

LATIN-ENGLISH SYNOPSIS

I. N. D. N. J. C.
DISPUTATIO INAUGURALIS
DE

JURE PRINCIPIS
AEREO,

Quam
ASPIRANTE DIVINI NUMINIS GRATIA
DECRETO ET AUTORITATE

Magnifici & Amplissimi Jctorum
Ordinis,

IN ILLUSTRIS UNIVERSITATE VIADRINA
PRÆSIDE,

DN. SAMUELE STRYKIO, Jcto,
COMIT. PALAT. CÆSAR. CONSIL. ELECTOR.
BRANDENB. FACULT. JURID. ORDIN. DECRET.

P. P. CELEBERRIMO, & h. r. DECANO SPECTABILI,
DOMINO PATRONO atq. PROMOTORE suo
etatem maxime de venerando,
PRO CONSEQUENDIS

IN UTROQUE JURE HONORIBUS AC PRI-
VILEGIIS DOCTORALIBUS

Ad Diem 8 Octobr. Anno MDC LXXXVII.

Horis Ant. & Postmeridianis

IN AUDITORIO JCTORUM

Publicè proponet

JOHANNES STEPHANUS DANCKO, Servest. Anhaltinus,

Anlz Servest. Advocatus Ordinarius.

transmissi ad Oderam, Literis CHRISTOPHORI ZEITLERI

EDITORS OF THE LATIN-ENGLISH SYNOPSIS:

DR. MARIETTA BENKÖ AND DR. BERNHARD SCHMIDT-TEDD

TRANSLATORS: MARTY H. HEITZ, OKLAHOMA STATE UNIVERSITY, USA

AND PETER KERTÉSZ, COLOGNE, 2002

LATIN - ENGLISH SYNOPSIS

IN THE NAME OF OUR LORD JESUS CHRIST

INAUGURAL DISSERTATION

THE JURISDICTION OF THE PRINCE OVER THE AIR

WHICH, WITH THE HELP OF THE GRACE OF THE HOLY SPIRIT

BY VIRTUE OF THE RESOLUTION AND AUTHORITY OF THE EXCELLENT AND DISTINGUISHED

ORDER OF THE LAWYERS IN THE FAMOUS VIADRINA UNIVERSITY

UNDER CHAIRMANSHIP OF

JURIST SAMUEL STRYCKIO

ACCORDING TO THE RESOLUTION OF THE IMPERIAL COURT

AND OF THE IMPERIAL ELECTORAL COUNCIL

IN THE DEPARTMENT OF THE LAW FACULTY, BRANDENBURG

P. P. CELEBRATED AND DISTINGUISHED DEAN, HIS PATRON AND SUPPORTER

ADMIRABLE ESPECIALLY WITH REGARD TO HIS LONGSTANDING EXPERIENCE

FOR THE ATTAINMENT

OF THE HONORS AND PRIVILEGES OF THE DEGREE OF DOCTOR IN BOTH RIGHTS

PUBLICLY PRESENTS

ON THE DAY OF OCTOBER IN THE YEAR 1687 IN THE MORNING AND AFTERNOON

IN THE AUDITORIUM OF THE JURISTS:

JOHANNES STEPHANUS DANCKO, ANHALT-ZERBST

LICENSED ATTORNEY OF THE COURT OF ZERBST, FRANKFURT / ODER

PUBLISHED BY CHRISTOPHORUS ZEITLER

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Dancko, Johannes Stephanus:

De Jure Principis Aereo / The Jurisdiction of the Prince over the Air. Anhalt-Zerbst, 1687
Latin-English Synopsis / Latein-Deutsche Synopse

Edited by / Herausgegeben von: Marietta Benkö und Bernhard Schmidt-Tedd

Translators / Übersetzer: Marty H. Heitz, Oklahoma State University, USA
and Peter Kertész, Cologne 2002

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INTRODUCTION

To the best of our knowledge, “de Jure Principis Aereo” is the oldest study in the history of air and space law and a translation from Latin into a “modern” language has not been made until the present.

The dissertation was first brought to our attention by Dr. *Andreas Kadletz*, a lawyer colleague, who shares our enthusiasm for old manuscripts and ancient literature. He had seen quotations of the Latin manuscript in other studies dating from the first half of the 20th Century. However there was no indication whether the Latin manuscript was still existent and whether (or where?) it was accessible to the general public.

It was finally with the help of Ms. *Denise Digrell*, librarian of the Institute of Air and Space Law at Cologne University, that we could locate the book in Dresden at the Saxonian State- and University Library (Sächsische Staats- und Universitätsbibliothek)¹ and could even obtain a microfilm of the original.

After studying this unusual, early manuscript we were quite astonished about its “freshness” even after more than 300 years as well as its cosmopolitan approach and spirit: The author compares different European legal systems with respect to his subject, namely German, English, Italian, Spanish and Russian as well as Hungarian laws and regulations. Also it is interesting to see that quite as a matter-of-fact the author masters a number of foreign languages. We can take it from the text that *Dancko* spoke good Latin which at his time was the language of scholars and officials. In addition, his quotations and arguments show that besides his mother tongue which might have been German he also knew English, Greek and even Hungarian. (To all probability *Dancko* was of Hungarian origin.)

Also if we look at the dissertation from a scholar’s and publishers point of view we can see that the roots of our legal argumentation as well as the way of systematising legal material go back hundreds of years since “our way of legal thinking” was already known and applied in *Dancko*’s dissertation which is structured as well from the logical as from a formalistic point of view in many ways like a “modern” German dissertation today.

As to the University Viadrina where *Dancko*’s dissertation was written under the supervision of Prof. *Samuel Stryck*² who was considered to be one of the best lawyers of his time, this institution had been founded already in 1506 and famous scholars had studied there. These

¹ SLUB: Sächsische Landesbibliothek – Staats- und Universitätsbibliothek), 01054 Dresden (Germany). Visitors’ address: Zellescher Weg 17, D-01069 Dresden. See also: <http://www.tu-dresden.de/slub/>

² As to his biography and publications which however do not show any relation to air or space law, see: *Joercher, Christian Gottlieb*, Allgemeines Gelehrten-Lexicon (*General Encyclopedia of Scholars*) : Darinne die Gelehrten aller Stände sowohl mann- als auch weiblichen Geschlechts, welche vom Anfange der Welt bis auf die ietzige Zeit gelebt, und sich der gelehrten Welt bekannt gemacht, Nach ihrer Geburt, Leben, merckwürdigen Geschichten, Absterben und Schrifften aus den glaubwürdigsten Scribenten in alphabetischer Ordnung beschrieben werden. Leipzig, 1750-51, p. 898-900. See also, *J. Zedler*, Großes Universallexikon (*Great Universal Encyclopedia*), 1732 on p. 1128, wich can also be used via Internet under [http://mdz.bibbvb.de/digbib/lexika/zedler/images/ze40/@ebtlink;nh=1;cs=default;ts=default;p_t=1797366;lang=de?collection=images;book=ze40;target=IDMATCH\(entityref,ze400577\);__prev_hit__=1797378;__next_hit__=1797386;](http://mdz.bibbvb.de/digbib/lexika/zedler/images/ze40/@ebtlink;nh=1;cs=default;ts=default;p_t=1797366;lang=de?collection=images;book=ze40;target=IDMATCH(entityref,ze400577);__prev_hit__=1797378;__next_hit__=1797386;)

were for example *Thomas Müntzer, Carl Philipp Emmanuel Bach, the Brothers Humboldt, Samuel von Cocceji, Carl Gottlieb Svarez, Christian Thomasius* and *Heinrich von Kleist*.

In 1811, the University was closed after the foundation of the University Berlin in its neighbourhood. However, on September 6, 1991, Viadrina was reopened again as “Viadrina European University”. Its aim is to build bridges to Eastern Europe especially between Poland and Germany and it strives at becoming a place where history and geography as well as connections between different disciplines and areas of study are investigated.

Stephan Dancko’s dissertation fits into this context even today.

Fascinated by “*de Jure Principis Aereo*” we decided to bring this exceptional study to the knowledge of our colleagues involved in air and space law and, as a first step, we asked *Peter Kertész* to make a German translation. The Latin-German Synopsis could be edited in 2001 and we gave it as a present to the former Director of the Institute of Air and Space Law at Cologne University, Prof. Dr. *Karl-Heinz Böckstiegel*, on the occasion of his becoming emeritus³.

Due to the great success of the German translation the present English edition was prepared on the initiative and with kind support of the distinguished Honorary Director of the International Astronautical Federation, Ms. *Eileen Galloway* as well as Prof. *Jonathan Galloway* from Lake Forest College, Illinois, USA who motivated Mr. *Marty H. Heitz* to start working on an English translation.

We do hope that our readers will share our fascination and great respect for *Stephanus Dancko* who more than 300 years ago had systematically investigated the foundations of air and space law on the basis of the knowledge of his time as well as the then existing problems relating to the protection of the environment.

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³ This event took place during the Colloquium “Legal Framework of the Commercial Use of Outer Space: International Colloquium on Conclusions of Project “2001”, and Presentation of Liber Amicorum Karl-Heinz Böckstiegel (“Luft-und Weltraumrecht im 21. Jahrhundert/Air and Space Law in the 21. Century, Edited by *M.Benkö* and *W.Kröll*) Cologne, 29-31. May 2001.



Eilene Galloway

54TH INTERNATIONAL ASTRONAUTICAL CONGRESS
SEPTEMBER 29TH - OCTOBER 3RD 2003, BREMEN

PRESENTATION IN THE HONOR OF EILENE MARIE GALLOWAY

ON BEHALF OF THE INSTITUTE OF AIR AND SPACE LAW, COLOGNE UNIVERSITY
AND THE GERMAN AEROSPACE CENTER (DLR)

Ladies and Gentlemen,

as we all know, the year 2003 is spectacular in the history of air and space law as well as in space exploration. Just to name a few events: we are celebrating the 100th anniversary of the *Wright Brothers'* flight in Kitty Hawk. 80 years ago, the German physicist *Hermann Oberth* published his famous study on the construction and use of rockets (*Die Rakete zu den Planetenräumen*) and in 1958, the *Ad-Hoc* Committee on the Peaceful Uses of Outer Spaces, which is now the (Permanent) United Nations' Committee on the Peaceful Uses of Outer Space, was established.

In this framework, we would like to highlight the merits of our distinguished colleague, *Eilene Galloway*, who has been an influential force in the development of space law and space policy since the birth of the "Space Age".

Just to give an outline of her remarkable career: in 1941, *Eilene Galloway* began working in the field of international relations for the Legislative Reference Service, which is the Congressional Research Service today at the U.S. Library of Congress. And when Sputnik was launched on October 4, 1957, it was *Eilene Galloway* who was immediately called upon as a senior specialist to participate in the drafting of the United States' response to this dramatic event.

From then on, she has worked with the United States Congress and as a consultant to NASA, the Federal Communication Commission and the State Department in assessing alternatives and developing solutions in space law and space policy. Among her many achievements she was also involved in the drafting of the National Aeronautics and Space Act which provides the foundation for U.S. space law and space policy even today and which was the legal basis for the establishment of NASA.

Naturally, the international aspects of space activities have always been a major concern of *Eilene Galloway's* work: She served as a consultant to Senator Johnson in 1958 when he addressed the United Nations and recommended the creation of an *Ad Hoc* Committee on the Peaceful Uses of Outer Space which became later the standing U.N. Committee which we all know. Serving *i.a.* as a member of the delegation of her country and as the liaison between the International Astronautical Federation and the Committee she was involved in the drafting of all U.N. treaties which govern today the exploration and utilization of outer space.

Eilene Galloway was also instrumental in creating the International Institute of Space Law (IISL) in 1958 which, since that time, has served as a forum for legal scholars and others to debate legal issues relating to space exploration and utilization. In 1982 she was invited by the United Nations University to plan a symposium in cooperation with the IISL, the Peace Palace, and the Hague Carnegie Foundation on the important question of maintaining outer space for peaceful purposes. In 1992 and 1994, she actively participated in the two workshops on international cooperation in space held by the American Institute of Aeronautics and Astronautics (AIAA). In June 1994, she was invited by the European Space Agency to participate in its International Lunar Workshop. She was also one of a select group of experts invited to the United Nations to speak during the celebration of its 50th anniversary in March 1995.

Eilene Galloway continues to be an active participant in space policy and space law debates - presenting papers at conferences, participating in professional societies like the AIAA, serving as a resource to researchers and the media on historical and current space policy issues, and mentoring new members of the space policy and space law communities. She received many honors and awards from important institutions like the International Academy of Astronautics, the IISL, where she still holds the position of Honorary Director, the American Astronautical Society, the AIAA, the Library of Congress, NASA and Women in Aerospace.

On today's occasion, it is our intention to join these distinguished institutions in honoring *Eilene Galloway* and thus express our high esteem and gratitude for the outstanding work of her lifetime.

On behalf of the Institute of Air and Space Law at Cologne University and the German Aerospace Center (DLR), we have edited an unusual book for an unusual grand lady. It is the English translation of the very first doctoral thesis in the field of air and space law. It is more than 300 years old, written in 1687 in Latin by *Johannes Stephanus Dancko* at Viadrina University which is in Germany today. The work is entitled "De Jure Principis Aereo" and deals with the jurisdiction of the Prince (today we would say the Head of State) over air and space.

At the time when the dissertation was written, this subject did not have legal implications only. It also touched questions of faith and religious doctrine (today we would also point to the political dimension of the work) since at that time, it was common belief that air and space were reigned by the hosts of heaven - especially by Lucifer - and that they were *not* a domain for mankind. But in his dissertation *Stephanus Dancko* - in the spirit of enlightenment - proved that state jurisdiction had very well to be extended to air and space and not only to the territory of the State on Earth. *Dancko* wrote an international comparative study (of 36 pages!) on the question in how far such jurisdiction was necessary from a pragmatic point of view for the health and well-being of the State and its subjects. He examined different European legal systems namely, German, English, Italian, Spanish, Russian and even Hungarian laws, and came to the conclusion that jurisdiction over the air is vital for the protection of the environment and also serves the interest of *e.g.* public health and urban development. He demonstrates with very “modern” examples the need for such a solution and provides from the legal point of view some basic foundations for the use of air and space for men on Earth.

We have reprinted the original Latin manuscript together with an English translation and are presenting the book as a synopsis to the reader.

We dedicate this edition to *Eilene Galloway*, because it is evident that *Stephanus Dancko* and our honored colleague have many interesting features in common: their extraordinary foresight in a field where at an early time, when they had already started thinking about the future, their work required a clear vision as well as an unusual freedom and independence of thinking. In addition, from a pragmatic point of view, they both needed great energy and dedication for obtaining general recognition for the value of their work and, as a next step, for reaching practical results in a field where useful precedents were and still are hardly available.

Ladies and Gentlemen, thank you for your attention!

Bremen, October 2nd, 2003

Marietta Benkö

Bernhard Schmidt-Tedd

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**SYNOPSIS OF THE LATIN TEXT AND THE ENGLISH
TRANSLATION**

P Ræmâ divino nexu conjuncta la-
 bori
 Cernas, hoc virtus subdere calcar
 amat.

Te Themidos sacris magno fervore litâsse
 Entheus in Musas ardor amorque do-
 cet:

Pagina docta tacens loquitur tùm lingua So-
 phorum,
 Qvæsitis doctè cuncta regeſta pro-
 bans.

Macte animo: gradibus templum ſe pandit
 Honoris:

Jam decus & laudes arva paterna pa-
 rant.

*Nobiliff. & Conſultiffimo
 Dn. Candidato
 Imq, ſac.*

PHILIPPUS BUCHIUS,
 S. S. Theol. Doct. & Prot.
 Ordin.

See the treasures, which are connected by a holy bond with
 work;
 whereby virtue loves to give the spores.

That you have devoted yourself with great fervor
 to the mysteries of the goddess Themis,

Discloses your enraptured fervor and love
 of the muses;

then the silent, scholarly record speaks
 in the language of the wise,

and examines everything that is rendered, after
 the scholarly investigations are concluded.

Hail to your lofty intellect!
 The temple of honor stands open to your steps:

At this very moment the paternal regions prepare honor and
 praises.

Produced for the noble and skilled

Candidate

and Schoolmaster of Law

by

Philipp Buchius,

doctor and professor

of holy theology



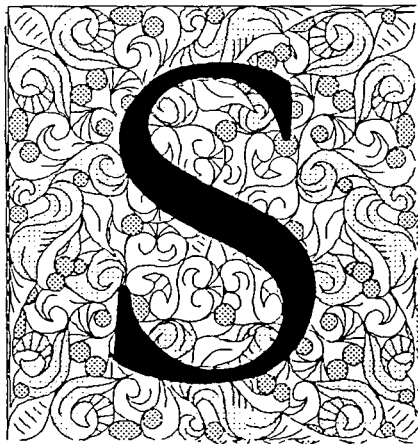
PROOEMIUM.



Panta Principi incumbit sollicitudo, salutis publicæ, & subditorum privatæ prospiciendi, ut nil quicquam, quod turbare vinculum societatis civilis possit, sine remedio Ipsi relinquendum. Provida illa Imperantium cura se non tantum ad prædia & agros Civium, sed & ad maria, flumina, imò ad ærem ipsum extendit. Servat enim omnia nutritque æer, inde, ne circa ærem quid committatur, quod salubritatem ejus intervertat, vel commoditates aliis præripiat, Lege aliquando publicâ cavendum est à Principe. Quapropter cum mihi seligenda ma-



Foreword



So great a concern for taking into consideration the public and the subjects' welfare weighs on the prince, that he must not leave without remedy anything that threatens the bond of civil society. This considerate attention extends not only to the citizen's lands and real estate, but equally to the seas and rivers, indeed even to the air itself.

For it is the air that preserves and nourishes everything. Accordingly, at some time it must be guaranteed by the prince, through a public law, that there be nothing committed regarding the air that might cause it to lose its powerful effect or remove its advantages for others.

PROOEMIUM.

series esset, quam publicè loco Disputationis Inauguralis proponerem, occasionem mihi suppeditavit Charissimi quondam mei Con-
tubernalis, Domini CHRISTOPHORI ERNESTI
BAUERMEISTERI, J. U. L. Serenissimi Princi-
pis Anhaltini, DOMINI VICTORIS AMA-
DÆI, Domini mei Clementissimi, Præfecti
Ballenstadii &c. solennis Disputatio, quam
de Jure Principis Subterraneo in hac Uni-
versitate pariter pro Licentia Doctorali pro-
posuit, cogitandi, an non circa æerem specia-
lia quæpiam Jura Principi possent assignari.
Feci ergò periculum, & quæ festinanti mihi
succurrebant collegi, & in illum, qui sequitur,
ordinem redegi. Tuum est, Benevole Le-
ctor, benignè interpretari meam, quam susce-
pi, operam, & defectus, quos deprehendes
subinde, faventissimâ interpretatione sup-
plere. DEUS verò O. M. dirigat omnia fe-
liciter...

So when it fell on me to choose the material that I would present publicly in my discussion, the dissertation on the subterranean jurisdiction of the prince of my extremely dear and valued former colleague, Mr. Christoph Ernst Baumeister (he has also submitted it in this University for attaining the doctor's degree), Licentiate of both rights of the Most Serene Prince of Anhalt, his highness Victor Amadeus, my most gracious lord, Governor von Ballenstedt & c., gave me the opportunity to consider whether, with regard to the air, any special rights could be entrusted to the prince.

I therefore accepted the risk, and whatever came to my assistance while I hastened I have gathered and arranged in that order. It rests with you, gentle reader, to favorably interpret the efforts I have undertaken, and to amend the defects, that you will always find, through extremely benevolent explanations. However, almighty God shall conduct everything to a good end!

(0) 20

CAPUT I. DE JURE PRINCIPIS AEREO IN GENERE.

SUMMARIA.

<i>V</i> ocabula ab ambiguitate liberanda	1. 2.	<i>Pr</i> inceps æris dicatur?	13. 14. 15.
<i>V</i> aria Principis significatio, remissive.	3.	<i>I</i> tem Princeps Mundi?	16.
<i>J</i> uris acceptio varia, remiss.	4.	<i>Q</i> uo Jure sibi Princeps jus in ærem vindicet? ratio dub.	17.
<i>Q</i> uid h. l. Principis appellatione veniat?	5. 6. 7. 8. 9. 10.	<i>R</i> esponsio	18. 19. 20.
<i>Q</i> uid Jus denotet?	11.	<i>M</i> os Regum Hungariae.	21.
<i>Q</i> uid importet cō æreum?	12.	<i>P</i> rogressus ad ulteriorem Juris ærei expositionem.	22.
<i>Q</i> uo sensu Diabolus in Sacris Prin-		<i>D</i> efinitio Juris ærei Principis.	23.
		<i>D</i> elineatio subseq. methodi,	24.

Exposituro mihi Jus Principis Aëreum, prima incumbit cura, obscuras vocum nebulas e medio tollendi, quo illud cō lucidius nostro sistatur conspectui. Verum quoniam circa Disputationis vocabula satis superque Doctorum mentes manusque laborarunt, ut omnia sua jam luce radiant, Soli facem accendete nolo. Interim de varia Principis significatione videri possunt *Limn. de Jur. Publ. Tom. 1. L. 4. c. 2.* Reinking. *de Reg. Sec. L. 1. Cl. 4. c. 8.* Illustr. *Da. de Rhetz. 7. Jur. Publ. L. 1. c. 17. §. 10. & seqq.* Schved. *intr. in Jus Publ. P. 2. Resp. Sect. 2. c. 8.* Vocabuli Juris acceptio varia habetur in *L. pen. & ult. ff. de J. & J. conf.*

Chapter One

The Jurisdiction of the Prince over the Air in its Nature

Summary

Concepts that must be freed of ambiguity.	1, 2	call the devil the prince of the air?	13, 14, 15
The different meaning of the word <i>prince</i> with reference to the relevant literature.	3	Likewise the prince of the world?	16
The different conception of the word <i>jurisdiction</i> with reference to the relevant literature.	4	According to what right might the prince claim the jurisdiction over the air for himself?	
What has to be included in the designation <i>prince</i> ?	5, 6, 7, 8, 9, 10	Controversial point of view.	17
What does the concept <i>jurisdiction</i> mark?	11	Reply.	18, 19, 20
How can <i>to aereum</i> be translated?	12	Coronation custom of the Hungarian kings.	21
According to what definition does religion		Development of an explanation of the jurisdiction over the air in a wider sense	22
		Definition of the jurisdiction of the prince over the air	23
		Outline of the method to follow.	24

¹ Since I have the intent to explain the jurisdiction of the prince over the air, the concern first of all falls upon me to remove any dark and foggy concepts, as a result of which the jurisdiction is revealed all the more radiantly to our sight.

² But because the hearts and hands of scholars have more than sufficiently been active concerning the concepts of my dissertation – so much indeed that everything already shines by their intellectual light – I do not wish to light a torch for the sake of sunlight.

³ Meanwhile, regarding the different meanings of the word prince [the following] can be consulted: *Limn. de Jur. Publ. Tom. 1. L.4 c.2. Reinking. de Reg. Sec. L.1 Cl.4. c.8. Illustr. Dn. de Rhetz. J. Jur. Publ. L.1. c.17. §10. & seqq. Schwed. intr. in Jus Publ. P.2. Resp.Sect.2 c.8*

⁴ A different interpretation of the concept jurisdiction is advocated in: *in L. pen. & ult. ff. de J. & J.*

6 CAPUT I. DE JURE PRINCIPIS AEREO,
 conf. Eckold. *ad d. 1. §. 16.* Donell. *Enycl. c. 4.* H. Grot. *de*
J. B. ac P. L. 1. c. 1. §. 3. seqq. cujus mentem illustravit Exc.
 Dn. Valand. *in Diss. Quirit. Phœnicis. Interp. Mantiss. §. 1.* A-
 chill. Epstein. *in not. ad Joh. Frid. Horn. de Civit. L. 2. c. 3. §. 3.*
 5 In præfenti vero Disputatione PRINCEPS signifi-
 eat in genere Personam publicam, penes quam summa
 6 in republ. est potestas: Ita ut hac appellatione veniat non
 solum Sacratiss. Imperator, qui Princeps in Jure Civili,
 & hodiernum in titulis der Allerdurchlauchtigste Fürst secun-
 7 dum excellentiam & in gradu eminenti vocatur: Nec illi
 tantum, qui ab Imperatore de Principatu einem Fürstenthum
 una cum dignitate eines Fürsten investiti & decorati sunt,
 quales inter coeteros Sereniss. Principes Anhaltinos, Do-
 minos meos Clementissimos, qui teste Schvved. *d. 1.*
 ab antiquissimis Friderici nempe Barbarossæ tem-
 poribus hanc dignitatem habuerunt, summa cum reve-
 8 rentia nomino: Sed huc etiam referendi, minime au-
 tem gentium excludendi sint reliqui Imperii Principes,
 quocunque dignitatis titulo sive Electorum, sive Ducum
 sive Marchionum, sive alio denique fulgeant & insigni-
 antur, utpote qui vi superioritatis territorialis sibi compe-
 tentis Majestatico quodam jure Provinciis suis præfunt,
 9 ac subditorum salutem promovent. Imò nec illos ex-
 cludendos censeo, qui, licet Principes non sint, Status ta-
 men Imperii sunt, & ea propter æquali cum Principibus ju-
 10 re territoria sua moderantur. Ad quam Classem Civi-
 tates quoque Imperii refero, quæ utut eminentia Prin-
 cipum personali non gaudeant, realia tamen eorum ju-
 ra, ex superioritate territoriali dependentia, omnino cum
 11 reliquis Statibus communia habent. JUS notat pote-
 statem moralem adæquate sumptam, quam Grot. *d. 1.*
 §. 4. facultatem vocat.

Ad

conf. Eckold. ad d. t. §.16. Donell. Emucl. c.4. H. Grot. de J. B. ac P. L.1. §.3 seqq.
 Its meaning made clear: the splendid dean Valand in *Disp. Quirit. Phonoenicis.*
Interp. Mantiss. §.1; Achill. Epstein. in not. ad.; Joh. Frid. Horn. de Civit. L.2 c.3 §.3.

- 5 However, in the present dissertation, **PRINCE** essentially designates the public person, in whose hand precisely lies the highest office of power over a state.
- 6 Accordingly, not only does the most divine emperor, who is named prince in civil law and nowadays is called the most high prince on the inscriptions (as befits his grandeur and according to his outstanding position), come under this concept,
- 7 likewise, not only do they come under it, who— owing to their superior rank — have been supplied by the emperor with a principality or honored with the rank of a prince, among all of whom I name with highest reverence the supreme princes of Anhalt, my most gracious lords, who, according to the evidence of *Schwed. d.l.*, possessed this rank from antiquity, namely since Friedrich Barbarossa,
- 8 but also the remaining princes of the kingdom shall here be mentioned and in no way withheld from the ears of the people, by whichever honorary title they may shine forth and are decorated, be it the title of electors, dukes, counts, or be it a different one, since indeed these very same lead their provinces and promote the welfare of their subjects by the power bestowed to their territorial supremacy by a certain majesty's jurisdiction.
- 9 Indeed, in my opinion not even they may be excluded who, even if they are not princes, nevertheless have sovereign rank and so by rights rule their lands on equal footing with other sovereigns.
- 10 I also place in this class of sovereign authority the states that — although it may be that they do not have the benefit of a personal excellence of a prince — yet have their actual laws depending upon the notion of a territorial superiority, and generally in accordance with all the other states.
- 11 In a similar manner JURISDICTION signifies a certain moral authority that Grot., in the *aforementioned section*, § 4, names permission.

IN GENERALE

Adjectivum **AEREUM** propriam suam retinet 12
 Significationem, ita ut **ius aëreum** sit **ius circa aërem**
 & ea quæ in aëre sunt & contingunt. Aër verò quid
 sit, & quomodo accurate describi debeat? Physicorum
 inquisitioni relinquo: Res ipsa cum vulgò nota sit, juridica
 hoc in passu non indiget tractatione, cuius eam quovque
 esse, ex Juris nostri textibus infra allegatis apparebit. **Ius**
 autem aëreum quoniam Principi adscribam, dubium movere 13
 nullum, quod Apostolus Diabolum appeller Principem
 cui potestas est aëris *ad Ephes. 2. v. 2.* non enim ipsi pro-
 prie potestatem adscribit, sed tyrannidem, quam DEI
 permisso exercet. Joh. Calvin. *Com. in h. l.* nisi rectius for- 14
 tean tota hæc locutio dicatur impropria, videlicet mali-
 gnium istum Spiritum in conflictu etiam loco esse supe-
 riorem, idcirco eo magis metuendum, Idem *Com. in C. 6. Ephes.*
v. 12. Alii asserunt, obsidere instar tabernaculorum aërem 15
 Dæmones, ne dona DEI ad nos descendant, nec preces
 nostræ & Gratiarum actiones ad Cælum ascendant, id-
 que, suis quando infidiis & tentationibus homines in pec-
 catum impellunt, ut indigni sint recipere dona DEI vel
 ad eum preces fundere. Alph. Salmet. *Disp. 5. in Com.*
C. 2. ad Ephes. ex mente Bernardi *de incarnat. verb.*
 Alii aliter alleg dictum Paulinum interpretantur, verum
 Theologis genuinum illius sensum relinquo, Cum illud,
 quicquid etiam significet, non magis mihi obstat, quam
ad Ephes. c. 6. v. 12. ubi Princeps mundi vocatur Diabolus. 16
 Dedit DEUS O. M. filiis hominum terram *Psal. 115. v. 16.*
 & unâ, seu terræ accessionem, aërem, adeoque Diabo-
 lus nec in terram, nec in aërem, quicquam potestatis, nisi
 jussu ac permisso DEI, qui universi est Dominus, sibi ar-
 rogare valet: quamvis tyrannidem suam erga homines
 exercere

- 12 The attribute $\tau\omicron$ *AEREUM* retains its original meaning, such that jurisdiction over the air becomes jurisdiction with respect to the air and with respect to what is in it and what applies to it. But what the air might be and how it should be exactly described, that question I leave to the natural scientists' investigation. Since the object itself is generally acknowledged, it requires no juridical treatment in this section. That it is also an issue of juridical treatment will emerge further below from our law texts, which I have cited.
- 13 But nobody should be doubtful about the fact that I attribute jurisdiction over the air to the prince, just because the apostle designates the devil as a prince, to whom dominion over the air is given (*ad Ephes. 2 v. 2*). And indeed he does not define this dominion as his exclusive property, but rather as a tyranny that he wields with God's permission.
- 14 Johannes Calvin: *Com. in h. t.* writes — if the following debate is not actually supposed to be called insignificant — that naturally in battle this evil spirit is the superior not least in view of his fighting position, and because of that all the more to be feared.
- 15 Others report that demons lie in wait in the air like highwaymen, so that God's gifts do not come down to us nor do our prayers and good works reach up to Heaven, and that — because they lead people astray to sin by their ambush and their temptations — it may be that the people are unworthy to receive God's gifts or to let their prayers be heard before him (*Alph. Salmer. Disp. 5. in Com. C. 2 ad Ephes.; in this sense also Bernhardi de incarnat. verb.*). Others read the cited expression of Paul differently, but its unadulterated meaning I leave to the theologians,
- 16 especially since it, whatever it means, no more impedes me than *ad Ephes. c. 6 v. 12*, where the devil is named the prince of the world. The almighty God gave the earth to the sons of men (*Psalms. 115 v. 16*) and at the same time, virtually as earthly access, the air; and even the devil is not in the position to lay claim to the slightest power over the earth and over the air except by order and with the permission of God, who is the lord of the universe: trying as he might to expend the greatest effort to exercise

8 **CAPUT I. DE JURE PRINCIPIS AEREO,**
 exercere annitatur maxime, Leonis instar rugientis ob-
 ambulans, & quem devoret, quærens. *J. Petr. s. v. 8.*

- 17 Quo autem jure Princeps sibi jus aliquod in ærem
 tribuere ac vindicare possit? disquisitionem meretur,
 quippe cum ær communis omnium & liber esse dica-
 tur §. 1. *7. de R. D. L. 2. §. 1. ff. eod. L. 13. §. ult. ff. de injur.*
& fam. lib. L. 11. C. de edific. prin. & hac ratione nihil pe-
 culiare sibi in eundem privative quoad alios tribuere,
 posse videatur Princeps: Nam

Nec Solem proprium natura, nec æra fecit!

- Ovid. *6. Metamorph.* Sed utut hoc verum sit non solum
 18 intuitu æris naturæ, sed etiam hominum aptitudinis:
 Tamen uti de reliquis rebus, quæ usui omnium produ-
 xit natura, disponere ac LL. ferre, imò & magnam illo-
 rum partem sibi soli vindicare potest Princeps: Ita &
 circa ærem ipsi non denegandum est liberum dispo-
 nendi arbitrium; Accedit, quod Deus Principi, ut Vica-
 19 rio suo & Pro-Deo in Orbe partiali universæ reipubl.
 regimen credidisse censeatur, Joh. Frid. Horn. *de Civit. l. 2.*
c. 2. §. 2. n. 11. & Majestas se in omnia, quæ ad Civitatem
 spectant, extendat, nihilque ab ipsius imperio sit,
 exemptum, ut adeo Principis etiam potestatem ad ærem
 & omnia quæ in ære sunt & fiunt, pertingere neminem
 recer esse, qui de eo dubitare possit: Ut taceam, omnia
 20 jura populi Lege Regia olim in Principem esse translata
 §. 6. *l. de J. N. G. & C.* sine dubio E. & illa, quæ circa æ-
 rem quicquam specialis utilitatis habent, translata cen-
 senda. Ad quod æris dominium designandum mos
 21 Regum Hungariæ referri posse videtur, quando in co-
 ronationis actu stricto S. Vladislai ense quater æteram
 versus omnes mundi plagas verberant. Exc. D. Becman, *in*
 22 *Nat. Dign. Illustr. Diss. s. c. 2. §. 7.* Cum igitur pateat
 Prin-

his tyranny over the people, just as a roaring lion wandering over the earth and seeking whomever he can devour.

- 17 But according to what right a prince is entitled to any jurisdiction over the air and may claim such jurisdiction for himself deserves an investigation, especially since it is said that the air is common property and has no limits (*§.1. J. de R. D. L.2. §.1.ff. eod. L.13 §.ult.ff de iniur. & fam. lib. L.11 C. de aedif. priv.*), and it appears, according to this argument, that no special right can be bestowed to the prince for himself or on his own behalf over the said article, as over other things. For: "Nature has given neither the sun nor the air to anyone as property." Ovid 6. *Metamorph.*
- 18 But how truthful the saying may be — not only while contemplating the nature of the air, but also the cleverness of the people, this nevertheless holds true: as he can propose laws over and allot large parts of all things that nature had brought fourth to the advantage of all, so the prince can claim a large part of things for himself alone indeed. Who consequently must not — concerning the air — be denied the unrestricted judgment of how the allotment ought to proceed.
- 19 Add to this that God, according to unanimous opinion, has entrusted to the prince as his representative and in his place, dominion over the world, which is but a part of the universal rule of God (*Joh. Frid. Horn de Civit. 1.2 c.2 §.2 n.11*), and his command should extend over everything that belongs to the state, and nothing should be omitted from his dominion either, so that I do not believe that there is anyone who can entertain doubts about the fact that the power of the prince indeed extends to the air and to everything that therein is and occurs.
- 20 Not to mention that all the rights of the people were once, according to the Lex Regia, transferred to the prince (*§.6.1 de J. N. G. & c.*), which makes us conclude without allowing any doubt that everything that has a special benefit concerning the air has also been transferred to the prince.
- 21 It seems the custom of the Hungarian kings can be connected with this definition of the dominion over the air, because in the course of their coronation ceremony they lash the air with the drawn sword in all four directions of the world: *Excellenz D. Becman. in Not. Dign. Illustr. Diss. 5. c.2. §.7.*

IN GNERE.

Principi justè adscribi posse jus circa æerem, quod æereum rectè appellatur. Legitimus nunc ordo exigit, ut naturam hujus juris introspeciam penitus.

Definiri illud ad ductum Hug. Grot. c. L. i. c. 1. n. 4 poterit : Qualitas moralis perfectà Superiori ad usum æeris habendum & in æere faciendum competens. Quod clarius in Capp. subsequ. reddetur, quæ Jus Principis æereum primò ad necessaria, deinde ad utilia, & tandem ad jucunda dirigent.

CAPUT II.

DE

JURE PRINCIPIS AEREO

AD VITAM CONSERVANDAM COMPETENTE.

SUMMARIA.

I ngressus.	1. Ne igitur Sordibus inficiatur trans-
Aër omnium est communis ad	quillitas aëris, Principis est cu-
respirationem:	rare. 17. 18.
Princeps tamen in æerem absolu-	Exemplo veterum Latòrum, 19.
tam & liberrimam habet pote-	Quorù interdicta de Cloacis pur-
statem;	gandis & reficiendis. 20. 21.
Dum vel sedens ad locum, in quo	Item de non projiciendis sterco-
aër salubrior, transfert, 4. 5. 6.	ribus. 22. 23.
Vel eam ad tempus relinquit;	7. Constitutiones etiam de cada veri-
8. 9. 10.	bis citò sepeliendis, 24.
Cum primò tempore pestis. 11. 12.	Non verò arrestandis ob debitù. 25.
Quia multum aër ad constitutio-	Item ut Latit, coriarii &c. in ex-
nem hominis facit. 13. 14. 15. 16.	tema Civitatis parte habitet. 26.

- 22 Since it is consequently obvious that the jurisdiction concerning the air attributed to the prince, which will henceforth be called jurisdiction over the air, can be well established, the legitimate procedure now requires that I consider the nature of this jurisdiction more thoroughly.
- 23 This can be determined following the guidance of Hug. Grot. c. L.1 c.1. n.4.: as a perfect moral quality that is bestowed to the sovereign, in order to benefit from the air and in order to take action with regard to the air.
- 24 Therefore it will be clearly expounded in the following chapters what exactly determines the prince's jurisdiction over the air concerning firstly the absolutely necessary things of life, then the useful and finally the pleasant issues.

Chapter Two

The Jurisdiction of the Prince over the Air which Applies to Preservation of Life

Summary

I ntroduction.	1	by effluents.	17,18.
The air we breathe is common to all	2	Considering the example of the lawgivers of antiquity.	19
Nevertheless the prince has the absolute and unrestricted control over the air	3	Their temporary decrees about the clearance and repairing of the sewers;	20,21
By either moving his residence to another place where the air is healthier;	4,5,6	Likewise against the effusion of excrement.	22,23
Or temporarily abandoning it	7,8,9,10	Likewise the resolution that cadavers must be quickly buried	24
Especially in the time of plague	11,12	but must not be retained because of unpaid debts.	25
Since the air greatly contributes to the condition of man;	13,14,15,16	Likewise that butchers, tanners, etc. should live in the outermost part of town.	26
It is thus the prince's concern to see to it that the peace of the air be not contaminated			

CAPUT II. DE JURE PRINCIPIS AEREO,

Deinde potest etiam Princeps usum Porro subditus aëre privatur per		
aëris limitare subditis,	27.	Bannum. 44.
Prohibendo ipsos discedere.	28.	Relegationem. 45.
Ratio dubitandi.	29. 30.	Per impositionem venditionis &c. 46.
Ratio decidendi.	31. 32. 33.	
Hinc Princeps interdictum de non		Quid de Subditorum, qui diver-
emigrando tempore determina-		se sunt à Dominis religionis,
to:	34.	emigratione? 47. 48.
Imperatoris Russorum:	35.	Privatur etiam in carceribus, 49.
Ne certæ personæ discedant:	36.	In Patibulo. 50.
Ne certis casibus:	37.	De suspendii justitia, incidenter. 51.
Ne tempore pestis:	38. 39.	An suspendiorum cadauera in aë-
Academiae excipiuntur.	40.	re consumi debeant? 52.
Limitatur quoque liber aëris u-		Pertinet hac certâ ratione pœna
sus per detractionem. 41. 42. 43.		culci. 53.

1. **Q**uoniam prima & præcipua mortalium cura de
Conservatione vite esse solet, primo mihi loco
dicendum, quid juris ejus occasione circa aërem
2. competat Principi? Est quidem aër secundum *all. præ-*
ced. C. n. 17. text. omnium communis; imò nihil commu-
nius eo, & magis proprium hominum necessitatibus. Gry-
phiand. *de Insul. C. ii. n. 27.* dum omnibus sufficit ad respi-
rationem, Oldenb. *Itin. Jurid. T. 4. §. 1.* conf. Bachov. &
Vinn. *Comm. in §. 1. f. de R. D.* sine qua nemo vivere po-
test. Hippol. à Collib. *de Incr. Urb. cum add. Naturat. p.*
27. seqq. ejus modum & rationes adducit Tholof. *S. 1.*
Univ. E. P. c. 5. Rem Havem. *Amos. Sect. 1. C. 6. n. 15.* de qui-
bus tamen calculum Philosophis permittere malo, quam
3. meum lis adjicere. Attamen f. Princeps potestatem ha-
bet aëre absolute ac liberrime utendi fruendiqve, adeo
ut illum haurire possit quando, ubi & quomodo lubi-
4. tur. Hinc vel plane sedem suam ad locum salubrio-

According to this, the prince can		imposed on moving	41,42,43
also restrict the use of the air		Furthermore the subject is robbed of the air	
for the subjects	27	by ban of the Empire.	44
by prohibiting them from leaving.	28	Banishment.	45
Reasons for objection.	29,30	Compulsory sale &c.	46
Reasons for the decision.	31,32,33	How will the emigration of subjects who	
hence the prince's decree that there must be		have a religion different from the local	
no emigration after a determined period of		sovereign be decided?	47,48
time.	34	Air will also be withheld from the subject	
Decree of the emperor of Russia.	35	in prison.	49
Prohibiting the freedom of movement for		On the gallows.	50
certain persons.	36	Additional consideration of the legality	
In certain cases.	37	of hanging.	51
In the time of plague.	38,39	Should the corpse of the hanged man be	
Exceptional permission for the		consumed in the open air?	52
universities.	40	To a certain degree the penalty of drowning	
The free use of the air is also limited by taxes		in a leather sack belongs here.	53

- 1 **S**ince the first and foremost concern of mortals is indeed to attend to the preservation of life, it is first of all my task to say what aspects of his jurisdiction over the air apply to the prince on that occasion.
- 2 To be sure, the air is the common property of everyone (according to *all. praeced. C. n.17. text.*), there is indeed nothing more commonly distributed and nothing is more suited to the needs of mankind (Gryphiand. *de Insul. C.11 n.17*), as it is given to all for breathing (Oldenb. *Itin. Jurid. T.4. §.1.*, compare Bachovius & Vinnius *Comm. in §.1. J. de R. D.*), without which no one can live (Hippol. à Collib. *de Incr. Urb. cum add. naurat. p.27. ff.*, whose method and arguments quotes Tholos, *S.1. Univ. L.1. c.5*). Likewise Havem. (*Amus. Sect.1. C.6. n.15.*), about whom I would, however, prefer to entrust the right of judgment to the philosophers rather than add my judgment to their comments.
- 3 Nevertheless: 1. The prince has the power of absolute and unlimited use and enjoyment of the air, and indeed to such a high degree that he can breathe it when, where and how it pleases him.

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AD VITAM CONSERVANDAM COMPETENTE. 11

rem transferre amat; sicuti ob aëris sanitatem Madri-
 tum Regum Hispaniarum, & Ispahan Persarum habitæ 5
 factæque sunt Regiæ dignissimæ. Excell. D. Becm. *Hist.*
Orb. Geogr. C. 6. Sect. 1. §. 4. p. 161. & C. 6. Sect. 2. §. 5. p. 256. Ita
 etiam de M. Hostilio testantur Historiæ, Ipsum Salæpiam 6
 oppidum quatuor passuum millibus à veteri situ, loco salu-
 briore deprehensò, transtulisse: Vel saltem ad tempus 7
 coelum solumque in dies mutare, ac instar Principis sile-
 rum, Solis, non modo ditionum suarum orbem, sed ex-
 traneas etiam Provincias liberè peragrarè non minus vo-
 lupte atq; solenne est Principi; secus ac Principibus Orien- 8
 talibus, qui aulis suis quasi adscripti in publicum non pro-
 deunt. Herod. *in hist. Dej. L. 1.* Neuhoß. *Sines. Reisebesch.*
p. 175. Regibus item Hispaniarum, qui alibi extra sedes su- 9
 as vix, & non nisi certis anni temporibus, aërem haurire
 consueverunt: ita Maciel *in vers. Germ. der Spanisch.*
Reisebeschreib. Alle Jahr gehet Er (Rex Hispan.) zu glei-
 cher Zeit in seine Lust Häuser / man sagt es könne Ihn nichts /
 als Krankheit verhindern / sich nach Alronque / nach Pardo
 oder nach dem Escorial in denen Monaten / da er gewohnet
 die frische Luft des Feldes zu genießen / zu begeben. *c. 6.*
p. 34. & Philippum publico libenter abstinuisse, & quasi 10
 ex abdito venerationem intentasse, refert Fam. Strad. *de*
Bel. Belg. Dec. 1. L. 2. p. m. 46. Huc spectat aëris coelique 11
 mutatio Principi ob illius pestilentiam & lue salutis con-
 servandæ causâ omnium maximè licita & suscipienda:
 Quod si enim aëris intemperies iusta causa translationis
 & mutationis sedis in Episcopo dicitur Gloss. *in can. tri-*
bui 16. de Consecr. dist. 1. & can. quorundam 4. dist. 74. Mo-
 noch. *A. 7. 2. cas. 423. n. 12.* Multo magis in Principe, cu- 12
 jus vita multis est utilis,

*Cum tot ab hac animæ populorum vita, salusque
 Pendeat, & tantum Caput sibi fecerit Orbis,*

- 4 According to this, he either loves to thoroughly move his dwelling to a healthier spot, just as — because of the conduciveness of the air — the most worthy royal houses of the Spanish and Persian kings had been built and occupied
- 5 in Madrid and Isfahan; Excell. D. Becm. *Hist. Orb. Geogr. C.6. Sect.1 §.4 S. 161 & C.6. Sect.2. §.5. p.256.*
- 6 (the historical works about Marcus Hostilius provide the same evidence: he had moved the town of Salapia to a new location 4 Roman leagues away from its old one after he had established that this site was healthier.)
- 7 or, it is at least rightly agreeable and usual for the prince to temporarily choose a new site and a new climate every day, and, just as the princely star, the sun, to be free not only to traverse his own domain but also foreign provinces,
- 8 in a fashion that highly differs from the Oriental princes' habit, who —detained in their palaces, as it were – do not appear before the public (Herod. *in hist. Dej. L.1. Neuhoff. Sines. Reisebesch. p.175*).
- 9 The same holds for the Spanish kings who are either not at all or only at certain times of the year accustomed to breathe the air somewhere outside of their residence. So writes Mackel *in German lines: the Spanish travelogue: every year, at the same time, he (the Spanish king) goes to his pleasure-houses/ one could say that nothing save sickness could keep him from/ making his way to Aranjuez/ to Pardo or to Escorial in those months/ when he is used to enjoying the fresh air of the fields; c.6. p.34;*
- 10 and Fam. Strad. (de Bell. Belg. Dec.1. L.2. p. m.46) reports that Philipp liked to stay away from the public and, as it were, increased respect by keeping in reclusion.
- 11 This refers to change of air and change of climate which is permitted for the prince especially and before all others, and which he must by all means undertake in case of contamination of the air and in order to save his health. For if the bad temperature of the air is a legitimate argument for the removal and change of residence for an archbishop, *Gloss. in can. tribus 16. de Consecr. dist.1. & can. (according to a few certain sources) 6. dist.74. Monoch. A.J. Q. cas.423. n.12.,*
- 12 how much more so for a prince, whose life is of benefit to many,
*Because the life and welfare of so many people depend on this
 Breath of life, and the world itself has created such a significant leader...*

CAPUT I. DE JURE PRINCIPIS AEREO,

- 12 Hug. Grot. *de J. B. ac P. L. l. c. 1. §. 8. & passim*. Principis autem
 13 vita tempore infecti aëris facile periclitatur, quippe maxi-
 me interest, qualem spiremus aerem, qualesq; hauriamus
 odores. Gothofr. *ad L. 2. §. 29. ff. ne quid in loc. publ. lit. X.*
 hinc uti purus aer ac salubris plurimum ad bonam Prin-
 14 cipis constitutionem facit, exemplo Caroli V. Imp. qui
 Madriti paucos dies commoratus, morbo Quartanae, quo
 diu laboraverat, est liberatus, quod Madritum saluber-
 15 rimo donatum sit aere; ob quam etiam causam Reginae
 olim partui vicinae huc concesserunt, ut Principes recens
 nati purum statim haurirent aërem. Excell. D. Becman,
 16 *d. C. 6. Sect. 1. p. 161.* Ita aer corruptus labem fert corpori-
 bus, & negotia infirmat humana. Arnob. *L. 1. Adv. Gent.*
p. 4. dum juxta Ovid.

Ora patent aureae, graves captantur hiatu.

- Quoniam vero putredo aliaeque res foetorem ex-
 17 citantes corruptum efficiunt aerem, & hic saepius pestem
 generat. Dan. Cram. *Diff. de Peste* & ei add. Beroald. *Disc.*
de Peste passim; Principi non tantum licet, sed ejus etiam
 officio & personae congruit omnem operam dare, ne aer
 ullo modo corrumpatur vel inficiatur; Econtrario salu-
 18 britatem aeris, in qua tutela etiam Civitatum videtur
 posita esse, arg. *L. 1. §. 2. ff. de Cloac.* sibi quam commenda-
 tissimam habere, vid. omnino Christoph. Besold. *Confid.*
 19 *Pol. Vit. & Mort. L. 2. c. 2.* Hanc ob causam veteres Legumla-
 tores de salubritate aëris maxime solliciti fuerunt, & ut il-
 le ab omni putredine & foetore salvus servaretur, cave-
 20 runt: Inde peculiariter interdicta Praetorum de Cloacis
 purgandis reficiendisq; *d. l. 1. junct. L. 15. Eod. L. 2. §.*
29. ff. ne qui d. in loc. publ. L. fin. §. 3. ff. quod vi aut clam.
 21 & purgandae quidem Cloacae hyeme potius, quam aesta-
 te Gloss. *in L. 21. §. fin. ff. quod vi aut clam.* & de nocte
 potius

Hug. Grot. *de J. B. ac P. L.2. c.1. §.8. & throughout.*

- 13 But the life of the prince is easily in danger in times of contaminated air; surely the quality of the air that we breathe, or of the odors that we take in, is of utmost importance, Gothofr. *ad L.2 §.29.ff., that nothing happen in public places, lit.X.*
- 14 Thus, while the pure and healthy air contributes to the good physical condition of the prince, according to the example of Karl V. who, after he had spent a few days in Madrid, became free of malaria, which he had long suffered from, since Madrid is largely supplied with a most healthy air
- 15 (for this reason the queens, at the time of impending birth, made admissions to the effect that the new-born infants inhaled the pure air then and there: Excell. D. Becman, *de C. 6. Sect.1. p161.*),
- 16 it is again the foul air that produces a pernicious effect to the body and weakens the human functions. Amob. *L.1. Adv. Gent. p.4.*, while Ovid agrees with him: *the [dry] mouths stand open [to the mild breeze]
and the baleful airs are sucked in by the throat...*
- 17 Because decay and other stench producing agents actually make the air corrupt, which in turn repeatedly gives rise to the plague (Dan. Cram. *Diss. de Peste & he appends to it* Beroald. *disc. de Peste* throughout), the prince is not only permitted, but it is his task and suits his rank to see to it that the air is in no way corrupted or contaminated.
- 18 Quite the contrary: *L.1. §.2. ff. de Cloac.* argues that the prince regards the healing power of the air, upon which the protection of the state also seems to be established, as the most pressing task entrusted to him; see in its entirety: Christoph. Besold. *Consid. pol. Vit. & Mort. L.2. c.2.*
- 19 For this reason the law-givers of antiquity were extremely concerned about the wholesomeness of the air, and took notice that the air was kept intact from all decay and every odor.
- 20 Hence the peculiar, temporary decrees of the *Praetorum* about the clearance and repairing of the sewers: (*d. l. 1. junct. L.15. Eod. L.2. §.29 ff., that nothing happen in public places, L. fin. §.3 ff. quod vi aut clam.*);
- 21 and that at least the sewers should be cleared in winter rather than in summer (Gloss. *in L. 21. §. fin.ff. quod vi aut clam.*),

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potius quàm die. Ripa de Pest. C. 4. de rem. pres. cont. pest. n. 65. Prohibitum etiam in via publica stercora projicere & morticina atque pelles jacere *L. 1. §. 5. ff. de vi publ. & si quid in ea fact.* Quò facit prohibitio in vicinis Civitatum aquis linum macerare aut cannabem, quisquillas item oleum leguminumque putredinem vel fimum intra ædes in civitate habere. Dn. Præses de Jur. Sens. Diff. 5. n. 35. seqq. Tholos. S. 7. d. L. 1. C. 5. Receptum præterea, ut mortuorum cadavera, quàm citissimè mandentur sepultura. Boer. Decis. 287. & quidem extra civitatem *L. 3. §. 5. ff. de Sepulch. viol.* Befold. d. Tr. 1. 3. c. 2. hinc eadem ob debitum arrestari non licet. *L. fin. & seqq. auth. C. Eod.* Fieri etiam prohibitio potest, ut Lanii & accommodantes pelles, similesque alii, suam artem non exercent, nisi in extrema civitatis parte, ad aëris salubritatem conservandam. Befold. d. l. in f. n. 1. Oldenb. It. Jur. d. t. 4. §. 19. & Capoll. de Servit. c. 43. n. 2.

Quandoquidem autem Juris natura non solum in faciendo, sed etiam in excludendo alios, ne idem faciant, consistit, dicendum nunc II. posse Principem naturalem utendi aëre libertatem subditis limitare & auferre, non quidem propriè & directò, sed impropriè & per consequentiam. Ita limitatur usus aeris, quando subditis præterea salubrioris alibi aeris patriam suam liberè & pro lubitu relinquere non licet; utut enim subditi aliud sibi domicilium quærere possint *L. 5. §. 3. ff. de Capt. & post lim.* adeò ut inviti retinendi non sint. Gail. Obs. 35. n. 9. per *L. 20. 31. 34. ff. ad Municip.* hæc tamen libertas ex Reipubl. utilitate metiri debet, cum non id, quod privatum interest unius ex Sociis, servari soleat, sed quod Societati expedit *L. 6. §. 5. ff. pro Soc.* hoc præcipue casu, ubi non solum Respublica membris & commodis suis paula-

and at night rather than during the day. *Ripa de Pest. C.4., regarding the current remedy against the plague, n.65.*

- 22 It was also forbidden to pour excrement onto a public street, likewise to unload carrion and skins there. *L.1. §.5. ff.; regarding the public authority and when something happened against it.*
- 23 Whereby another regulation forbids the soaking of flax or hemp in waters that are adjacent to the community, likewise trifles such as the storing of rotting remains from vegetables and legumes as well as the storing of garbage within the house in a community. *Dn. Praeses de Jur. Sens. Diss. 5. n.35. seqq. Tholos. S. J. U. d. L.1. C.5.*
- 24 Moreover, there is a regulation that the mortal remains of the dead are to be released for burial as quickly as possible (*Boer. Decis. 187*), and, indeed, released outside of the community. *L.3 §.5. ff. On Grave Desecration. Besold. d. Tr. 1.3 c.2.*
- 25 Hence it is also not permitted that they be detained because of debts. *L. fin. & seqq. auth. C. Eod.*
- 26 In order to preserve the healing effect of the air, a decree can also be issued that butchers, tanners and others of similar profession only practice their trade at the outermost end of town. *Besold. d.l. in f. n.1. Oldenb. It. Jur. d.l.4. §.19. & Caepoll. de Servit. c.43. n.2.*
- 27 But since the nature of a privilege not only consists in doing something but also in excluding others from doing the same, it must now be demonstrated that: **2.** The prince by nature can limit and withdraw the freedom of his subjects to make use of the air, but not personally and straightaway, but rather mediately and as a consequence.
- 28 Thus the use of the air is always restricted whenever the subjects are not permitted to leave their home freely and at will, arguing that the air be healthier elsewhere.
- 29 However promising, in all respects, the prospects of the subjects may be to seek another residence (*L. 5. §.3. ff. de Capt. & post lim.*), to the point that they must
30 not be restrained if they enter a protest (*Gail. Obs. 35. n.9. by means of L. 20. 31.*
31 *34. ff. ad Munic.*), this freedom, however, must be measured according to the utility for the state, because we are not accustomed to observe what in a group of
32 fellows may be important to one alone, but what is conducive to the community (*L. 65. §.5. 55. pro Soc.*);

- 14 **CAPUT II. DE JURE PRINCIPIS AEREO,**
 tim privatur, ut civilis tandem Societas interire habeat
 necesse; Verum sibi met etiam ipsis familiæque suæ rui-
 nam interitumque parant subditi huc illuc sese moven-
 tes, nam arbor sæpius transplantata facile arescit, & fa-
 milia sæpius translata raro augefcit. plur. Theod. Rein-
 king. *Biblisch. Politey* 3. B. 2x. 41. p. 90. Hinc posse Do-
 34 minum territorii statuere, ut Cives, qui e. g. triennium,
 quadriennium aut ultra se dimiserint in territorium ipsi-
 us, postea aliorum se conferre non possint, opinatur
 Illustr. Dn. de Rhetz *J. fur. publ. L. 2. tit. 14. §. 7.* Quod in
 35 despotico Russorum Imperio magis extenditur, dum
 Principes non patiuntur quæquam è suis ad exteras na-
 tiones commigrare, nisi quos in legationem mittunt, ex
 Thuan. *L. 21. ad A. M D LIX.* Exc. D. Becm. *Hist. Civ. c. 7.*
 36 §. 2. Ceterum excipiuntur certæ personæ, quibus emigra-
 re atque aëre frui alieno non licet v. g. olim Senatores
L. 2. §. 6. ad Manicip. Dn. Struv. *S. J. C. Ex. 9. §. 23.* It. proprii
 homines Dn. de Rhetz *d. 1. §. 6.* Item milites, Monachi &c.
 37 certi etiam casus, quos videtis in *L. 24. ff. d. t. B. Brunn.*
ad h. L. & L. 31. n. 2. Eod. Hug. Grot. *L. 2. c. 5. §. 24.* Quò
 38 tempus corrupti ac pestilentis aeris meritò refertur, dum
 singuli lue infecti ædibus suis (Sie dürfen nicht an die
 freye Luft gehen) D. Ewich. vom Ampt der Obrigt. zu
 Pestilenz. *L. 2. c. 1.* universi autem urbe includendi sunt,
 daß sie nicht aus der Stadt fliehen / und in frembde Luft
 39 weichen / ut modo dict. A. loquitur: Absorbum enim non
 videtur, quando in republ. aliqua certa sub poena prohi-
 betur, ne cives ex urbe tempore pestis inibi grassantis
 ad loca, in quibus aër est salubrior, secedant. Besold. *P. 2.*
C. 2. n. 3. eo quod multorum salus paucorum saluti, sæ-
 40 pius incertæ, sit præferenda. Peculiare tamen privile-
 gium sortuntur Academix, si enim pestis aut alia lue con-
 tagiosa

- 33 especially in a situation, when not only the state is gradually robbed of its members and its prosperity, so that the civil community must finally be ruined, but also the subjects, who move this way and that, prepare the ground for utter ruin for themselves and their families, because a tree that is all too often transplanted withers easily, and a household that is all too often moved seldom thrives; (*repeatedly* Theod. Reinking. *Biblical Policy* 3. B. ax. 41. p. 90.);
- 34 hence it is common opinion that the local sovereign can resolve that the citizens who, for example, have settled in this region for three years, four years, or beyond that, can no longer go elsewhere (*the celebrated* Dn. de Rhez. *J. Jur. publ.* L.2. tit.14. §.7.).
- 35 What in the despotic empire of Russia was even more widespread, because the princes did not tolerate that anyone travel outside of their region, except those whom they sent in a legation (*from* Thuan. L.21. *ad A.M.D. LIIIX.* Exc. D. Becm. *Hist. Civ. C.7.* §.2.).
- 36 Furthermore, certain persons were exempted, for whom it was not permitted to emigrate and to enjoy foreign air, e.g., at former times the senators (L.2. §.6. *ad Manicip.* Dn. Struv. *S.J.C. Ex.9.* §.23.; likewise bondmen; Dn. de Rhetz *d.l.* §.6.).
- 37 Likewise soldiers, monks, etc., also certain exceptional cases that are found in *in* L.34. ff. d. t. B. Brunn. *ad h. L. & L.31. n.2. Eod.* Hug. Grot. L.2. c.5. §.24.
- 38 Whereby one can rightly turn again to the situation of corrupt and contaminated air, since individuals struck by the plague must be imprisoned in their homes (*they may not go into the open air*; D. Ewich., *from the Office of the Government concerning pestilence.* L.2. c.1.), but everyone in the city must be confined by the city walls, *that they may not escape from the town/ and move into foreign air/*, as the same above mentioned author writes.
- 39 One sees, because of this, no disagreement when it is by a certain law forbidden in a state for foreign citizens who stop in a town just at the time of plague to make their way out from the city to a place where the air is healthier (Besold. *P.2. C.2. n.3.*), because the well-being of many is preferred to the — all too often uncertain — health of a few.
- 40 However, the universities receive an extraordinary privilege. For if the plague or another contagious disease

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languida nimium incipiat ingravescere loco Academiis ad-
dicto, Princeps mandare solet, ut corpus hoc literariū aliō
transferatur, quia salubritas aeris maximū corporibus ad-
jumentum præstat & subtilioribus cogitationibus mirificè
confert, nec debent Academiae esse carnificinae quædam
corporis, sed ejusdem æque atque mentis campi quidam
Elysei: hinc non temerè mirantur, quod Plato Academi-
am in loco pestilenti delegerit, cum locus non magis tu-
tus & commodus, quàm sanus eligendus, ubi Academi-
arum sedem volunt Principes. *Limn. de J. P. L. 8. C. 1. n. 12. seqq.* Döring. *Bibl. Jstor. voc. Academia n. 90. 95.*

Quando autem nec specialis quædam prohibitio, nec 41
conditio sua, neque singularis aliqua causa solum cœ-
lumque mutatio obstat, Princeps vigore Superioritatis ter-
ritorialis per § 3. *Cap. Leop. circ. med.* imponendo onus, quod
census emigrationis seu Gabella, *Abzug/ Nachsteuer* dicitur,
emigratorum gravat. *Illustr. Dn. de Rhetz J. Jur. Publ. L. 2. tit. 14. Phur. Vide Diss. sub ejus præf. de Sarcina emigrant. habit. d. Dh. Struv. Ex. 50. th. 54.* In Principatu Anhalt. ab emigranti- 42
bus, si quidem in alio Anhalt. loco domicilium constituunt,
vigesima, sin. vero ad alterius cujusdam Principis terri-
torium se conferunt, decima pars bonorum immobilium
solvenda est. *Fürstl. Anhalt. Landes. Ord. tit. 14. vom Abzuge.* Aliud tamen in Patria, Civitate Servest. sin- 43
gulariter observatur, *vi Stat. VIII.* cujus tenor: *Wenn einer aus der Stadt hinweg ziehet/ so darf er keinen Abzug geben/ sondern nimmet das Seine frey und unbeschweret hinweg. I- dem in tractu Wittenbergico tenere annotat Dn. de Rhetz in J. Jur. P. d. 1. §. ult.*

Privatus præterea a Principe libero aeris usu subdi- 44
tus, & quidem vel fictè vel verè: nullo modo bannitus,
qui aere quidem utitur, at peregrino, & simul cum me-

begins to excessively worsen at places allocated to the universities, the prince takes care to order that this scholarly corporate body be moved to another site, because the healing power of the air achieves the greatest aid for the bodily system and helps raise the sagacious thoughts in a wonderful manner; in addition, the universities are not to be torture chambers for the body, but, as it were, Elysian fields to the body as likewise to the mind. Hence one wonders, not without reason, why Plato had built his Academy at a place with unwholesome scent, although the place was no more secure and beneficial than a place with wholesome scent, that could have been chosen, that is: a place such as the princes would wish as the abode for the universities. *Limn. de J.P. L.8 C.1. n.52. seqq. Döring. Bibl. JCtor. voc. Academia n.90. & n.95.*

- 41 But when there is neither any prohibition in particular, nor a restriction from the prince's side, nor a unique reason standing in the way for someone wanting to move his residence, the prince burdens the desire to leave his territorial dominion by way of of imposing a tax on him, that is called either the emigration tax or, according to Grabella, additional tax for leaving. *Illustr. Dn. de Rhetz. J. Jur. Publ. L.2. tit.14; see further Disp. sub eius praes. de Sarcina emigrant. habita. Dn. Struv. Ex.50 Th.54.*

- 42 In the principality of Anhalt the emigrants must, if they set up their residence in another site in Anhalt, pay the twentieth part of their real property, and if they proceed to the region of any other prince, must pay the tithe of their real property. *Princely Anhalt. State Reg.. tit.14. on departure.*

- 43 However, a different proceeding is observed uniquely in my homeland, that of the citizens of Zerbst, in virtue of the efficiency of *stat. VIII.*, whose contents read: *When one moves away out of town, he shall not pay additional tax, but takes away his belongings freely and unencumbered.* This same regulation is recorded in an entirely new Württemberg tract as a supplement by Dn. de Rhetz *in J. Jur. P. d. 1. §.ult.*

- 44 Moreover the subject is deprived by the prince of the free use of the air — in both a figurative as well as a literal sense: As an outlaw banished in such a way that he freely continues to breathe, but abroad, and at the same time under the constant fear

16 CAPUT II. DE JURE PRINCIPIS AEREO,

- ca mortis momentaneæ perpetuo, sic enim tenet formula Bamii: Derowegen er in die Acht v. verfestung erkläret / aus den Frieden in Unfrieden gesetzt / sein Leib und Leben / wie eines Vogels in der Luft / jedermann gemein / und in denselben Gerichten erlaubt wird / daß er ohne alle Straffe entleibet / un vom Leben zum Tode möge gebracht werden / und daß sich niemand an ihm vergreifen könne. Carpz. *Pr. Crim. P. 3. Q. 140. n. 132.* inde Phrases: Vogelfrey machen: daß einer so frey ist wie der Vogel in der Luft / i. e. daß sein Leib und Gut jedermann / wie der Vogel in der Luft erlaubt. Oldenb. *It. Jur. d. t. 4. §. 17. p. 457.* Item.
- 45 Relegatus ad eum modum, quo Jure Civili interdicti sunt aquâ & igne, in cujus interdictionis locum successit deportatio *L. 2. §. 1. ff. de pæn. L. 3. ff. ad L. Jul. pecul. Gail.*
- 46 *L. 2. de Pac. publ. c. 1. n. 17.* Item cui imposita venditio ac migratio ex pago aliquo certo: Wann denen Unterthanen auferleget wird ihre Güter unter denen Gerichten zuverkauffen und sich anders wohin zuwenden / Carpz. *Pr. Crim. P. 3. Q. 130.* Quâ occasione oportune quæritur, an Princeps subditis diversæ religionis necessitatem emigrandi imponere possit? Resp. Neg. quod de iis, qui anno 1624. illam religionem exercuerunt, nullum est dubium, propter *art. 5. §. 34. Inst. Pac. Osn.* Illis verò, qui vel d. anno exercitium religionis non habuerunt, vel post illum religionem mutârunt, obstare videtur *d. art. §. 36. & 37. 3. P.* Verùm hi textus de Subditis, qui non quietè vivunt, sed ansam turbis, præcipuè religionis occasione, suppeditant, intelligendi sunt. Myler. ab Ehrenb. *tr. de Princip. Imp. c. 83. n. 3.* Illustr. Dn. de Rhetz. *Disput. de Jur. Stat. Imp. circ. Sac. c. 4. n. 12. seqq.* Idem etiam Imperator Silesiis immediate ad Cameram Regiam spectantibus ex gratia concessit *art. 5. §. 30. 3. P. Dn. de Rhetz. Inst. 3. P. L. 2. c. §. 50.*

of instant death. Thus the law of the imperial ban sets it down in writing: *For this reason he is proclaimed to be banned/ to be transposed from peace to pursuit/ his body and his life/ belonging to everyone/ like a bird in the air [which is released for shooting]/ and by this same judgment it will be permitted/ that without fear of trial and punishment/ he may be done away with/ and be dispatched from life to death/ because it is not possible to "violate" him.* Carpz. Pr. Crim. P.3. Q. 140. n. 132. out of this Phrases: *Therefore, to be free as a bird means: That one is as free as a bird in the air/ i.e., that his life and his property are possessed by all.* Oldenb. It. Jur. d. t.4. §.17. p.457.

- 45 Likewise the subject is deprived of the use of air as someone expelled from his native land in such a manner that, according to civil law, interdicts water and fire to the person concerned, which interdict has been replaced by deportation. *L.2. §.1. ff. de poen. L.3. ff. ad L. Jul. pecul. Gail. L.2. de Pac. publ. c.1 n.17.*
- 46 Likewise he, to whom a compulsory sale and emigration from some certain administrative district is imposed: *When the subjects are forced to sell property by law and to go and live elsewhere/* Carpz. Pr. Crim. P.3. Q. 130
- 47 This provides an appropriate occasion to investigate whether the prince can impose the necessity of emigration on subjects with an opposing religion. Allowing for objections there is no doubt for those who practiced this religion from 1624, by reason of *art.5 §.34. Inst. Pac. Osn.* But to those who either were not in the habit of practicing the opposing religion in the aforementioned year, or who thereafter had embraced it, the passages in the same *art. §.36 & 37. J. P.* seem to stand opposed. However, these passages must be understood as texts concerning subjects who did not live in peace, but rather who supplied ample opportunities for confusion, chiefly on the occasion of religious disputes: Myler. ab Ehrenb. *tr. de Princip. Imp. c.83. n.3.* Illustr. Dn. de Rhetz. *Disput. de Jur. Stat. Imp. circ. Sac. c.4. n.12. seqq.*
- 48 The emperor benevolently conceded the same judgment to the Silesians, who had appealed directly to the king's chamber; *art.5. §.30. J. P.* Dn de Rhetz. *Inst. J. P. L.2. c. §.50.*

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Hoc modo (scil. verè) privatur subditus aëris' usu 49
 vel partialiter vel totaliter: Partialiter, quando delinquen-
 tes continentur in carceribus, vel ad poenam hodie, vel ad
 custodiam; Quamvis autem Criminalistæ tolerabilem,
 de Jure carcerem exigant, ut in eo vivere aëreque frui
 possit captivus; Carpz. d. Q. 130. n. 11. per Dd. all. § L. 1. C.
 de cust. reor. Solet tamen is, ut plurimum in Germania,
 esse locus subterraneus, horribilis, malè olens. Idem Q.
 111. n. 45. Totaliter, quando in furca laqueo suffocantur 50
 fures, wann die Diebe in der Lustt arrestiret werden / ut lo-
 quitur Oldenburg. §. 10. p. 464. & quidem, ne aër corrum-
 patur, extra civitatem, Borell. de Magist. Edict. l. 3. c. 12.
 n. 17. arg. l. 3. §. 5. ff. de sepulch. viol. suprâ n. 24 all. qvô hæc
 observatio pertinet. Suspendii hujus Justitiam Theo- 51
 logi pariter ac Jcti examinant; Verùm rectè illam defen-
 di posse statuo. Plur. vid. Dn. Præses in Annot. ad §. 5. J.
 de Oblig. quæ ex delict. nasc. Carpz. Pr. Cr. P. 2. Q. 77. n. 13.
 seqq. Oldenburg. d. l. Item an corpora ad furcam (rotam 52
 &c.) damnatorum justè maneant in elemento aëris, cor-
 vorumque esca fiant? quod affirmat Carpz. P. 3. Q. 137.
 n. 70. Mihi in furto isthæc consuetudo iniqua videtur,
 confer. Oldenburg. d. l. p. 470. Huc spectare videtur. 53
 suffocatio in aquis, quando delinquens elementorum
 usu vivus carere, eiqve superstiti cælum auferri dicitur,
 in §. 6. J. de publ. Jud. § L. Unic. C. de his qui par. vel lib.
 & de jure quidem Romano insutus culco coreaceo, in
 quo haud dubiè aliquândiu vivere oportuit parricidas,
 eò quod aqua in eum penetrare facile non potuit, Myn-
 sing. in d. §. J. n. 11. & Harpprecht. n. 17.

- 49 In the following manner (obviously understood in the literal sense) the subject is deprived — be it partially, be it completely — of the use of the air: partially, when the delinquent is held in prison, today either as punishment or for surveillance. Although, however, according to the law the criminologists require a tolerable prison, so that those held can live in it and enjoy the air, Carpz. *regarding Q.130. n.11. cited by the doctoral candidate & L.1. C. regarding the custody of the accused.*, the prison is usually, as is more often than not the case in Germany, a subterranean, frightful, and fetid place. *Id.*, *Q.111 n.45.*
- 50 [The subject is deprived of the use of the air] completely, if thieves are strangled with the noose on the gallows, *When the thief is seized in the air* (as Oldenburg §.19. p.464 says) with the procedure taking place out of town, so that the air be not contaminated; Borell. *regarding the town council edict l.3. c.12. n.17. arg. l.3. §.5. ff. regarding the desecration of graves n.24. cited above*, to which this rule belongs.
- 51 Together with jurists, theologians investigate the legitimacy of such an execution by hanging. But I affirm that it can indeed be justified. See further Dn. Praeses in *Annot. ad §.5. J. regarding the duty that arises from a crime.* Carpz. *Pr. Cr. P. 2. Q.77. n.13. seqq.* Oldenburg *loc. cit.*
- 52 Likewise, whether the mortal remains of those condemned to the scaffold (wheel, etc.) ought rightly to be left in the elements of the air and serve the ravens as a meal? Carpz. *P.3. Q.137. n.70* confirms this. Such a custom seems to me too severe a penalty for theft. Compare Oldenburg. *loc. cit. p.470.*
- 53 Suffocation in water seems to belong here, because the delinquent — as one says — is deprived of the use of the elements while alive, and, although he is not yet dead, heaven is taken away from him: in §.6. *J. de publ. Jud. & L. Unic. C. regarding the murderers of father or child* — and by rights most certainly the one sewn into the Roman leather sack. Consequently the parricide must, without doubt, remain alive a long time in this, because water does not easily penetrate this material. Mynsing. in *d. §. J. n.11. & Harpprecht. n.17.*

CAPUT III. DE JURE PRINCIPIS AEREO,

CAPUT III.

DE

JURE PRINCIPIS AEREO

AD PALATIUM EXSTRU-

ENDUM COMPETENTE.

SUMMARIA.

P risca habitationum negle- ctus.	1.	Progressus ad limitatam subdi- torum ædificandi potentiam.	15.
Moderna ædificiorum superbia.	2.	Ratio dubitandi.	16. 17.
Ab ipsis privatis affectata qui- dem; Sed coarctanda à Prin- cipe:	3.	Ratio decidendi.	18.
Qui absolutâ ædificandi potestate pollet:	4. 5. 6.	Per Legem, Statutum aut consue- tudinem certa ædificandi for- ma introduci potest.	19.
Hinc in locis editioribus Palati- um suum constituit:	7.	Exempla.	20.
Ob rationes.	8. 9. 10. 11.	Rationes.	21. 22. 23.
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Q. An faculata ædificandi us- que in calum Principi per Servitutem posset circumscri- bi?	14.	Potest præterea Princeps subdi- torum ædes altius exstructas destruere.	31. 32. 33. 34. 35.
		Quid de excelsis, Campanis, & Gallis turrium & Templorum.	36. 37. 38. 39.

Nemo reperitur hodiè, quem cum aurei seculi ho-
minibus in speluncis habitare juvat. Exc. D. Bec-
man. Not. Dign. Ill. Diff. 1. C. 1. §. 3. aut in casis, quas
furæ utrinque suspensæ fulciebant, spissatis ramantibus.

Chapter Three

The Jurisdiction of the Prince over the Air which Applies to Constructing a Palace

Summary

Neglect of venerable, old lodgings.	1	the subjects' building activities.	16
The modern, lush splendor of buildings.	2	Reasons for objection.	16,17
Which is again affected by private houses that must, of course, be checked by the prince	3	Reasons for the decision.	18
Who has great influence by the absolute power of his building activity.	4,5,6	Through law, statute or custom a certain extent of building activity can be defined.	19
Hence he erects his palace upon more elevated places.	7	Examples.	20
Reasons for this:	8,9,10,11	Reasons.	21,22,23
Q. Whether the prince is permitted to build for the display of splendor?	12	Moreover, it is not permitted to build higher in certain cases.	24,25,26,27,28,29
Q. or by reason of rivalry?	13	Circumstances in which not to build palaces and towers.	30
Q. or whether the power of the prince to build up to Heaven can be restricted by a servitude?	14	In addition the prince can destroy the subject's buildings which are built to greater heights	31,32,33,34,35
Proceeding to the restricted power of		What is to be done with churches on higher sites, with the bishops' bells, with weather- cocks on towers and temples?	36,37,38,39

¹ **N**o one can be found today who would care to live with the people of the golden age in caves (Exc. D. Becman. *Not. Dign. Ill. Diss. 1. C.1. §.3.*), or in huts that everywhere had been supported by wooden forks with the help of piled up branches and