at the method that we now use and finally, from a comparison of all ways, we shall see which is the best.

First of all, before the time of Justinian, as he himself tells us, when a period of four years was absolutely the limit for completing the study of law, it was customary that of the two million lines comprising the books written on law, scarcely 60,000 were put before the students, all the rest being as it were remote from practice, completely neglected and, even from that abridgement, quite a number were still passed over as being unnecessary. This was a compendium of a compendium. Then the Emperor, having composed a new epitome of the law from the 2,000 books, divided the curriculum of study in the following way, namely that the teaching of all his books should be completed in a period of five years, a beginning being made with the books of the Institutes, with the qualification that of the remaining books, paratitla would be composed, or the actual laws would be turned from Latin into Greek κατὰ ποδας (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 ποδας (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 Harmonopulus, Michael Attaliota, Michael Psellus, Antiochus Balsamon and several others mentioned by Suarez in his Notitia Basilicorum as well as by Leo's son, the Emperor Constantine Porphyrogenitus. So too Julius Patricius, the ex-consul and professor at Constantinople, produced a special compendium of the Novellae.

80 Cf. Constitutio Omnem § 1 passim.
81 Cf. Constitutio Omnem, 1. ex tanta legum multitudine, quae in librorum quidem duo milia, versuum autem tricies centena extendebatur, nihil aliud nisi sex tantum modo libros a voce magistra studiosi accepit. The Latin text wrongly reads tricies centena for tricies centena.
Iuris, Dialogus.

dopolitanus; è quibus omnibus fats constat, que fuerit
inde a tempore Justiniani veterum Graecorum ratio docen-
di discernique Juris; videlicet, incipere a Compendiis, at-
quae exinde ad Excerpta basilicae, denique progradi ad uni-
versum corpus Justiniani: nec eòs ita exstitisse, dispensa-
dium id esse doctrina juridica, si nò quibus quaedam ès
archetypa sustinent et subsequi statuta subiecta, verba sunt Harmenopuli,
si pulchriora, et utiliora maximeque necessaria in librom-
uali coligerent. Imo patens ex codem Harmenopulo cate-
risique superfinitibus, id eos egoisse, uti, quod a tempore Ju-
stiniani ad suam ætatem plus annis quingentis evenerant
mutationes additionisque legalis disciplinarum, earum in suis
epitomis notitiam studiósque impertirentur. Quod rursus ve-
lim observari advererus eòs, qui his diebus Artem Juris con-
taminari violaque clamitant, si quando aliquid hodiernis
Juris manualibus è moribus institutiisque sequentium tem-
porum miseri adjungique fentiant. Græci Imperatores,
& Jurisconsulti, utcumque sucesores Justiniani in eodem
Imperio, minime religioni duxerunt, Illius Jurisprudentiam
ad usum sibi temporis accommodare; ineptóque fè fore cre-
diderunt, si compendia & manualia fût, quibus adolescen-
tibus summas Juris positiones tradebant, periende compa-
suiissent, ac si Justinianus adhuc viviter nihilque ab ès
ætate sui fuit innovatum. Nos vero pont alios sexcentos &
quod excedit annos, extinço Justiniani Imperio, qui jus
èjus haud alterum, quam ad luxuriae leges domesticas
cujusque populi recepimus, non audebimus juventuti no-
fitiae manualis praєribere, in quibus eòs admoneramus,
quid de jure vetusto moribus hodiernis obverbetur aut foci-
cus? Sed pergamus. Dum ita Græci Juris scientiam suis
moribus & institutis aptatam excelebant, in Occid. at hum
Imperio leges Romanæ exulabant & ignorabant; donec:

\[ \text{Pppp3} \]
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 χρειώντι τε καὶ ανεμετάπτατα συντεμόντες ἐν προχείρῳ βιβλῳ συντάτοιεν (if they were to collect the more noble texts, the more useful and especially the essentials in a manual). Indeed, it is clear from that same Harmenopulus and from the other writers who survive that they did so in order that they might share with their students by means of their epitomes the knowledge of the changes and additions to the legal discipline which had come about from the time of Justinian to their own age – a period of more than 500 years. Again, I would like people to be on guard against those who clamour that these days the knowledge of law is being contaminated and violated whenever they see that something from later times has been included and added to present day legal manuals. The Greek emperors and jurists, as being in one way or another the successors to Justinian in the same empire, thought it in no ways disrespectful to adapt his jurisprudence to the needs of their own time, and they would have thought that they were being absurd if they had composed the compendia and manuals from which they taught young people the propositions of law as if Justinian were still alive and as if nothing new had been introduced since his day. But now, forsooth, after another six hundred or more years, and after Justinian’s empire has ceased to exist, shall we who received his law only to supplement the indigenous law of our various peoples, not dare to prescribe for our young students manuals in which we inform them what of the ancient law is or is not observed in present day customs?

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

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

Lothario Saxone Imperatore, quasi postliminio studium ejus infauraretur. In his initiis, prima quidem ingeniorum occupatio fuit eaque sola libri Justiniani evolvere, dare operam, ut intelligenterunt, diversos libros legesque inter se conferre, diffidentia conciliare, posterioresque cum prioribus conjungere; cujus rei specimen Irenius in Excerptis Autenticis per Codicem spargendis audax & nobile dedit. Secundum haec principia progresse sunt homines studiosi ad proponendas Auditoribus suis Summas, ut loquebantur haud abbreviè, librorum Juris, quæ nihil aliud fuere, quam paratitla, quæ Justinianus appellat græce corrupto vocabulo, idque potissimum ad Institutiones atque Codicem, ut Placentinus & Azo præverunt. Ita enim eximiamabant, Codicem potius quam Pandælas iis, qui Institutiones perceperant, effe praegendorum, quia recentius in illo jus est usque in foro certioris & frequentioris, quæ gratia Novellarum argumenta singulis in Codice Rubricis Irenius ille subjecerat; quod illorum institutum ad formandos judices causa-rumque Patronos, id est, validos Iurisconsultos, non erat, ut magnopere improbaretur, utcumque deinceps aliter viùm fuerit potenterati. Juxta summas pro tyronibus Artis, in ulum provedissorum scribant glossas, quæ sunt breves interpretationes legum, secundum ordinem verborum, in quo genere facile principem locum tenuit Accursius. Fueræ, qui intentiores praefalibus cura jus Romanum flereoret ad trituram fœrentem, cujus rei praecipuus Autorum Durandus ille, dicteus pater Prætice, laudatur. Poetae cum glossan-di materia consumptam summarumque fatis effe videreetur, fecuti Interpretes ingenti apparatu ad commentarios in omnes juris libros legesque scribendos se contulerunt; speri-jam repudiaturo Justiniani præcepto, quod priores, summas atque glossas contenti, cum illa Cesariis edicto exácte con-
Saxon was emperor, the study of it was restored as if by right of postliminium and it resumed its former position. At the beginning, the first object of talented men was to read only the books of Justinian and to make every effort to understand them, to compare the various books and fragments one with another, to reconcile contradictions and to join the later with the earlier. Irnerius, in his extracts, the Authenticae, scattered through the Codex, gave a bold and splendid example of such work. In accordance with these principles learned scholars moved on to expounding to their classes Summae of the law books as they not illogically called them. These were nothing other than paratitla, as Justinian called them, an unfortunate translation from the Greek, and these were given chiefly on the Institutes and the Codex as Placentinus and Azo had done previously. For they used to say that the Codex rather than the Pandects ought to be taught to those who had mastered the Institutes, because the law in the Codex is more recent and of more certain and more frequent use in court. It was because of this that the famous Irnerius had subjoined the appropriate extracts [Authenticae] from the Novels to the individual rubrics in the Codex.

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

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

congruerent; hæ tam modice ab eo recedebant, ut auctori-
tatem ejus comiter industriique eufodire velle viderentur. 
Sed commentandi signum imprimit extulere Barbolus de 
Saxoferrato & Baldus de Ubaldis; aque exinde copia enor-
mis confiliorum, responsorum omnilque generis commen-
tariorum jurisprudentiam, ad veterem, que fuerat ante 
Julianum, incertitudinem, dubitationem confusionem-
que, fuit ipse praedixerat Cesar, reduxit atque deforma-
vit; ut non minus ad communes Doctorum sententias quam 
ad ipsos fontes legum consilia sententiaeque exigerentur. 
His temporibus iuventus ad studium Juris accedebat, im-
buta, si forte, Philosophiæ scholarum, illâ spinosâ & inci-
vili, à notitia utriusque literaturæ & antiquitatis alienis-
mâ; nec alia ratio Juris studio conlivare potuit, uisque dum 
superiori seculo humanioris literaturæ lux e tenebris igno-
rantiae barbariae emerit. Ab eo tempore cum novam fa-
ciem induit universa Jurisprudentia, tum ratio quoque do-
cendi atque diffendi juris alia planeque nova invaluit, ne-
que tamen ea sine alia quâ varietate. Videntur omnino Ju-
ris Interpretes, qui literas politiores cum Juris scientia con-
junxerunt, duorum fuistè generum. Quidam intra folos 
Juris Romani limites fæ continuere nihilque alius agere vo-
lucere, quam ut libros à Justiniano reliùos illufrarent aut 
emendarent. Alii faciendum putarunt, ut intelligentiam 
Juris antiqui cum tua nostrâ seculi peritiatque forensi conjun-
gerent. Prioress inter, familiam duxerè Cujacius, Duau-
renus, Donius. Inter posteriores excelluerè Zalus, 
Alciatus, Vigilius; ex ingenti numero Triumviro edidit-
fe fatis eff. Sunt etiam, fuit nostris, qui non tam jus, id 
eff, scientiam boni & æquità, quam antiquitates & Philolo-
gicas observationes libris Iulianæ adperflerunt quales An-
tonius Augustinus, Budæus atque Ravardus. 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 commenting and from then on an enormous flood of *consilia, responsa* and all kinds of commentaries reduced and debased jurisprudence to the ancient, pre-Justinianic state of uncertainty, doubt and confusion, just as the Emperor had himself predicted. As a result, *consilia* and opinions related as much to the *communs 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 Raervardus. All these

\[86\] See D.1.1 pr. and D.1.1.1.1.
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inter alias industria sue partes operam Arti utilissimam na-
varunt, emendando corrupta Juris antiqua loca; quod tamen
neminem cum aliquo laudis succèsu videmus aggressum,
quam qui copiam librorum veterum, maxime Florentini
Pandectæ habuissent, aut ubi coniecturis utendum videre-
tur, qui longo docendi scribendique usu literarique tam Gra-
cis quam Latiniis culti famam autóritatemque insignem
adepi forent, non ignoro fieri potuisse & aliquando conti-
gilē, uti qui neutram horum subsidiorum facultatem habe-
rent, tamen felici quodam conjecturà nodum alicujus loci
detexissent atque solviissent: cujus rei spectem Dominicus
Baudius Jurisconsultus minimè equidem Validus; dedit,
quando Grotius ab eo monitum fœ fatetur, apud Ulpiannum
Inf. 1. §. 45. non. Unde Vi. pro passides, legendum est: posse-
dit: præter quem locum ego non admodum recordor, Gro-
tium in lectionis receptæ mutationibus, quævoluisse lauræm;
tamen illam doctrine partem merito inter gravissima Juris
consulti officia reputaret

Hoc faciant, adolens Themidis Cujacii aris,
Ingentique bono nominata Fabri

canet ipse, cum juvenis suos flores adipserget Infiniae-
no, sic ut olim Aelius eius, ut refert Plutarchus, magistro
predicante, sê corrigendo Homero parem effœ, Ne tu,
igitur feultus, inquit, es, qui advoc schola des operam.
Res enim est manifesta, neminem hanc studii partem in
quâque disciplinâ profiteri posse, qui non omnibus nume-
ris in ea fit exactus & abolitus, judicowque multa lectione
continuâque tracßatione rerum, in quibus veràtatur, subæcto
limatoque: si quidem non modo callere, sed etiam judica-
re sunt Artem, & probare, quod ab Artis tuae conditori-
bus extat relietum, fine dubio ad famum, ut auóriti-
tatis, ita scientiæ peritieque faütigium pertingit. Unum
in-
scholars, in addition to the other facets of their industry, with zeal and diligence accomplished a task, most beneficial to our subject, namely the emending of corrupt texts of the ancient law. However, we see that no-one has embarked on this task with some degree of success except those who had at hand a number of the old texts, especially the Florentine *Pandects* 87, or who, when they decided to use conjecture, had acquired an outstanding reputation and authority in both Greek and Latin literature from long training and practice in teaching and writing. I am not unaware that it could happen and sometimes has happened that those who had expertise in neither of these skills, nevertheless by a happy conjecture, had identified and solved the knot in some text. An example of this is provided by Dominicus Baudius, a rather second-rate jurist. Grotius admits that he was advised by him, that in Ulpian’s text in D.43.16.1.45 *possedit* should be read for *possides* 88 (sic). Apart from this instance, I do not recollect at all that Grotius 89 sought to make his name by changing the received reading, even although he thought that this aspect of teaching is rightly one of the most important duties of a jurist: ‘Let others do this, Cujacius, worshipping at the altars of Themis. And the Fabers, names destined for great fame’.

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

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87 The Florentine was notoriously difficult to access. For a discussion of the texts available, see Stolte Brenkman p 73 ff.

88 The 1684 text, p 70, reads *pro possidet legendum esse possedit*, as does the 1696 edition (p 612) and the Buder edition (p 76). The 1688 *possides* is a misprint for *possedit*. On his debt to Baudius Grotius wrote p 178: Line 1 *Nec alius dejici visus est, quam qui possidet. Lege possedit . . .* (omits 9 lines) *Non ali utrum quom e qui possidet, interdixit unde vi competere. Legendum possedit, atque id olim annotavi suggerente Baudio.* (Nor does anyone appear to be deprived of possession except he who is in possession. . . . The Interdict *Unde vi* is available only to him who is in possession. At the suggestion of Baudius I formerly noted that *possedit* (he is in possession) must be read.)

89 The 1684 text, p 70, reads: *praeiter quam locum non notor Grotium in universa florum sparsione ad omnes Justiniani libros, ulam lectionem ab omnibus receptae mutationem, atque eam qui possidet, atque id olim annotavi suggerente Baudio.* (apart from this one instance I do not recollect that Grotius in his *Florum Spario* on all the books of Justinian, made any change to the reading received by all, although he considered that aspect of teaching is rightly one of the most important duties of jurists). The two lines cited above appear in G.C. Gebauer’s Preface to Grotius’ *Florum Spario ad jus Justinianeum* (Naples, 1777), (and are part of ten lines composed by Grotius).

90 See Plutarch’s *Achibades*, § 7.
Iuris, Dialogus.

intelligo Antonium Fabrum ad hoc institutum se contulisse naturam, annos viginti quattuor, neque manuscriptis intru citizens, nec etiam magnopere subnimum collatione veterem monumentorum, quae lectionis suum tempore recepta fidelis facere potuerint. Enimvero non adfectior Bachovio, qui cum elementer loquitur, eum appellat hominem corrupte jurisprudentiae naturam; tametsi Wissenbachius nother hoc nimir avide convitum arripuerit, auditoresque fuos a lectione conjecturarum ejus graviter dehortari fit solitus. Id tamen exstimo, emendationes ejus esse plerisque non necessarias, atque ita comparatas, ut ab alius, sic ut ipse fateatur in praefatione sua, refelli non nequeant. In hac autem ego sum hæresi & liberti, in fluctuationibus juridicis esse duas færas anchoras, quibus non sit utendum, nisi extremæ necessitate cogente: sunt autem hæ meo judicio, confessione antiquissimæ & mutatione lectionis Florentiæ. Sunt qui hodie modos tollendi difficultates legum appellant viam Regiam; sed quibus Artis fuerint honores & integritas cordis exreque est, non poñunt aliter arbitrari, quam hane esse viam militiarem solvendi nodos gladio, decus autem Artis profutuendi luidibrio & ipsam dilacerandi. Nimis hæc acerba dicta Cruvii auribus accidabant, quam ut diutius ea silenti tranfigiterem poñeret. Atqui ego, mi Hubere, modo non auderebas praesumere, ait, quod nimir aperte jam proferis, esse te adverso animo ab illa parte studii, quod in a renatis literis verae jurisprudentiae delicias fecit, & clarissima nomina superioris seculi externa posteritate admirati conseravit. Imo vero, replicaat ille nemo praecarios de illo genere, nemò magnificiutius de auctorisibus, quorum tu laudem demonstras sentit. Ita enim exstimo & semper arbitratus sum, Professionem studii Juris critici, quod in emendandis mutandisque legum dictis confìnit (ita ut imur verbo) habendum esse profìigio & quasq

Q q q q
Antonius Faber, at the age of 24, betook himself to this study. He did not have manuscripts nor did he rely greatly on the comparison of ancient texts which could support the received readings of his day.⁹¹

To be sure, I do not agree with Bachovius⁹² who, when speaking quite mildly, called Faber ‘a man born to corrupt jurisprudence’, even although our Wissenbach seized upon this excessively heated controversy and used to seriously discourage his students from the reading of Faber’s conjectures. However, I do think that Faber’s emendations are generally unnecessary and such that they cannot fail to be refuted by others, as he himself states in his preface⁹³. In this regard, however, I am of that school of thought, and εὐχω ἐναι (and I gladly boast that I am), that in legal questions of doubt there are two sacred anchors which are not to be touched except in dire necessity. These are, in my opinion, the admission of an antinomy and the alteration of a reading in the Florentina. There are those who call this method of removing difficulties in the law the Royal Way (Via Regia)⁹⁴, but those to whom the honour and integrity of their subject is a care close to the heart, can only think that this is the Military Way (Via Militaris) of cutting knots with a sword⁹⁵ and moreover making the glory of our subject into a laughing stock by dishonouring and tearing it apart."

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

“No, truly”, replied HUBER, “no one feels more sublimely about that scholarship, no one feels more generously about the authors whose praiseworthy achievements you are describing than I do.⁹⁶ For I think and I always have thought that the profession of the critical study of law which consists, as we say, in the emending and changing of the words of the fragments must be regarded as the peak and,

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

⁹² See Bachovius in Rationalia Fabri. In his Ad lectorem Bachovius launches a vigorous attack on Faber, lambasting both his De erenbus pragmaticorum and his Rationalia.

⁹³ Van den Bergh Noodt, p 140 ff 89 writes that Huber’s remark Id tamen existimo, emendationes eius esse plerique non necessarias atque ita comparatas ut ab altis, sicut ipse faetetur in praefatione sua refelli non nequeant, is directed at Noodt’s comment in the Praefatio to Book I of his Probabilia (1674). Probabilia quippe edere instituti opiniones, non dare decreta, nec definire quae sunt ambigua sed quid mihi videatur verismilium enarrare. (My intention is to give plausible opinions, not decrees, not to determine what is ambiguous, but only to explain what seems plausible to me. Transl. van den Bergh.) However, here it seems that van den Bergh is overprotecting Noodt. It is clear from the context (1688, p 41) that Huber is attacking A. Faber. See Faber’s Conjectura (Epistula) as cited in ft 82.

⁹⁴ See Commentary Chapter V.1.3.1 on Roads.

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

⁹⁶ For more on Huber’s attitude to textual criticism see Digestiones, 2.1.24, p 549 ff.
42 De Ratione docendi & discendi
quasi complemento doctrinae legalis, fere, sicut Censura fuit habita, respectu Magistratuum Romanorum. Sed ut optima quaedam pella modo corrumpuntur, ita nihil exi-tiofius artis iuridicae, quam terneritas & luxuria Critisus esse mihi videtur. Nam reliqua docendi vitia, sive in methodo praeposenter, sive in conciliandi pigritia, sive in ipfa senten-tiariam perveritate confitant, iplos Artis libros intaetos re-linquunt, Critica male exercita leges ipfas corruipit & fa-crum Juris corpus violat ac imminuit. Ne vero hujusmodi infinita oratione praestantissimum institutum maligne a me putes arrodi, dicam, quod pace tua fiat, quid in vestro, Crusi, instituto potissimum mihi diplecat. Primum atque precipuum id elle puta, quod occupavi dicere, vos prima docendi juris rudimenta ponere in emendationibus, nec aliam credere januam famae patere, quam si receptas probatque ab antiquissimus codicibus lectiones folicietetis ac in-vertatis. Tamefis quid ego de antiquis Codicibus loquar, cum satis confict, non habere nos alium antiquitatis venerazione commendatum, de Pandectis saltum, nisi quod ex-tat, Florentiae, vos, inquam, adolefcentum, qui sese commitunt, initia talibus conjecturis earumque subtilissimi probationibus occupatis, antequam terminos & regulas artis univerol methodicae institutione, quam penitus improbati, perceperint, quae re nihil inutilis & a vera docendi discendique ratione alienius esse potest. Ex quorum genere non eft mirum nasci tales Juris criticos, quales illud vetus dixum notat, emendandis legibus neminem se dedere, nisi qui de legibus nihil intelligat; quod equidem si de omnibus, qui in hac provinciis lauramque averterint, interpretari sint, injurium fallumque esse non negaverim. Enumvero, si quis in indagandis legum fensibus eiusmodi quid reperiat, quae temulentum sed elegantis ingenii BAUDIO occurrit, in laudato modo
as it were, the fulfilment of legal learning, almost like the office of Censor with regard to the Roman magistrates. But as all excellence is corrupted by excess, so nothing seems to me to be more pernicious for legal science than the temerity and excess of a critic. For the other faults in teaching whether they consist in a disorganised order, or a sloppy co-ordination of legal texts or in actually wrong opinions, leave the actual books of the law untouched. Criticism, badly applied, destroys the actual laws, violates and diminishes the sacred body of the law. Lest you should think that a most outstanding practice is being spitefully sniped at by me in a vague speech of this kind, let me say, with your permission, Crusius, what particularly displeases me in your practice. Consider that, first and foremost, is what I have been busy stating, namely that you begin teaching the first elements of law by making emendations and that you believe that the only door open to fame is if you disturb and upset the readings received and supported by the oldest manuscripts. Irrespective of what I say about the old manuscripts generally it is agreed that, at least regarding the Pandects, we do not have anything else endorsed by the authority of antiquity other than what exists in Florence.†

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

\[*†\] Tametsi quid... Florentiae.

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

98 D.43.16.1-43. See p 40.
modo Ulpiani repromò, bene se res habet & feliciter! acclamabimus. Nec minus si quid simile vobis hæredit, applaudemus & gratulabimur. Ipse quoque non minus gratanter, vobiscum, si quid occurrat ejus generis, communicaturi.

Tu vero, (interrumpere Cursus) fatis infulenter, dum præ te fers admirationem. Crisós, utum ejus & studiosos auctoresque nimirum spermanter babes, ut nec beneficiun in Artem, quod fatere, collatum, sine convitio emendatoris commorare poteris. Mi Crusi; Huberus subrident; noli in te diētum putare post nubiam, quod de Baudio minime profecto nara

excidit: etsi tu quoque, sic noti sumus inter nos, gaudet haec parte morum prius Catonis, quam toties sibi Baudius ultero apud amicos adderit. Sed nec ego Baudii contumeliam neque tuam, facillime Crusi, quæstio, magis in conspectu habui, quam quod ab aliis fæte notatum est, ejusmodi lucis ingeniorum, felicioresque divinationes & amena crisós libentius inter pocula vel à poculis, quam inter occupationes sucedere concatenatas. Forsitan inde contra, eum est, quod mihi sic potius animo fæder, libros juris evolvere, ut inde regulas & exemplarum agendarum colligam, imitarique cupiam Antonii Mornacii inter alios multos institutum, qui rarum erat in Doctoribus Accuriosis & Bartoliśsis, rarus in novitiis Interpretibus communibusque fententiosis inter se comparandis; sed etsi Juris corpori incumbarat, ipsas leges memoriam judicioque fubigebat, & tamen idem rarus in emendationibus censureaque juris antiquum; unam hanc, pulcherrimamque facultatem acquisivere, quibuslibet factorum speciebus applicare textus legum; exacte singulis convenientes, omniaque ad usum humanae societatis referre; neque minus tamen idem eloquentià omnone literarum cultu excellebat, suæque scripta talibus ubi-

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

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

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

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

*Nee minus . . . concatenatas

99 On μητι χολωθης see Homer Iliad IX.33. ἢ θεμίς εστιν. ὡς, ἡγηματ. σο το μη τι χολωθης. (My lord, this is the right of the assembly. Do not be angry.) Diomedes (Huber) is here criticising Agamemnon (Crisius) and claiming the right of the agora to speak his mind. Agamemnon must not be angry. Diomedes says he opposes Agamemnon’s (Crisius) foolish actions Αρειδη σοι πρώτα μουχασωμεν αξιωδοτην, but has the right to speak his mind.
De Ratione docendi & discendi

que decoravit elogis. Nifi me vehementer opinio fallit, haec ratione Jurisconsulti officium melius impletur, quam perpetuis finemque contrendendi non habentibus emendandi coniecturis. Maxime, quando ita conjecturalis illa Crinis exercentur, ut propriae opiniones vestras de juris controversiae adiuverit, rationisque adversarii usque ad vitam legum argumenta refellatur; quod quidem loco secundo animadvertere cupiebam. Nam si toleranda sine manucripitis est emendandi licentia, duntaxat tam evidens esse deber, ut minus facile refelli quam adhuc & approbari posset: quod de talibus, quae tuendis opinionibus, in quibus Interpretis discrepant, adhibentur, nullo modo licet affirmare; cujus rei luculenta specimena dedit Antonius Faber, dantur hodieque similia. Constituimus inde ab initio de singularibus inter nos discrepantiosis haud agere; quamquam tua de articulo sed Lege 101. ex de verb. obl. sententia, pro obligari legendum esse obligare, huic loco nimis pulchre conveniet. Vidimus & Salmasium de mutuo cum Jurisconsultis disputantem eodem genere pugnandi usum; neque dubium, quin haec licentia invaleat, quilibet Artis imperitiissimus idem jus sibi in Infiniam, quod in alios suas notitias scriptores exercerent, brevis et arrogaturus. Quid dicas, anticipes celebratissere diversissimorum sententias et partes rapi! aperta via est & patula porta, quam videmus, adscribendi conditionibus Artis sententias ab eque bonoque alienis illustras, Républicæ infeutas plane sequi nostræs. Dicam, & emendandi facro artificio distantie faciam Jurisconsultos, nullam cedem mortis penæ multitudinem esse, nisi quæ more latronis alto confilio animique prædestinatione commissa fuerit; in rixâ quæ fiant homicidiam, subitus animi motibus, eti cum cultro, sicca, gladio extra ordinem leniorem, quam capitis supplicio adficiendi. Ergo fas sit, Lapithas & Centauros convivia fortuitis rixis &
[classical] expressions. Unless I am very wrong, by this method he fulfilled his duties as jurist better than by continuously and never-endingly disputing about conjectural emendations, especially when that conjectured decision is exercised in such a way as to support your own opinions on some legal controversy, and refute the reasoning of those who oppose you and any contrary legal arguments. This indeed I wanted to note in the second\textsuperscript{100} place. For if the freedom to emend without manuscripts is to be allowed, the emendation ought to be at least so patent that it can less easily be refuted than it can be constructed and approved. It is in no way permissible to approve this regarding those texts which are used in defending opinions where the interpreters differ. Antonius Faber provided splendid examples of this and similar examples are provided today. We decided from the beginning not to argue about individual points where we differ. However, your opinion regarding fragment, or \textit{lex}, D.45.1.101\textsuperscript{101}, that one should read \textit{obligare} for \textit{obligari}, illustrates this argument exceedingly well. We also see that Salmasius when disputing with the jurists on \textit{mutuum} (the loan for consumption) used the same kind of attack and there is no doubt that, if this freedom becomes established, each and every one, however ignorant of legal science, will soon arrogate to himself the same right regarding Justinian as writers of his acquaintance exercise with regard to others. What I am saying is that the numerous uncertain opinions are being torn this way and that by different writers. As we see the road is open and the gate wide to ascribe to the founders of the legal science opinions which are most inimical to the fair and the good\textsuperscript{102} (\textit{aequum et bonum}), detrimental to the State and clearly (\textit{ἀθεμικός}) contrary to the spirit of law.

Shall I speak thus and shall I produce jurists teaching, by means of this sacred craft of emending, that no killing is to be punished with death except that which has been committed in the manner of a robber, with serious intent and mental determination?\textsuperscript{103} And that in a brawl that develops into a killing, from sudden access of passions, even although committed with a knife, dagger or sword, is the punishment to be inflicted \textit{extra-ordinem} and be one less severe than capital punishment? Therefore, let it be right for the Lapiths and Centaurs, without fear of death, to celebrate banquets bloody with chance brawls\textsuperscript{104}.

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

\textsuperscript{101} See D.45.1.101. \textit{Modestinus libro quarto de praescriptionibus. Puberes sine curatoribus possunt ex stipulatu obligari.} (Those over the age of puberty can be bound in terms of a stipulation without the intervention of their tutors.) This emendation appeared in Crusius’ posthumous \textit{Dissertatio ad constitutionem Divi Marii de caratibus minus quam quingenti 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{Dispunct.} 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.
Iuris, Dialogus.

& promiscua cæde cruentata fine metu mortis celebrat: qui rapido furore fodalium sanguinem duellis haurient, nihil amplius ulterem gladium metuent. Quin tu, si ituc alius prætextu critice æutoritatis obtinebit, aliunde probes, ordinaria furti poenà eximendos, qui subitæ cupiditate acceñi res alienas abstulerunt: Qui matrem familias alienam Improvisá libidine motus corrupt, eum experssæ legis Julia sanctione non teneri: neque Textus deerunt, quibus mutatis lectionibus hæcaliaque posuisse evincent, sup Lex Cornelia violentis hominum affectibus coque violentioribus, quia subitis, in atrocissimi criminis temeritate ignoceit, aut, si hæc sententia fagacitate criticæ legibus inferri potest.

Nescio, ad illæ CRUSIUS, quorùm hæc ultima spectant, nec imaginari possum, quis ad habiliendam opinionem, ut mihi videtur, inauditam, articulum illum veteris Jurisprudentiae vellet immutatum. Possè equidem singularibus & exquisitis perfônarum rixarumque circumfantis judici mitiganda poenæ causam dari, fater, urapud Alciatum me legere memini, de puero, qui fortuita irá collüfórem fœum cultro percuterat. Verum si quis inde colligendum putet, homicidea quælibet suibito rixandí studio fícis & gladiis admissa, mihiore quam capitis supplicio adfiscienda, ne ille parum incolumenti generis humani confederer, quod salvum esse non possit, si violenti affectus rigidis poenarum frenis à facinoribus non cohiberentur. Cxtera tua, Mi Hubere, nunc quidem prætereo, quis enim finis contentionum! Dicerem alioqui, quam inficetos fape fpreat, quia Autóribus noftris fennentias, de quibus illi ne fominarunt quidem, addīngere malunt, quam lexmanu vocule aut littere aliguando unus subtrāctione, vel.additione,velmutatione fænum veteribus fænum Artique honorem.
and indiscriminate killing. Those who, in a sudden fury, draw the blood of their companions in a duel will no longer fear the avenging sword. Certainly, if someone maintains this on the pretext of some critic’s authority, you may prove from somewhere else that those who steal another’s property, when inflamed by a sudden desire, must be exonerated from the statutory penalty for theft. You may say that he who rapes another man’s wife, moved by an unforeseen lust, is not liable to the express sanction of the *Lex Julia*. For, if in the rash fury of a most atrocious crime, the *Lex Cornelia* pardons men’s violent emotions, and they are the more violent for being unforeseen, and if this opinion can be imposed on the law by sagacious criticism, there are no lack of texts from which by changing the reading you can prove this and other things.”

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

*† quis enim . . . retardabor (p 46).

105 Alciatus *Disputationes*, 1.17.
De Ratione docendi & discendiconciliare malunt: Sed his ego minime retardabor, nihiloque fecus Crinijuridicum, faventibus Mufis, dum spiritus hos reget artus, alerter exercerbo, neque morabor;

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

Colliganus igitur vela, regerebat HUBERUS, pro-pinquo porta; neque libet mihi reciprocare serram, a qua Tu manum generofci contemputo amovisti. Unum addam, aquam me censere, ne vos folos effe, quos aequus amavit Jupiter, reputare in animum inducatis; omnes autem qui in exercendis emendationibus feci conficiendos non praebent; quid de sensibus legum sit, perspicere non posse. Sed manum de tabulâ, ubi addidero, me fequatum effe in adolescencia seclam hominum, qui varie eruditionis liquore non in elevati leviter sed imbuti, tamen in correctionibus legum venditatis auditoribus suis non praeverunt: Vinnius, Matthias, Wiissenbachius, moti, faticio, rationibus a me pri
dem expositis, tum vero hac inprimis; quod fatis compertum habeabant, eos, quibus hac precipua Crucis profeclio arriedet, ab omnibus systematicâ doctrinâ, denique ab omnibus, quae civilem prudentiam tradunt, disciplinis alienos averfoque esse; cujus specimen habuimus a quo Salmasium, quem fatis confitavit, cum alia hujus generis, tum divinum Grotii de jure pacis & belli opus insolenter adspernari, atque ad omnem politicam civelemque doctrinam tantum non nau
feare confuexisse; quod & aliis, si non omniis ejusdem infituti rigidis cultoribus evenire notabiliter amavidenti
mus, euloge contemptus Salmasio fructus in succell肪 de
defensionis Regii coniunct haud omnino gloriosus. Præcep
tores illi me feci arbitrabantur, officiis effe fui, facere juris
consultos, id eff, homines qui de quolibet facto consulti respondere, cavere, scribere possent; quas boni Juriscon
fulti
for the subject. But I shall in no way be impeded by these considerations,† and notwithstanding, while life shall rule these limbs, I shall, with the help of the Muses, keenly practice judicial criticism and I shall not be deterred,

If envy wishes to carp at my careful work

Until our age is ashamed of its accusations.”"\textsuperscript{106}

“Then”, resumed HUBER, “let us therefore furl our sails in the nearby port for it does not please me to continue the thrust and parry of this argument from which you have withdrawn with such superior scorn. Let me add one point. * I am convinced that you should not get into your heads the idea that it is you alone whom benevolent Jupiter has loved, and moreover that all those who do not appear competent in the practice of emendations, are incapable of perceiving what is the sense of the laws. But it will be enough, when I have added † that in my youth I followed a school of men who were deeply imbued, not slightly tinged, with the dye of wide scholarship; nevertheless in promoting their corrections of the law, they did not dictate to their students. Vinnius, Matthaeus and Wissenbach were, I know well, moved by the reasons initially expounded by me, but then also by this especially that they were convinced that these men to whom this particular practice of criticism appeals, are completely unfamiliar with and hostile to systematic study, in short to all studies which concern the civil law. Of this we have an example τον παντοτικον διαιεσμον (in particular) in Salmasius whom it is generally agreed haughtily spurned both Grotius’ divine work De Iure Belli et Pacis and other works of this kind\textsuperscript{107} and was all but accustomed to spew forth nonsense against all teaching of political and civil subjects. And we clearly notice that this happens also to others, if not to all who rigorously cultivate the same subject, and for Salmasius the not entirely glorious fruits of that contempt consisted in the success of his Defensio Regiae. These teachers of mine thought, as I just mentioned, that it was their duty to produce jurists, that is men who, when consulted on a certain point, could give a responsum (legal opinion), advise on legal transactions and draft documents, which are the attributes of a good

*† aequum me... ubi addidero.

\textsuperscript{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 Foruntiam criminis pudeat sui (Until Fortune is ashamed of her accusation).

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

fulti esse partes, ut olim Cicero tradidit, ita hodieque facul
tates eadem illud nomen atque munus implent, a cujus gravitate cos, qui folis verbis & syllabis inherent, mirifice videbant esse alienos. Enimvero non debeo preterire, Wissenbachium nostrum suisse maximum sui temporis Criti
cum, idque ei haeffile a preceptore suo Mattheo Seniore, Groningeni; sed priorius alio genere Crisoeos, ac illud et
quod in figlis & notarum enigmatisbus occupatur. Tene
bat homines clarissimos immodica confutetudo demonstran
dinovos juris, vel potius, ut loquuntur, detegendi flagitia Trioniani, errores veterum Juris magistrorum, omnia-
que inhonesti, absurdii, falsi notat, ut ipsis videbatur, defor-
mita passim indagandi, in locis communes redigendi atque
exagitandi in auditoris & in libris suis. Habet hae Fac
cultas speciem libertatis neque vulgare famæ lenocinium;
fasis videlicet animi esse Juris Interpretibus, ipsos Artis
sub Conditores vocare sub censuram; ideoque res hae ad
modum latæ patet, ut ingentes libri censuræ Juris Roman
extrent in lucem dati. Ego nunquam aliter de hac parte
Crisoeos peniti quam de Antinomiis & emendationibus; non
utendum illis, nisi extrema cogente necessitate. Non puto
façilegeum, reprehendere Justinianum, vel antiquos Ju-
stitiz facerdotes, quales se merito appellari possidebant,
sed hoc affectare gloriarique exinde captare, sicut facere
videntur, qui numerum Juris nevorum tam immanniter
augent, alienissimum ab officio boni Interpretes esse vide-
tur. Necio, quæ mea simplicitate fiat, ut judicium meum
à judicio communi, quo jus Romanum nititur, admodum
raro deflebat. Ideoque dedi toto biennio in publicis le-
citionibus operam, ut demonstrarem, pleraque loca Juris
nostræ, que ut mi qua, inhonesta, falsa, absurdæ tradu-
centur, sano seniù intellecna, nibil ejusmodi continere,
cujus
lawyer as Cicero once said\(^{108}\), so today too these same abilities are required for the name and office of a jurist. From the importance of this those who cling only to words and syllables seem wondrously far. For I ought not to omit to say that our Wissenbach was the greatest critic of his day and that he learned that from his teacher Matthaeus senior of Groningen, but this is a completely different kind of criticism from that which is concerned with sigla and the problems of notae. Very well-known scholars were bound to the unrestrained practice of exposing the blemishes of the law or rather, as they said, of detecting the sins of Tribonian, the errors of the old legal masters, and of generally sniffing out everything which is inelegant (as it seemed to them) and marking it as dishonourable, absurd or false; of restoring them in general arguments and discussing this in their lectures and books. This practice has the appearance of liberty and not the vulgar and meretricious appeal of fame, namely it was enough for the interpreters of the law to subject the actual founders of their discipline to their criticism and this topic is so extensive that huge volumes of censura Iuris Romani (critical judgments on the Roman Law) have already been published.

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

\(^{108}\) See Cicero De Oratore, 1.48.212. His words are: Sin autem quaeretur, quisnam jurisconsultus vere nominaretur, eum dicere, qui legum et consuetudinis eius qua privati in civitate uterentur, et ad respondendum et ad scribendum et ad cavendum pertius esset. (But if the question were to arise as to who should truly be called a jurist, I would say, he who is knowledgeable as to the laws and customs which private citizens use in the state, in order to give legal opinions, to draft documents and to advise on legal transactions.) See too Oratio II p 64.
48 De Ratione docendi & discendi
cujus á claris hominibus insimulantur. E quorum lectio-
um memoría nefcio, an non aliquando censuram Censurae
Juris Romani & Anticriticam hujs generis incorrupto
eruditorum judicio sim propositurus. Quae mea de critica
studii Juridici professione flet sententia, fatis abundaque
differuisce videor, In historicis similibusque veterum scrip-
tis, ubi nulla dogmata in humanæ societate stabilita tra-
duntur, res non habet tantam àuspicias; quamquam ego, si
in hoc ipso genere me continuissém, experimenta professio-
nis & fame ab emendationibus príma non cepissem, neque
tamen, si quæ mihi oblata fuisset, abrupte avertatus ef-
sem; quæ pertinent exempla, quæ modo mihi est differ-
tionibus illis histroris objiciebas. Quod ad sytemata com-
pendiosam univerfiti juris attinet, non discrepat instituti mei
ratio à communi omnium temporum confuetudine, nec
ab is quæ modo in hanc rem luculenter à Bökemanno nofro
prolata sunt in medium, modo à duobus scopulis diligentem
caveamus. Primo, ne studiois compendia, siccæ, jejuna
& aëra proponamus, verum talia, quæ gustum melioris
doctrinae, simulque initium exhibere possint; tum vero, ut
adiduis hortamentis exempla precaessis, ne in his e-
lementis subisšere se deberé, nec posse praesumant. Denique
nollem, mi Crufi, tantopere placuisses tibi, ut rem ab o-
mni studiorum ordine judicioque remotissimam, cum atro-
ci invidiá secus agentium, tam factidienti oratione proscucu-
tus esses. Nec etsi, quod diæs, ut postremo definebas,
te paucos notare voluisses nundinatores sanctifísmæ Artis,
gui Juris Doctóres intra paucos mensés perficiundos impu-
dentur fulcipliant. Nam hi profecto sunt pauci, nec, si
aliás bene læ haberet Ars Juris, horum causâ, de corruptâ
Jurisprudentiæ quierì in mentem tibi venisset. Tu latè pa-
tentem errorem universalisque utuperaísti, qualem vis
iliam
that are alleged by well-known scholars. I don’t know whether on the basis of these lectures I shall not some day propound a judgement on the ‘Judgement of Roman Laws’ and an anticitica of this kind with the correct opinion of learned men. 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 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 censura censurae juris Justinianaei . . ., written 1692-1694 and posthumously published as a book, Franeker 1700. However most of the disputations collected therein were published during his life. See Feenstra BGNR Franeker, pp 94-95, nos. 279, 283, 284. The title page declares that those texts which are variously traduced as false, unjust, dishonourable, absurd, corrupt and underhand are vindicated by the true reasons of jurisprudence, civil philosophy, history and Holy Writ.

110 Cf The title to Albertus Rusius Oratio de jejuna quorumdam et barbarar juris compendiaria, 1659.
illam esse preparatoriam Compendii Institutionem. At vero
nollem illum ut eum fuert, generofum illum ipiritum, qui ad
infirmandam Juris disciplinam tanto cum impetu adurgit,
inde reformationem aulpicari, quo maximé obtento, refor-
minationem in se ipsam ruere oporteret.

Ego vero, CRUSIUS, aetum age re nolo, & iremo-
vende sunt amplius ratione veltra, quod in procli fo-
ret, hujus quidem colloqui odiun, sicut vos intituitis,
jampride me habet; aliás dabitur occasio; nune ad alia
transcamus: Cavendum enim, ne materia novi diaolgi suc-
crebat; neve reliquis convivis parum officioso longiore fe-
ceffu videamur.

Illi quidem, excipiembat Wijngardenius, fuis quoque fa-
bellis detinentur. Sed ante quam digrediamur, ne plane
obligis in hac scenā esse videar, date mihi quoque lo-
cum, non dicendi sententiam, neque refellendi quicquam
à vobis dicitum & disceratum; fed rogandi te potissimum
Hubere, non qua causā corrupta sit jurisprudentia, nec
an compendia sint dispensa juventutis; fed quoniam me
favor studiorum, potius quam meritum eruditionis mea:
in partem aliquam docendi, seve indului seu commixtūr
Amphissime Facultatis Juridicæ recepti, ficer superem,
quo potissimum ordine, quibus studendi gradibus adolescuentes
mihi commissos ad Themidos sacrarium dedicere possim.
Quando autem Cll. Bökellami Crusiique humanitas semper
ad illos aditum mihi præbet, Tui maxime consilii præfcrip-
tum ad exempli copiam mihi relinqui defiderarem. Intel-
lexi equidem genus univerfūn instituti, quod in stdio Ju-
ris excolendo probes atque commendes, fed opus est mihi
excaē magis & speciali descriptione, ac quae manuductio-
ne a carceribus ad metam, quod ajunt; Et si enim tuus ali-
quandiu fuerim Auditor, ideoque ordinis quem ferves, ra-

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

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

50 tio mihi non plane ignotus esse queat, haud tamen dubito, quin longa discendi docendique experientia collexeris & feceris monita non tralatia, quex in promiscuo studioforum concurru profferre non solebas, quaque mihi hanc discendi viam primum ingredienti, multum conducere posse crediderim.

Ergo Tu quoque, HUBERUS, in eodem verfas errore Wyngardeni, quo vulgus studioforn tenetur? Enim vero sepe mihi usus venit, ut adolescentes discendi cupidis privatis me adirent atque ad interiorem amicitiam aditum affecerent; haud alia gratia, quam ut peculiarem methodum secretamque viam sibi panderem atque monstrarem, per quam celerius & felicissimur eruditionis iter consecrare possent. Respondere sum solitus, maximum quod illis suggere possem arcanum, esse laborum indefessum in eia via, quam publice illis prairem; pararent se diligenter, antequam ad audientum venirent, auscultaret attentè, notarent quod non lectionem primum audirent, cumita repetere domi, conferrent cum fontibus legum, mandarentque memoriae; rursum offerrent se examini, quoties occasio foret; hoc aegerent, ut tyriconium suum paucis onerarent prseptis, attamen universae artis, eaque validissime sua facerent, & in causas fontesque rerum ubique penetrarent. Quando tamen eujusmodi summa cohoratione non videris esse contentus, utcunque nihil inuitatari arcane polliceri habeam, nolo tamen desse facilitem meam desiderio tuo, quod ex animo, veterisamicitiae disciplinæque memore, proficiæ, facile mihi perfiadeo. Caeterum, non est quod expectes ita Jurifconfulum à me forum iri, sicut Stoici suum sapientem describunt, neque ut Cicero suum oratorem esse voluit, cui nihil desit, qui quod sumnum ess, quod nemo foritant unquam adigi, sit confectus, nec à studioforno tantum laboris durique
of the order which you observe cannot be entirely unknown to me, nevertheless, I do not doubt that from long experience of learning and teaching, you have collected and distinguished your own private rulings which you were not accustomed to make known to the general body of students and which, I believe, could contribute much to me as I am first starting out on the path of teaching.”

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

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

in semet imperii exigam, sic ut alii plurquam heroico instituto faciunt, ut merito vix esse tanti, eruditum esse, inexperti arbitrentur. Agam civiliter, atque ita, ut adolecens ne desperent effici posse, quod ipsis praefribatur. Sic igitur ego fascerim, Qui animum ad studium Juris applicat, eum primo adniti decret, ut literas ac artes, fine quibus Jurisprudentia non potest valde percipi, mediocriter addicat. Literas intelligo Latinas & Graecas, priores exactius & cultius; alteras ita, ut scripta veterum, falso interpretis ope distinete & cum ratione traktati posint; sub literarum studio Historicum me complecti facile praefumetur: Artes quae ad Juris studium preparant requiro Logicam, et si hac pene jam obsoletar, atque Ethicam, Mathematicas artes & Physicam, si quis addat, laudo, exigere non audeo; neque politicam præmittit sed potius comitari volo studio Juris; de oratoria quoque nihil dixi; nam præcepta Rhetorica literarum studio implicita sunt, Facultas scribendi habendi que rationes mihi videtur omnium difficilima, ideoque inter preparatoria non collocanda; sed alia tyle exercitio in hunc usum soleo commendare; vera eloquentia ex omnium rerum notitiae exundat & exuberat, ideoque majorem postulat eruditionem, quam ad adolecensibus, qui nescunt Jurisprudentia maturi sunt, praefari posint. Plura de propadienticis non dicam; nec enim dubium credo cuiquam esse, quin liberalia Literarum & Artium studio Juris præmittenda sint; quomodo autem in illis sit verandum, à me hoc quidem tempore non expectas ut edisceram: nifi unum, quod alii forfitan omnium minime expectas ut edisceram: nifi unum, quod alii forfitan omnium minime expectabant, monendum videatur; adhibendas esse literas & Artes sane, priufquam leges aggregiare, sed tamen hec quoque locum habere Terentianum illud, Ne quid nimis. Intelligo, non fine R. r. r.
control over themselves as do some people with a more than heroic programme, so that they are rightly considered to be scarcely worth so much, to have been taught but to be lacking in experience.

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

I perceive that I have said this, not

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

114 Cf. Tacitus *De Oratoribus*, 30. *Ia est enim . . ., ex multa eruditione et plurimis artibus et omnium rerum scientia exundat et exuberat illa 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 offenstâ Cruši, forte nec fine admiratione Bökemanni tuaque id â me adfirmari. Quis enim non potius fìmulum ab hac parte quam sufflamen opus esse arbitretur? Certè fìmulum multò magis esse necessărium juveniti, res ipßloquitur, nòique jam públice privatimque fàpe confessì fìmns. Attamen generösìs animis, qui philosophie literarumvè amore capti se totos illis dedit, ego modum imperare non dubito; sàltem haètensi, ne legale studium inchoare conètentur, ubi primum ingenio judicioque ad accipienda Juris disciplinam maturi facti videantur; et si in Artibus alis humanilque literis nondum eo proveèti sint, quo pervenire possunt & debent, qui harum laude confici parque cenfèri cupiunt. Ratio conflat ab experientia, quæ sic fere me docuit evenire, ut qui diu multumque philosophìx, literilque ac historiis immanentur, earum amènitate vel facilitate eo modo in sinu suo adfìciantur, ut cum ad Leges se conferunt, earum studium patént esse tetricum & asperum, ægrique ab animis suis imperare solent, ut earum disciplinam bene ter & alacriter fàscipìant: Nemo autem dicit aut proficit invitus & reluètante natura. Sue ingenio. Velim igitur, qui studiosus Juris esse cupit, idem agat, quod mihi Wissenbachius noftrum auctor fuit, ut cum annum integrum in preparatoris studis commorátis esset, Institutiones Justitiae inaudìre atque deinceps in percipientis integre Artis elementis perseverarem. In illâ anno vellem studiolum meum audire Logicae & Ethicam, edificare compendium historiae universalis & dare operam, ut plane pleneque Suetonium intelligeret. In quo plerque ad antiquitates Romanas & Juridicas spectantia facilis ordine atque historico offerent fìc explicanda: Nam in omnibus vivam præceptoris voce, si copia dictur, adhibendum esse non est ambigendum. Interim in legendis alìis Historiae antiquae scriptoribus vacuò tempo-
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. 

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

re perghendum; neque minus, in continuo styli exercitio, non modò lectione sed & imitatione veterum eloquentiae Auëtorum. Si qui sint, quorum ætas & ingénia non habent eam facultatem, ut unius anni decursum his rebus mediocritatem defungir posse, his, silicet, tantum temporis adjiciendum puta, quantum opus est ad capiendum talem profectum, quæs validioribus intra annos spatium contingere potest. Neque deernunt, qui & de physica deque mathematicis codem anno primitias capere posse. Ubi vero studium Juris annu fecundo inchoatum fuerit, nolo novum Justinianæum itaëtorum folis legibus dedere, ut inchoata bonarum artium litterarumque studia deferat, nec amplius ad se pertinere putet. Nihil æquæ delectat quam varietas, nec est alia dignior studioso recreandi animi ratio, quam in amanitate doctrinae facilioris. Atque hanc viam, quæ confístit in continuatione studiorum primi anni, per omne tempus diciendi juris, eò fidentius commendare foleo, quod per eam non modo ad Artis Juridicae peritiem felicius perveni, sed & eloquentia ac Historiarum professioni deinceps admodus, ci qualitercunque fatisfacere visus sim. In hoc autem praefata illa, diversæ ratione, quæ plures annos preparatoriis studiiis prescríbit: quod & notabile temporis compendium facit, cujus summæ ratio confiatur studiosis, & quodiam aversiorem, quæ fere laborant, qui valde sunt philosophi & critici, auqueam jus didicerunt, antevertit atque consumit. Porro ipsum Juris studium hoc modo inprimis decurrentum exigó, ut id quodammodo duplex effe meminerit studiosi. Primum certè gradibus confectum sufficit ad forensés exercitationes cum fructu fuçpiendas; alterum ad interiorem Juris antiqui notitiam & ejusmodi facultatem acquirandam pertinent, quæ ad Jus explicandum docendumque sufficiat. Primum duobus intervallis abfolvitur, Institutionibus atque
progress must be made with reading other writers of ancient history, and also in continual practice in composing, not only by reading but also by imitating the eloquence of the ancient authors. If there are some students whose age and talents do not give them this ability, so that after the passage of one year they can only perform moderately well in these subjects, consider that they should be given as much extra time as is necessary to achieve such progress as the better students can achieve within the space of a year. And there will be no lack of those who, in the same year, can master the basics of physics and mathematics. Then, when the study of law is begun in the second year, I do not think that the new law student (novus Justinianaeus)\textsuperscript{119} should so devote himself to the law alone, that he abandons his initial studies in the humanities and literature and considers that they do not concern him any longer. For nothing delights like variety, nor is there any worthier means to recoup the mind of the student than the pleasures of an easier subject. And I usually recommend this route, which consists in continuing subjects studied in the first year throughout the whole period of learning law all the more confidently, because, by that method, I not only came more happily to master jurisprudence but also when I moved subsequently to a professorship of rhetoric and history\textsuperscript{120}, I was able to give adequate satisfaction in that too. Moreover, for a different reason this route is superior to that which prescribes several years for preparatory studies, because it makes a notable saving of time, which is a major consideration for students and also because it forestalls and dissipates that dislike from which suffer those who are very much philosophers and critics before they have learned any law.

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

\begin{footnotesize}
\begin{enumerate}
\item See \textit{Constitutio Omnem} § 2.
\item See the Commentary, Chapter V.1.
\end{enumerate}
\end{footnotesize}
De Ratione docendi & discendi

Pandectis. Institutiones velim bis tractari audiendo atque respondendo. Nam sola audito nequaquam sufficit ad expromptam validamque Juris scientiam consequendam; primoque statim ingredi qui serio vult proficere, non debet inutili vereundia superbiaque animi deterreri, quominus examini se quotidie committat. Juxta secundam auditionem, disputandi exercitium sedulo inchoandum & omni tempore, quod juri impendatur, continuandum censo, cum nihil co sit efficacius praeparando animo, sermoni, or ad publicas actiones, in quibus aliquando se Jurisconsulti exhibere atque pretare debant. Expositio & disceptatio fundamentorum Juris in hoc primo fludio non potest aliter regi, quam secundum positiones compendiis aliquidus systematici, quae in re nihil addendum habeo, ad ea quae Boelmannus notatur in hanc rem exacte differat. Nam quia primus studii Juridici cursus adolcentes aptos reddere debet ad respondendum, cavendum, scribendum; quibus partibus officium Jurisconsulti novimus abolveri; paulam est, eodem modo nobis in hac viam esse procedendum, quem Graecos tribus post Justinianum feculis tenuef modo probavimus, & quae in superiores disputatioi Luculenter scitaeque demonstrata est. Primam deambulatione hujus itineris, quod ad Institutiones dirigitur, nihil aliud ab adolcentibus exigo, quam ut dielata Preceptoris sui memoriam judicioque subigant, eaque cum textu Justinianeo Regulisque Juris & praecipis de verborum significatione presse accurateque conferant. Secunda auditione textus ceteros, qui est Pandectis & est Codicis magni numero in explicandis Institutionibus adducuntur, inspicerre, examinare, perpendere debent, quod nemo aliter, quam fudante cerebro, fat sicco, praelabir. Atque hic et annis integrig juftus labor, accedente, quan dixi, continuatione studiorum liberaliorum & humaniorum. Sequentem annum...
the Pandects. I would like the Institutes to be treated twice, once when heard in lectures and once when responding. For merely listening to lectures in no way suffices in order to achieve a ready and sound knowledge of the law. For he who seriously wishes to make progress from the very first step, ought not to be deterred by useless bashfulness and mental pride from committing himself daily to examination. After the second course I think that practice in disputing should be diligently commenced and continued during the whole time that is spent on law, for nothing is more efficacious than this in preparing the mind, the mode of expression and the manner of speaking suited to public actions where, at some stage, jurists have to stand up and discharge their duty successfully.

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

The next year

\textsuperscript{121} See Cicero De Oratore, I.48.212. ft 109 supra.
\textsuperscript{122} i.e. D.50.17. See Böckelmann’s Compendium, at the back, pp 68–102.
\textsuperscript{123} i.e. D.50.16. See Böckelmann’s Compendium, at the back, pp 1–67.
Iuris, Dialogus.

Pandeōtis impendere oportet, eādem praeunte methodo summariē inquisitionis, quae materiam omnem Artis definitionibus & partitionibus exaurit, eisque decisiones Quætionum, tam quæ ad integritatem Artis antiquae, quam in-primis, quæ in uō rerum humanarum hoc circulo verificantur, ex ipis juris fonsibus additur & ineńcit. Quia autem mea licet ratio, Quam Artem aliquis omni vita sua tempore vult profiteri, quod fortunam rerum suarum fulcire cupit, hanc eam prompte valideque seire atque in habitum, quod Philosophi crebris aditus fieri docent, convertere debebunt, censeo, repetita praelectione audientiāque & examinatione opus esse. Proinde biennio non minus in Digestis, eo modo transtigendum: Esto enim Pandeōtas ego ita tradere foleo, ut quæ in Institutionibus exposta sunt, illic denuo per novas positiones non traetentur aut explicentur, tamen annus utilis Academicus opus est ad summarius quinquaginta librorum interpretationem. Interea tamen temporis, opera danda est Studiose, ut non modo leges, quibuscumque positions Juris probantur, addiduo intenteque perlegas foliulque inde, quæ ad intelligendam Artis doctrinam faciunt, colligat, sed & observationes ad illustrandam augendamque eam pertinentes, quarum materia gnario scrutatori literarumque & philosophiæ peritio desee non posset, a notitiā receptarum sententiarum fregereget atque recondat. Quod autem omnium ego praefatis illiūnum in hoc instituto confilioque meo effe comperit, id est quod qui in illo triennio, Institutionibus & Pandeōtis occupato, vacuum tempus evolventis scriptoribus antiquis impendunt, inde iam Artis suae gnavari, fígere & ad idem locos referre possunt omnia, quae ad illustrandum jus Romanum in Philosophis, Oratoribus, Historiis atque Poëtis reperiant, quod facere non possint, qui ad legendos antiquos sibi toto conterunt, antequam Ar-
ought to be spent on the Pandects, beginning with the same method of summary instruction, which reduces all the material of the subject to definitions and partitions, and to these, from the actual sources of the law, this method now adds and interweaves decisions on questions, both those which pertain to the ancient law as a whole as well as in particular to those which, in this century, are dealt with in everyday life.

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

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

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

Artis, cui se potissimum dedere cupiunt, universam compositionem teneant. Quando enim omnibus excellere multitudo rerum infinita & ingenii humani imbecillitas non patitur, optima ratio est, in unà duntaxat scientia, quod summum est afficere de ceteris excerpere, quod ad illam ueniam pertincat ornamandam & illustrandum; hoc facere non potest, qui comperdiarum Artis illius notitiam animo non praecepit; ideoque nec Jurisprudentiam ex antiquis augere & expoliare potest, nisi qui prius Artis cognitam, fixissit terminos, quibus obvia quaelibet includere debet. Triennio in Jure, quadriennio in Academiis ficabfoluto, studio suo, cui ratio temporis fui bene conlecta, ad alterutrum finem se comparare debet, ut vel ad forum se conferat, cujus exercitationibus parem doctrinam adipiisci jam potuit acdebut; vel ut alterum Juris discendi stadium renovato studio ingrediatur. Pars equidem multa maxima finem Laborum in illo primo stadio ponit, nec aut ipsi cupiditate proficiendi, aut parentes sumptuum prorogatione, ad alterum d curandum sufficere vel durare solet; nec ideo tamen pofterius priori antevortendum esse quìquam rectè atque ordine fuerit. Nam qui Jurisprudentiam forem animo suo proponunt, his folum & totum jus antiquum in omni fìa subtilitate critica tenere non expendit neque sufficit, opus est illis institutione moribus secuti adtemporata. Talis cum eloquentia Latinâ, Graecifìmi notitìa, Philosophiâ ac Hûtoriâ literifica reliqùe humanitatis conjuncta, quam hæc nostrâ methodus requirit & praefat, in exitu quadriennii laudabilem Jurisconsultum, etiam fatis criticum exhibere potest: modo Politicam & juris publici doctrinam in illo triennio non omisìrit addere privati Juris institutioni; denique, tunc etiam fœta mens cognitione rerum gravissimarum juìtis orationibus eloquentiam exercere potest. Enimvero, 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.

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

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

hac ita generose perfecquatür & impleat, ut nostra methodus dicitur, eum ego non dubitem, pari alacritate fladium alterum, quod diximus, interioremque studii partem aggre-
surum: quod, videlicet, confitit in attentā lectione totius
Juris antiqui, sicut à Justiniano nobis est reliquit, eju-
sque collatione cum reliquis eius eorum scriptorum, e quibus Ca-
ēar corpus suum collocat; quæ quidem hodiè perquam exi-
guæ superlunt, fragmenta Cajii, Pauli, Ulpiani, collatio
Ruffini, Codex Theodosianus & Basilica Leonis. Quæ fito-
tum jus complectentur, abundantius huic instituto fervi-
rent, eti nunc cædem fatis luculentam conferendi copiām
præbant. Debet etiam hic eflè lectionis atque colla-
tiones universi juris fopus, ut quœ dicitur boni & acqui in
positionibus systematicis questionumque decisionibus apud
eas tractati solitus nondum percepta sunt, hac è recellibus
integri corporis legum, etiam ubi de rebus ab usu hodierno
remotis agitur, sedulo conquirantur & ad loca summa, quæ
pridem formata suere, singula redigantur. Dum hoc autem
studiofus naviter agit, novimus alter fieri non posse, quin
ubique incidat in crupulos & difficulitates intricatis,
quibus tamen resolvendis & amovendis indefessam operam
navare debet. Interpretes in hac obsecūrā via lucem affātām
præbent; sed ego tam n ita compiti atque ita meis amicis
suadere solem, ut eo modo textibus intricatis, etiam prodi-
feratis aut damnatis, ut loquentur, habitis, incumbent,
quasi nullus Int. rpres est in mundo. Nam si prius in-
terpretationes varias confulere & expendere voluerint; in fin-
gulis paulo minus difficulatis inventum ac in ipsa Leges re-
periunt, parumque abierit, quin idem illis eventurum sit,
quod Patri Comico, qui cultus tribus Jurisconsulis, dif-
crepantibus, ita abibat ab illis, Fecitius, inquit, probe; In-
certior fum nunc multo quam dudum. Ubi vero Tu vires
S ff in-
follows and completes this course as my method dictates, I do not doubt that he will attack with equal alacrity the second phase, which I have mentioned, namely the inner aspects of the subject, which, naturally, consists of a careful reading of the whole of ancient law, just as it was left to us by Justinian, and a comparison of that with what remains of the writers from whom the emperor gathered his Corpus. Indeed, today very scanty remains survive, fragments of Gaius, Paul, Ulpian, and the Collatio of Rufinus, the Theodosian Code and the Basilica of Leo. If these works were embracing the whole corpus of the law, they would serve this purpose better, but even now they provide a sufficiently rich source for comparison. [A12]

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

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De Ratione docendi & discendi

ingenii judiciique tui expertus fueris, sive inveneris, quod
fas tibi videatur, sse nihil expedieris, tempus ierit, ut In-
terpretes addas, sive vel in tuis cogitationibus firmere, vel
harum defectum ex corum commentarius supplereas. Heie ve-
ro suave jucundumque spectaculum praebent, qui neglecta
priore via, quam per meliorem appelletes systematicam, inco-
tinenti hoc examen universi juris occupant: quando loca,
que non intelligunt, inopii doctrine juridicae, continuo
suis conjecturis, interpunctionibus, additionibus, subsra-
ctionibus, transpositionibus ac omni genere emendationum se-
pe tam subtilli, ut uno spiritu diffilari possint, in suis in-
telleclus sollicitant, cogunt, rapiunt. Plura Doctissime
Wyngadini, non habeo, quod hac hor a inter nos super hoc
queen communicari possint. Dantur equidem & alia, quac
momentum in utraque studii via non spernendum faciant;
Sed cum in acto magis & demonstracione præsenti quam in
oratione consilere videantur, dabis veniam, heic ut subfi-
sere nobis liceat. Wyngardienus novam parat infatiam,
Quando Bōkelmannus, ut abrumperet hos nimit studiosos
eremones, libellum proferebat, cui præfixus erat titulus
talis, Ephemerides Eruditorum, gallice conscriptus. Rario,
instituti notior eft, quam ut cæli pluribus exponi necessi-
Fit. Verum Bōkelmannus aperto libro incidit in hujusmodi
titulum, Ventriculi Querula et opprobria, operae A. S.
Med. Doctoris Amstelodam. ruribus alibi, Carolis Mosai-
zenis, Autore N. Amerpoel & idgenus aia; quæ autore e-
phemeridum illarum proximo elogio profœquebatur. Ad hec
Bōkelmannus, Nonne vobis indigna res videtur, hos ho-
mines, qui scribendi hifice diariss Reipublice litterarie dant
operam; alia quidem illis inferere atque laudare nullius
momenti scripta, ruribus alia magnæ frugis & foliae erudi-
tionis omittere vel frigide commendare, coque modo fær-
bitros
of your own intelligence and judgement, you will either have found what seems good enough to you, or you will have found nothing and then it will be time to go to the interpreters so that you may be confirmed in your surmises or you may supply the necessary from their commentaries. Here indeed these provide us with an agreeable and pleasant sight as, having neglected the former route, which I allow you to call the systematic route, they immoderately busy themselves with an examination of the whole law, for they are constantly worrying at the texts, which they do not understand because of their lack of legal training, tearing at them and pulling them this way and that, with their conjectures, punctuation, additions, subtractions, transpositions and all kinds of emendations, ones which are often so fragile that they can be blown away with one breath. [A13] Most learned Wijngaerden, on this topic I do not have anything more to say which can be shared between us at this time. There are, of course, other things which make for significant moment in both ways of studying. But since they seem to consist more in action and visible demonstration than in speechifying, you will grant me permission to stop here.”

Wijngaerden was preparing to press on, when Böckelmann, in order to break up these excessively academic discussions, produced a little 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 Amstelodami}.\textsuperscript{129} Then again somewhere else \textit{Cartesius Mosaizans, Auctore N. Amerpoel}\textsuperscript{130} and other things of that type. These works the author of that journal presented with a wordy eulogy. Referring to these, BÖCKELMANN said “Surely it seems to you unworthy that these fellows who devote their energies to writing these daily pamphlets for the Republic of Letters introduce and recommend some writings of no significance, and again omit or only mildly commend others of great value and solid learning and that thus

\textsuperscript{127} The use of the title \textit{Ephemerides Eruditorum}, argues for the German version. See Chapter IX.
\textsuperscript{128} \textit{Gallice conscriptus}. This is part of the title of the \textit{Ephemerides Eruditorum} which in the 1665–1666 and the 1671 editions reads \ldots \textit{Ephemendes Eruditorum} \ldots \textit{Gallice primum editae}, Jam vero in Lingua Latinam versae \ldots
Iuris, Dialogus.

bitros ferre meritorum atque famae eorum, qui nomen aliquod inter literatos affectant? Mihi certe res non toleranda viderur, hujiusmodi quoque nostrarum libros, quorum inscriptiones vobis prælegi, & quos in his locis rarus lector inspectione dignatur, illic ut opera consideratione literati orbis digna commemorari, nec quicquam ineptiarum Gallicarum omitt, quod fallendo aulicorum aulicarumque otio serviat; interea commentationes hominum doctissimorum in urráque Germania & alibi silentio damnari, vel frigidâ negligentique mentione, quasi quæ legantur indigas, tantum non ludibrio exponi: Neeque sunt, quibus ju fier hac parte caufa sit indignationis, quique iniquius sint habit, quam Jurifconsulti. Ad hæc Crujus; nolim, Bökelmanne Clariflime, tam parvi animi querelam à te ferior intelligere emissam. Quid enim queso refert, tuum de Actionibus vel ad Pandeças, meumque ad Legem, Si Paterfamilias, commentarium ìfti Ephemeridi infertum vel non fuifte infertum, magis quam si Novellis hebdomadalibus, ut sit, eorum nomina subjiceta fuissent, aut non fuissent. Nifi tu putes, multum intereffe, menstrui an hebdomadales sint falli, de actis literatorum, an de Regum & Principum, de pacis & beli negotiis sint compositi; aut nifi putes, invindendum esse Medicis & Artium Magistris, quorum laudes in novel- lis decantantur, præ alii, qui modestiâ contenti famam ipsi non faciunt, aut fieri curant, sed expeclant. Enimvero non eft difficile è lectione Ephemeridium iliarum animadvertere, conditores illarum fere ex eorum effe gener, de quibus Fabius scribit, parva facile. Sane jurisprudentos adhuc quidem inter eos fuifte nullos, ipse ephemerides manifesto præ fæ ferunt. Prouinde faciunt id quod fieri confentaneum eft, ut de rebus, quas non didicerunt, aut nihil, aut valde parce tenuiterque loquantur. Et mea quidem auctoris fi Sffz 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

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

132 In 1664, while still at the University of Heidelberg, Böckelmann produced his Exercitationes ad Pandectas containing 25 disputations concerning books 1–6 of the Digest. Böckelmann himself had acted as Praeses and it is presumed he was the author. The Exercitationes was published in Heidelberg by one Adrian Wijngaerden. Four years later, in 1668, Wijngaerden published Böckelmann’s Collegium Pandectarum compendiose exhibens fundamenta et praecipuas controversias quae in singulis titulis occurrunt, praeside Joh. Frederico Böckelmanno. This contains disputations on books 1–22 of the Digest. In 1678, eight years after being appointed as hoogleraar in Leiden, Böckelmann produced his Commentarium in Digesta Justiniani libri XIX, published by Felix Lopez of Leiden. The first 6 books were a reworking of the Exercitationes ad Pandectas. In 1694 this work was expanded and re-issued. See Ahsmann-Feenstra, BGNR Leiden, p 57, no. 14; p 59, no. 23; p 61, nos. 30 and 31; Feenstra, Böckelmann, p 141.

133 See Ahsmann-Feenstra, BGNR Leiden, p 83, nos. 115 and 116 and Commentary, Chapter V.2.2.

134 See Marcus Fabius Quintilianus Institutio Oratoria I.3.iv. Hi sunt qui parva facile faciunt et audacia prorecti quidquid illud possunt statim ostendunt. (These are such as do little things easily and, carried along by their audacity, they immediately display their limits.)
De Ratione docendi & discendi

quid apud eos valeret, rogarem Viros cordatissimos, ut Jurifconflitorum ordinem ephemeridum fuerit memorialemibus
saeuis eximenterit, singulorumque fato committerent, utrum
suum hab. rest. an mererentur. Quod si tu in aliquâ parte
gloriae nonis, nomen tuum in illis diariis, cum ampllo elo-
ggio cumque spectosa scripsionis tuae historia conpici, ita cen-
ifico; scribas cum in procinetu esse edendi aliquem librum, tuo
vel typographi nomine, ad compilatores spectat, quid pares
emitterea, que sit libri tui summa, quid in eo praepue ex-
cerpi laudarique cupias, imprimi ipsa Ephemerides carum-
que Scriptores fac aliquo sublimi charactere laudis adpergas.
Sic tibi nullam caufam fore polliceor hac parte Salvio & A-
merpoeio similibusque Heroibus invidendi. Nefcio, rege-
bat Bokemmannus, quid ex meis verbis argumenti fum-
sieris, ut mea potius unius quam Jurifconflitorum commune
causa quodum me esse putares. Quod si torm hoc genusti-
bi contemnendum videtur, non habebis me tam contam-
em adversam, quam modo in caufa systematum & Compen-
diorum expertus es. Proinde facile patior, nihil esse commu-
ne Jurifconflitis, cum diariis & Novellis istis eruditorum,
nisi quid Huberus dissentit. Ego vero dissento, Ille,
venerabiles Symmystae, nec ubi modo conflitum duco, ut
homines elegantibus ingenios & pari fama notos ordini no-
stro inimicos reddamus. Nec enim ipsis uelisendi ratio deef-
set, si intelligerent, nos de instituto suo tam inuqenteire,
quem vos in animos vestrors inducere vultis. Credo, non
anamuis silentio nos omitterent, fed cum aliquâ notâ vel con-
temptus argumento scripta nostra suis saeuis immiserent, vel
omittentes, que magno labore confidisset, si quid tibi forstan
abortivi fœsus tuoque nomine minus decori excedisset, nomi-
ne licet prefla, tamen, illi hoc suis compilationibus, nomine tuo
palam facto infecerere non dubitarent. Nefcio, an non de meis

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would have any influence with them, I would ask these most sagacious gentlemen that they should leave the jurists out of the judgments expressed in their papers and leave it to the fate of the individual authors as to whether they have or deserve a good reputation. But if you reckon there is glory in any degree in having your name appear in these papers, with a handsome statement and a well-sounding account of your writing, I propose the following: when you are on the verge of publishing some book, you should write either in your own name or in the name of your publisher to the editors τῶν νεαρῶν (of the news-sheet) and state what you are preparing to publish, what is the main theme of your book and what you desire should especially be quoted and commended; in particular be sure that you shower the actual news-sheets and their contributors with some sublime marks of praise. Thus, I promise you, you will have no cause in this regard for looking askance at Salvius, Amerpoel and like heroes.

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

“I indeed do disagree” said HUBER, “venerable colleagues, and I do not think that it is in any way advisable that we should make men of elegant talents and equal reputation into enemies of our profession. For they will have every reason to avenge themselves, if they realise that we feel as indignantly about their practice as you want to suggest. I am sure that they would no longer pass us over in silence, but would include our works in their résumés with some black 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 . . . duitantent.

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

Digressionibus, quae continent observationes Juris Humaniores, incontinenti forte scriberent, eas idem fere esse cum Menagii Aenemiatisbus Iuris Civilis, eti liber ille mihi nunquam vitus foret, atque materia utriusque scripti nihil omnium inter se commune haberet; sola tamen inceptio- nis futiliuto ad ipeciem veri sufficeret, ipsos libros excut- tere nihil ad rem pertinentem: Eti autem illa Digressionum meorum cum Menagii libris comparatio mihi forte pudenda vel pœnitenda non foret, tamen ex ejusmodi relatione sim- pliciter facta imperiti facile opinarentur, me præcipuas ob- servationes meas debere Menagio, utriquefollicité in pra- fatione monuissém, vive laudändi conatus mei vive excúsi- da futiliatio eʃet, propriis stylo & cogitationibus elaborata esse, quæ publici juris facerem. Caveamus igitur Viri Clari- ssimi: offendere vel irritare genus hominum, cui tam po- tens famæ inrumentum in promptu est. Videmus illas e- phemerides in manibus omnium doctorum & indoctorum verlari, care vendi, cupidæ legi, ut sit in rebus novitare fœi lectori bland entibus. Et quanquam vera solidaque exi- stimatio virtutis & doctrinae ab ejusmodi sufragis non pen- det, ideoque talia fecus quam mercare, publicata magnæ- nimo sperni possint; tamen si verum est, contemptu famæ plerunque etiam contemni virtutem, viri prudentis esse vi- detur, nulla publica approbationis adjumenta, præfertim adeo late patentia adspersata. Est fane Jurisprudentia maxi- me ad gravitatem veritatemque doctrinae comparata, ideo- que Gallis & quæque auctóribus, qui philosophia, mathematicis & amici nondra doctrinæ potissimum, ut appareat, decéntantur, minus placuit, nec apta viæ fuit ad augendum scriptum, quod totum recreandum non minus quam erudiendo lectori comparatum est. Credo, genus hoc scribendi etiam ad Ger- manos vicinoque, uti sunt omnes populorum novitatis avidi, tran-
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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 foret). Certainly the contents of the Digressiones bear little resemblance to Menagius Amoenitates’. However, on pages 20 and 21 of the Dialogus Huber (through the mouth of Crusius), as shown in note 63, clearly was familiar with chapter XV. As an extenuating circumstance it is of interest that the 1684 edition does not contain the long section, running from Quod tu compendiariae opere videbaris on p 20 to velle videbantur 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, meo 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.
De Ratione docendi & dendi

fiturum. Germanorum, ingeniiis propitia magis est Jurisprudentia Belgique secundum illos aequae familiaris. Hi defectum, quem Bokelmannus in Gallis arguit, forsitam supplebunt, ordinemque nostrum pro parte aliquae literati orbis, habere non gravabantur, atque, si juvat & referit, in ipsis suis diariis nihil magis obliviscuntur. Ego quidem hac gratia libenter illis utor, quod ex is per compendium seire licet, quibus Auctoribus studia nitantur, Favendum est ingenii fœculi nec solis mortuorum etendum magistris; neque decet esse tam faltidiosos, ut quæ maximo labore clari homines, aut qui indolescere cupiunt, opera doctriæ composita, ea non modo legere, sed ne argumenta quidem summaque librorum cognoscere dignemur. Nolim igitur contendere, ut ordo nostrum, quæ interdicta ab hac fœnae Reipubl. literarum excludatur, neque fane etiam ambire multo minus, ut ratio nostrum habeatur. Facile patior, auditores uti arbitrìo suo, duntaxat, ne faciant Criticas generales, sed ut simplicitate narrationis, quæ est propria diarii & novellis, contenti, ablineant omni judicio omnique criû : hanc enim integra eujusque scribendi lectioni publicaeque affiliatione relinquant oportebat. Quod quidem eo magis requiritur necessarium est, quo difficilius evitatur; si quidem observare licuit, aliquos id fœro in praefationibus suis prolitis, in progressu relationum calorem scribendi abraptos nihil minus praebitus ac etiamnum praeritare. Scribant igitur, CRUSIUS, argumenta librorum suorum & amiant elogia, qui volent pascantque fæculis imaginariis. Ego mauerum, homines rogent, cur CRUSIUS non comparat proce-ribus pernictus aehivis, quam ut elogia rationesque mo- rum qualiuncunque scribentur, juxta tot dignas pariter indignaque reverentia polteritatis chartas, comparentur atque confeuntur. Non defecerat adhuc materia dialogorum, sed reli-
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Jurisprudence is more suited to the talents of the Germans and, next to them, is equally natural to the Dutch. These people will perhaps provide the lack which Böckelmann finds in the French, and will not be reluctant to regard our profession as some part of the world of letters and they will not forget in their papers what pleases and is relevant. I, personally, am grateful to them for this reason, that thanks to them one can learn as if through a compendium, about the authors who are relevant to one’s own studies. The talents of our age must be cherished, and we must not only use the great masters who have passed on, nor is it fitting that we should be so disdainful as to refuse to read the works of learning which well-known writers, or those who desire to be well-known, have written with great labour, but should also disdain merely to learn their arguments and the main points of their books. Therefore, I would not like to argue that our profession should be excluded, as it were by an interdict, from the public stage of the Republic of Letters, but much less would I like us to court favour so that account be taken of us. I can easily accept that the contributors should use their own discretion, provided that they do not make all sorts of criticisms but that, being content with a simple statement such as is proper to papers and news-sheets they should refrain from all judgement and criticism. For this ought to be left to a reading of the entire book and to the evaluation of the public. But the more necessary it is to demand this, the more difficult it is to be avoided, if one may be allowed to observe that some writers, having made earnest promises in their prefaces, carried away in the course of writing by the fervour of composition, have provided nothing less and even now provide it.”

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

There was still no lack of topics to discuss but

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\*† et etiamnum... censeantur.

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

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

141 It is ironic that Huber should scorn those who comment adversely on books they have not read in their entirety, as he himself is accused by Noodt of citing and refuting authors without having read their works (Noodt to van Eck, Leiden, 3 October 1693. U.L. Utrecht Ms 1000): gelijk ick dan noch behinde dat hij allegert auteuren, ende die refuerte zonder dat hij se gelesen heeft. See van den Bergh *Noodt*, p. 56. ft. 90 and Veen’s article on Stolte’s *Brebkman* p 383 ft. 9.
63

Iuris, Dialogus.

reliqui convivæ Bökelmanni, qui magis verecundia nos interpellandi, quam sua sponte in alio recesso amiciislimi horti subititerant, tandem affuebant, ut nobis valedicerent, hospitique gratias actis, in urbem se reciperent, quod & à nobis, polt aliquot ultimae civilitatis complementa mutualis 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.