

AD PALATIUM EXSTRUENDUM COMPETENTE. 19

ac fronde congestâ & in proclive dispositâ. Senec. *Ep.* 90. postquam dudum ætas posterior multò superbiora, non 2
solum quoad ornatum & amplitudinem, sed etiam alti-
tudinem reddidit habitacula. *Ad delicias dementis luxu-
ria lapis omnis eruitur, caduntur Gentium sylva: aris fer-
rique usus, jam auri quoque in exstruendis & decorandis domi-
bus,* inquit Fabianus Papirius apud Senec. *L. 2. Contr. 1. Qui*
& privatorum, adeò domorum magnificentia ac splen- 3
dore certantium, ut sortem suam excedant, Contzen. 8.
Polit. c. 14. §. 8. ausus est; verum à Superiore, ut infra 4
patebit, coarctandus. Solus Princeps major est Legi-
bus: Adeoque ipsius in cœlum usque ædificandi facul-
tas nullos agnoscit limites. Imperialis fortuna omnes su-
pereminet alias, oportet ergò & Principales ædes cul-
men habere præcipuum, ut in alia re loquuntur Impp.
in L. cum multa 7. C. de bon. quæ lib. Quod si etiam ex ma- 5
gnitudine & pulchritudine ædificiorum quis præsumitur
magnanimus Bart. *in L. 2. n. 5. in f. C. de præd. navic. L. 2.*
ex altissimis sanè Principum Palatiis Majestatis innote-
scet altitudo; Ita Boecler. *in Tacit: Annal. L. 1. c. 9. §. 10.*
nam ut singularis, inquit, *& sublimis & incomparabilis ha-
beatur summi Imperii Majestas, non solidis tantum artibus,
sed inanum etiam splendore efficitur. Hinc oculis hominum
haud raro ferendum est: Per quos omnium facillimè intrat
in animos veneratio. Item Cassiod. L. 7. Ep. 5. hæc nostra
sunt,* inquit, *oblectamenta, potentia Imperii, decora facies,
testimonium præconiale regnorum: hæc Legatis sub admira-
tione monstrantur, & prima fronte talis Dominus esse cre-
ditur, quale ejus habitaculum comprobatur.* Principis igitur 6
Palatium non tantum ad necessitatem & commodi-
tatem, sed splendorem quoque exstrui debet. In quem 7
finem, ut cò altius illud attolli queat, loca editiora & mon-

amassed leaves that were crammed in sloping places (Senec. *Ep.* 90.),

- 2 when our later age has, for a long time already, constructed far more splendid structures, not only in relation to the decoration and extension with regard to the square measurement but also to the height: *"Stone after stone is broken off to the delight of the blind craving for pleasure, the forests in the entire region are cut down, the use of ore and iron prevails, before long that of gold as well, in order to build and construct houses," says Fabianus Papirius in Seneca t. o. L.2. Controversiae 1.*
- 3 Whoever — among a group of private citizens who contend with each other through the very grandeur and glitter of their houses so that they may extend their position (Contzen. 8. *Polit. c.14. §.8.*) — behaves impertinently, must be in duty bound by his superior, as will be shown below.
- 4 Only the prince is greater than the law: and especially his power to perpetually build into heaven knows no limits. The sovereign position surpasses all others, and so it is appropriate that the house of the prince has a distinguished roof, as the emperors confirm on the occasion of a different matter: *in L. cum multa 7. C. de bon., quae lib.*
- 5 But if anyone is deemed a nobleman from the greatness and beauty of the house (Bart. *in L.2. n.5. in f. C. de praed. navic. L.2.*), so too the magnificence of the prince's majesty will be sufficiently deduced from the highest palaces. Thus Boecler. says *in Tacit. Annal. L.1. c.9. §.10: "For that the majesty of the most supreme reign is considered to be unique & illustrious & incomparable, is effected not only by genuine works of art, but also by the splendor of sheer things. Hence one must frequently comply with the eyes of men: through them veneration quite easily lodges in the hearts of all."* Cassiod. says likewise, *L.7. Ep.5. These our delights are signs of imperial power: this is shown to the ministers under great amazement & as the first impression of the facade induces them to admire the edifice, it will also induce them to believe that the master will be likewise.*
- 6 Thus the palace of the prince must be constructed not only according to his needs and comforts, but also according to the viewpoint of the external splendor.
- 7 Toward this end, namely that the palace can be raised all the higher, it is common to select elevated places and mountains.

20 CAPUT III. DE JURE PRINCIPIS AEREO,
 res eligi solent; Ita Tullus Hostilius, Octav. Augustus &
 omnes ab eo Impp. Romani in monte Palatino (qui unâ
 eum aliis sex montibus pomerio urbis Romæ inclusus)
 suam habuere sedem; Inde cujusvis Principis aulam Pa-
 latium dicimus. Ahasv. Fritsch. *Syll. Var. tr. de Palat. C. 1.*
n. 14. & seqq. Sixtin. de Regal. L. 2. c. 17. n. 1. Et Regia Hi-
 spanica in editiore Madriti parte sita est: Sein Pallast ist
 auff einen Ende der Stadt auff einer schier unbegreiflichen
 Höhe &c. Spanisch. *Reisebeschr. vers. Germ. C. 5. p. 26.*

- 3 Hujus rationes sunt; Quoniam aëris salubritas in ex-
 structione Palatii omninò attendenda; quod ipsum de
 extruendis domibus Arist. 7. *Polit. 11. & 1. Oecon. 6.* Colum-
 mel. *de re rust. L. 1. c. 4.* Castris, Hering. *Mantiff. tr. de*
Molend. add. C. 4. n. 545. seqq. urbibus, Camill. Borell. *de*
Magist. Edict. l. 3. c. 12. monent, & de constituenda Acade-
 miarum sede C. præc. n. 40. dictum, atque hîc exemplo
 Universitatis Francofurtanæ ob æris inter cœtera tem-
 periem, in hac Urbe vigentem, crectæ, ut ex privilegiis
 Maximiliani I. Imp. & Julii II. P. M. Academiæ concessis,
 & in Memorandis Francof. exhibitis, patet, illustrandum.
 Jam verò edita non nihil loca perflationibus pro puri-
 ficando ære accommodatiora sint, adeoque in iis ær
 multò salubrior. Gryphian. *Oecon. Leg. L. 1. c. 21. n. 34. D.*
 9 Cram. *Diff. de Pest. ferè in f. Borell. d. l. n. 45.* Deinde,
 quia ex loco sublimigratio liberiorque datur prospectus.
 20 Præterea, securitati per excelsam habitationem
 consulitur e. g. grassante in urbe aliquâ lue: Suboriente
 incendio (ideò fortassis Palatia Principum ædificiis Pri-
 vatorum cohærere non debent, ex Matth. de Afflict. Six-
 tin. *d. l. n. 3.* Fritsch. *C. 9. n. 8.*) Item excitato à Plebe tu-
 multu: Adventante hoste. Insuper, quia Principis Ma-
 11 jestas ex loco, qui, ut ipse homo, suam habet Majestatem,
 Boten

Thus Tullus Hostilius, Octavianus Augustus, and all other Roman emperors after him had had their residence on the hill of Palatine (that, together with the other six hills, is surrounded by the walls of the city of Rome); therefore, without making any distinction, we call the residence of every sovereign a palace. Ahasv. Fritsch. *Syll. var. tr. de Palat. C.1. n.14. & seqq.* Sixtin. *de Regal. L.2. c.17. n.1.* The house of the Spanish king is also situated on an elevated part of Madrid: *His palace is at an end of the city on a nearly inconceivable height, etc., Travelogue*, in German lines C.5. p.26.

- 8 There are the following reasons for this: firstly, because the wholesomeness of the air must be fully taken into consideration when building a palace, as the following authors urge: regarding the construction of houses, Aristoteles. 7. *Πολιτεία. 11. & 1. Οικονομία. 6.* Columella. *Regarding agriculture L.1. c.4.*; regarding the construction of storehouses, Hering. *Mantiss. tr. de Molend. add. C.4. n.545. seqq.*; regarding the construction of cities, Camill. Borell. *Regarding the edicts of the local authority l.3. c.12.*; and what has been said in the previous chapter, section 40, regarding the raising of an academic abode shall here be explained by the example of Frankfurt University, because the latter had been erected due to, among other things, the right composition of the air which prevails in this city, as is obvious from the privileges guaranteed to the university by Emperor Maximilian I and by Pope Julius II and presented in the memorandums of Frankfurt. Moreover the same slightly elevated places are just now rather suited for the purification of the air due to the constantly blowing winds, and the air especially on top of those places is more healthy. Gryphiand. *Oecon. Leg. L.1. c.21. n.34.* D. Cram. *Diss. de Pest. fere inf. Borell. loc. cit. n.4.5.*
- 9 Secondly: because a more pleasant and open view is afforded from an elevated location.
- 10 Moreover, because security is provided for through a residence situated at a higher altitude, e.g., whenever an epidemic rages in the city, whenever a fire arises (for this reason, perhaps, the palaces of princes must not be connected with private houses: according to Matth. *de Afflict. Sixtin. d. l. n.3.* Fritsch C.9. n.8.), likewise when a tumult has arisen, and when the enemy invades.
- 11 In addition, because the majesty of the prince is yet magnified by a place at which even a common person possesses majesty

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Botet. *de Orig. Urb. L. 2. c. 11. pr.* augetur; quando nimirum Princeps, Vicarius DEI, qui loca olim Montana & excelsa è reliquis terræ partibus elegit, & in his coli voluit. Mart. Schoock. *Exercit. 15. de Excell.* in editiori Civitatis loco habitans, superioritatem suam, quâ in terris pollet, magnificè ostendit, cultumque ac reverentiam exposcit à subditis.

Hâc occasione quaritur: An Principi ad solam 12
pompam & ostentationem ad cælum usque instarsurris Babylonicæ, ut loquitur Oldenb. *It. Jur. t. 14. §. 2.* ædificare conveniat? Resp. nulla quidem Lex obstabit Principi: Interim monent Politici, modum, uti in omnibus aliis rebus; Ita etiam in exstruktionem Palatiorum esse servandum, quia ædificationes augustam potius utilitatem, quam pompasam vanitatis ostentationem habere debent, quæ ipsa maximos requirit sumptus, instar vanæ ac stultæ Pyramidum Aegypti ostentationis, in quarum erectione pro laborantibus mille & octigenta talenta, i. e. decies centena millia aureorum in raphanos, allium & cepas erogata fuisse traditur. Fritsch. *C. 10. n. 3. §. 5.* & eapropter, exactionibus & superexactionibus premuntur subditi. Idem *c. 11. n. 17. §. 5. seqq.* Movetur etiam à Doctoribus 13
Quæstio: An Principi ad æmulationem ædificare liceat? Verum huc ea non spectat, quia negotium mihi est cum ædificio ad habitationem Principis: De quo nulla præsumptio, quod ad æmulationem ædificatum; Quemadmodum arces in finibus structæ inter argumenta pacis ruptæ non sunt referendæ, quando tuendi gratia ædificatæ. Grot. *de J. B. ac P. L. 3. C. 20. n. 40.* Ut taceam nondum satis liquere, quid significet ad æmulationem ædificare. Dn. Ziegl. *de Jur. Maj. L. 1. C. 35. §. seqq.* Döring. *Bibl. J. C. ror. voc. ades, ædificum, n. 185. seqq.* quod tamen regulariter prohibetur in *L. 3. ff. de Oper. publ. Gail. L. 2. O.*

(Boter. *regarding the origin of the cities*, L.2 c.11 pr.), for without doubt by living at a more elevated region of the city as the representative of God — who formerly would choose mountainous, elevated locations differing from the remaining regions of the land and wished to be revered at them (Mart. Schook. *Exercit.15. de Excels.*) — the prince displays in a magnificent manner his superior position, by which he is so strong on earth, and demands veneration and respect from his subjects.

- 12 On this occasion it can be asked: is it fitting for the prince, for the purpose of splendor alone, to perpetually build into heaven, just like the Babylonian tower, as Oldenburg. *It. Jur. 1.14. §.2.* writes? Answer: no law whatsoever will stand in the prince's way. Meanwhile, the books about political science urge that the proper proportions must be maintained— in the construction of palaces just as meticulously as in all other things, because the structure should have a sublime purpose rather than a splendid presentation of vanity that as such will demand the greatest expenses, just as to the vain and foolish exhibition of the Egyptian pyramids, to whose construction one thousand eight hundred talents, that is, one million pieces of gold, had been spent on the workers for radishes, garlic and onions, as is reported: Fritsch. *C.10. n.3.5.*, and because of this the subjects were bled white by taxation after taxation beyond proper measure.
- 13 Another question is also weighed by the doctors: should the prince be permitted to build for the purpose of rivalry? But this does not relate here, because my task lay with a building that is erected in order to offer the prince a **residence**. This does not lead to any presumption about what has been built for the purpose of competition. Likewise, castles built at the borders may not be drawn upon as proof for a broken peace, because they have been built for the sake of shelter. Grot. *de J.B. ac P. L.3. C.20. n.40.* Not to mention that it is still not quite obvious what exactly defines a building activity for the purpose of rivalry. Dn. Ziegl. *de Jur. Maj. L.1. C.35. & seqq.* Döring. *Library of Jurists, meaning of the word aedes, aedificium*, n.185. *seqq.*, what nevertheless is regularly forbidden in *L.3. ff. regarding the public expenses*, Gail. *L.2. O.96. n.19.*

22 CAPUT III. DE JURE PRINCIPIS AEREO,

- 14 96. n. 19. Annè verò Principis facultas in infinitum attollendi sedem suam Principalem per servitutem quādam tenus limitari potest? Resp. intuitu subditorum negandum omnino esse, ipsa res loquitur: Intuitu autem vicini territorii servitutem altius tollendi & altius non tollendi, item ne prospectui officiatur, introduci posse, asserit Illustr. Dn. de Rhetz. *7. Jur. Publ. L. 2. t. 18. §. fin.*
- 15 Absolutum hoc & illimitatum Jus Principis ex se-
quiore multum & circumscripta subditorum potentia
- 16 nunc illustrandum venit. Permittunt quidem Jura al-
tius tollere, per *L. altius 8. & L. seq. in fin. C. de Servit. & aq. L. 24. ff. de S. U. P. L. 12. §. 2. C. de adif. privat. & coe-
lum (h. e. aer) quod supra cujusque solum intercedit,
liberum esse debet L. 1. pr. ff. de S. U. P. Cothm. Vol. 2.
Resp. 93. n. 32. dum aer sequitur solum, ita, ut cujus est
solum, illi quoque usque ad coelum esse debeat aer, L.
ult. §. si quis projectum ff. quod vi aut clam. Gloss. ad L. si
intercedat f. ad verb. quia coelum ff. de Servit. Hinc Dd.
loqui consueverunt, licere in coelum usque ædificare. Gail. 2. O. 69. n. 1. licitum esse in infinitum plus quàm tur-
rim Babel attollere. Sreph Forcatul. de Oc. Jurispr. Dial. 16. n. 9. citante Oldenb. d. 1. §. 1. de cujus genuino sensu vid. Wefenb. conf. 34. n. 16. L. 1. Gryphiand. de Insul. c. 8. n. 8.*
- 18 Verum enim verò rectè hoc procedit, in quantum Civi-
lis Legis dispositio cessat, quippe, cum ædificiorum stru-
cturæ civilem maximè dispositionem atque ordinatio-
nem requirant, ut juxta præscriptum Aristot. miscean-
tur ex antiqua & recentiore forma, quo & splendori
inserviant urbis & securitati pulchrè consulant *L. 7. Polit. n.* Majestati sanè, uti omnia & singula Civitatis, ita &
- 19 ædificia subjienda sunt. Igitur quemadmodum illis,
qui superiorem non recognoscunt, nulla in ædificando re-
gula

96. n.19.

- 14 But will the power of the prince to build his princely residence up into infinite heights be restricted to a certain point by a servitude on the building site? Answer: the matter itself prescribes that with regard to his subjects a servitude is to be entirely denied, but considering the adjacent region, an order to build higher or not to build higher as well as not to hinder the view can be imposed, what Illustr. Dn. de Rhetz *J. Jur. Publ. L.2. t.18. §.fin.* assures.
- 15 This absolute and unlimited right of the prince emerges — as is now to be explained — from the quite different and restricted power of his subjects.
- 16 To be sure, the laws allow building rather high, according to *L. altius 8. & L. seq. in fin. C. de Servit. & ap. L.24. ff. de S.U.P. L.12. §.2. C. de aedif. privat.*, and the climate (i.e., the air), that stretches between the property of each one, must be freely accessible, *L.1. pr. ff. de S.U.P. Cothm. Vol.2 Resp.93. n.32.*, as long as the air follows the earth; hence the air, which extends continuously to heaven, must belong to that same person to whom the soil belongs. *L. ult. §. si quis projectum ff. quod vi aut clam. Gloss. ad L. si intercedat f. ad verb. quia coelum ff. de Servit.*
- 17 Thus the doctoral candidates are accustomed to say that it is permitted to build incessantly into heaven (*Gail. 2. O.69 n.1.*), that it has been permitted since time immemorial to build without limit, higher than the Tower of Babel. *Steph. Forcatul. de Oc. Jurispr. Dial.16. n.9.*, who quotes from: *Oldenb. d.l. §.1.*, as to the genuine sense thereof one may consult: *Wesenb. cons. 34. n.16. L.1. Gryphiand., regarding the dwellings, c.8. n.8.*
- 18 But in fact this state of affairs will consistently increase inasmuch as the framework of civil law recedes, especially since the structures of buildings most strongly require the organization and the discipline of the citizen so that, according to the specification of Aristotle, they be blended from old and new forms, whereby they contribute to the distinction of the city and provide for security (*L.7. Politeia 11.*). Nevertheless, as each and every thing from the domain of civil law must be subordinated to the princely majesty, so too must buildings.
- 19 Consequently, just as no law with respect to building activity will be given to those who recognize no ruling body, the natural freedom of building will be restricted

AD PALATIUM EXSTRUENDUM COMPETENTE. 23

gula posita est: Sic in genere, privatorum, quibus vel Lex, vel statutum, vel consuetudo certam ædificandi formam & modum, ultra quem ædificia extollere non liceat, præscribit, naturalis ædificandi libertas coarctatur. *L. 1. ff. de S. M. P. L. 1. L. 3. C. de ædif. priv. L. 1. §. 17. ff. de nov. op. nunc. Spreng. Tradat. de Jur. ædif. c. 7. Klock. de arar. L. 2. C. 18. n. 16. Barbof. Collect. in C. ad L. altius de servit. n. 3. Gomez. in Com. ad L. Tauri. L. 46. n. 6.* Ita Augustus 20 Cæsar altitudinem 70. pedum statuit, *Svet. c. 89. Tacit. L. 15. Annal. c. 43.* Quibus Trajanus 10. pedes detraxit *Klock. d. l. n. 15.* Senatum quoque Reipubl. Noricæ 80. pedes altitudini ædium constituisse notat *Piccart. ad Pol. Arist. L. 7. c. 11.* & Monachium in Bavaria ædes privatorum, iustâ symmetriâ sibi respondere, ut & Vratislaviæ in Silesia, habet *Oldenb. d. l. 4. §. 2.* Quibus meritò Urbes Belgii ad-
ficiendæ. Qui introductus in rempubl. altitudinis determi- 21
natæ modus, suis haud destituitur rationibus, facit enim ad Civitatis ornatum, qui in æqualitate & ædium propor-
tione magis, quàm sumptu consistit, *Oldenburg. d. l. p. 48.* ut & ad securitatem, ædes enim fastigiatae & in altum 22
deductæ, seorsim consistere non possunt, ut Amstelodami & alibi conspiciamus, nisi tota vicinia inter se conglu-
bata ventorum violentiæ resisteret, verba sunt *Oldenb. d. l.* Ingens quoque damnum ex ejusmodi ædificiorum
ruina, *Tanta*, inquit *Seneca, altitudo est ædificiorum, tan-
tæq. viarum angustia, ut neq. versus ignem præsidium neq.
ex ruinis ullum ullam in partem effugium sit. L. 2. Controv.*
1. Promovetur præterea per certam altitudinis formam 23
salus Civium, quorum effusa in ædibus extruendis li-
bido compescitur, & ne rem omnem ædificando exhau-
riant atque secundum tritum illud: *Litiget, ædificet, qui
vult cito pauper haberi, fortune suæ adverso exstant*
fabri

with respect to the class of non-aristocrats, for whom either a law, or a statute, or a customary law prescribes a certain appearance or dimension beyond which it is not permitted to erect a building. *L.11. ff. de S. U. P. L.1. L.3. C., regarding private houses L.1. §.17. ff., regarding the announcement of new constructions*, Spreng., *Essay on Building Law*, c.7. Klock., *On the State Treasury*, L.2. C.18 n.16. Barbos. *Collect. in C. ad L. altius de servit. n.3.* Gomez. *in Com. ad L. Tauri L.46. n.6.*

- 20 Thus the Emperor Augustus had set the building height at 70 feet (Sueton. c.89., Tacitus *L.15. Annales c.43.*), from which Trajan had removed 10 feet (Klock *d. l. n.15.*). Moreover, Piccart. remarks (*On πολιτεία of Aristotle, L.7. c.11.*) that the senator of the province Noricum had set the height of his building at 80 feet, also that the Munich senate in Bavaria had resolved that the private houses correspond to each other in orderly symmetry just as — according to Oldenb. *d. t. 4. §.2.* — in the Silesian city of Breslau. The Belgian cities should rightly be associated with these examples.
- 21 This imposed measure of a definite building height in a state is not left without substantiations; namely, it is appropriate for the city's decoration — which consists to a higher degree of the equality and proportion of the buildings than of splendor (Oldenb. *d. l. p.428.*) — as well as for its security.
- 22 The lofty, tapering, gable-shaped houses cannot stand by themselves alone, as we see in Amsterdam and elsewhere; only as an undivided neighborhood of houses gathered together can they offer resistance to the power of the winds, according to the words of Oldenb. *d. l.* The collapse of a building such as this is also of immense harm. Seneca t. o. writes: *There prevails such a great height of houses, such a narrowness of streets, that there is no shelter against fire and no escape route from collapsed houses to any secure place, L.2. Controv. 1.*
- 23 Besides, by a certain arrangement of elevation the well-being of the citizens is increased, whose desire, that exuded in the building of houses, is set within limits so as not to exhaust their entire fortune in the activity of building, and according to the old wisdom: „Whoever wishes to quickly be classified as poor, should pursue litigation and should build“ such hostile fate which befalls the building owner, brought about by his own fault, will be avoided.

24 CAPUT III. DE JURE PRINCIPIS AEREO,
 fabri, præcaverur. conf. Vent. de Valent. in *Parth. litig.* l. 1. c.
 13. n. 19.

- 24 Specialiter & certis casibus altius ædificandi liber-
 tatem naturalem à Legibus circumscribi tradit. Coras. *L.*
 25 *3. misc. c. 24. n. 3. seqq.* Ita e. g. non licet juxta aream vi-
 cini, in qva frumenta conteruntur vel conculcantur, &
 ab ea quidem parte, ex qva tantummodo area ventum
 26 habere potest, ædificare *L. fin. §. 1. ff. de S. U. P.* Pro-
 hibetur etiam hæres altius ædificando obscurare ædes
 27 alteri legatas, per *L. Gaurus 10. ff. d. t.* Item prope Mo-
 nasteria Monialium s. monachorum, & scholas, ne præ-
 judicetur Scholarium luminibus, ædificare. Barbof. *Collect.*
 28 *ad L. 8. C. de Servit.* Resistunt porro ædificanti pacta &
 servitutes, *d. l. altius 8, C. de Serv.* & *L. 12. §. 3. C. de edif.*
 29 *priv.* Nec licet ad invidiam, æmulationem ac præjudi-
 cium cujusquam sine utilitate propria in altum ædifica-
 re. *L. 1. §. 1. & seq. ff. de aq. plur. arc.* Gomez. *ad L. Taur.*
 30 *C. 46. n. 8.* Hinc in specie nemo palatium, quamvis suo
 sumptu, exstruere potest, *L. opus novum pr. ff. de Oper. publ.*
 cum res ad alterius æmulationem pertinere, & quando-
 que seditioni materiem præbere posse censeatur Zoes. *ad*
d. t. n. 1. neque turres extollere, ita de jure Sax. Man sol
 auch keine Burg noch Stadt verfesten mit Blancken/ noch
 mit Mauren/ noch Berg/ noch Thürne bey Dörffer bauen/
 &c. Land-Recht *L. 3. art. 66.* cit. Dn. Ziegler. *de Jur. Ma-*
 31 *jest. L. 1. C. 3. §. 9.* Ad hanc Principis circa ædificia
 potestatem quoque spectat mandatum de diruendis pri-
 32 vatorum ædibus e. g. si ultra usitatum altitudinis mo-
 33 dum, factâ nuntiatione, *L. 1. §. 11. ff. de nov. op. nur.* aut
 si contra ornatum, commodum ac decoram faciem
 Civitatis exstructæ *L. 6. & 17. C. de oper. publ.* Item si af-
 fectati Principatus aut rebellionis suspicionem præbent.
 Exemplum habet Livius *L. 2. c. 7.* de Valerio Poplicola,
 qvi

Compare Vent. de Valent., *Cases of Litigation Against the Persians*, l.1. c.13. n.19.

- 24 Coras. *L.3. misc. c.24. n.3. seqq.*, recounts that in exceptional and certain cases the natural freedom to build higher can be restricted by laws.
- 25 Thus, for example, it is not permitted to build next to a threshing area of the neighborhood, in which grain is milled or threshed, or on the side from which the threshing floor exclusively obtains the wind. *L. fin. §.1. ff. de S. U. P.*
- 26 Also, an heir is impeded from obscuring the part that is granted to another heir, by constructing a further building, according to *L. Gaurus 10. ff. d. 1.*
- 27 Likewise it is forbidden to build in the vicinity of convents, monasteries, or schools, so that the eyesight of scholars will not be decided upon in advance. Barbos. *Collect. ad L.8. C. de Servit.*
- 28 In addition contracts and servitudes also withstand the client; *d. l. altius 8. C. de Serv. & L.12. §.3. C. regarding private houses.*
- 29 It is also not permitted to erect high buildings due to anybody's envy, rivalry, or bias without an extant benefit in the case; *L.1. §.1. & seqq. ff., regarding the damming of rainwater*, Gomez. *ad L. Taur. C.46. n.8.*
- 30 Therefore, in this particular case no one may build a palace, not even at his own expense (*L. opus novum pr. ff. regarding public structures*), because this as a legal matter — as one might suppose — extends to the emulation with somebody else, and in days to come can supply a motive for discord (*Zoes. ad d. 1. n.1.*), according to Saxon law, no one may erect towers either: *One must not fortify a castle or city with boards/ nor with walls/ nor build peak/ nor towers/ in the villages/ &c. Land-right L.3. art. 66. cit. Dn. Ziegler, regarding the right of the majesty L.1. C.35. §.9.*
- 31 The power of the prince with regard to buildings is referred to by the mandate to demolish private houses,
- 32 for example, when information is placed against an infringement of the usual height (*L.1. §.11. ff. regarding the denunciation of new constructions*),
- 33 or when a house has been built contrary to the adornment, interest or beautiful appearance of the city (*L.6. & 17. C. regarding public constructions*). Likewise, when it arouses the suspicion that its owner arrogates the rank of a prince to himself or excites rebellion. Livius (*L.2. c.7.*) provides an example of Valerius Poplicola,

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qvi atrox invadendæ reipubl. crimen, qvo notatus, qvod Romæ in summa Velia ædificaverat, vix ante purgare poterat, qvàm deferrentur in planum ædes, ac in infimo clivo ædificarentur: Simile ferè exemplum de Genuensibus & Pisanis habet Sigon. *de Regn. Ital. L. 11. § 15.* Item si ædificia securitati publicæ officiunt, exempli loco sint arces Ganerbicæ, Ganerben- Häuser oder Schlösser/qvæ à Nöbilibus qvibusdam generosis contra incursum hostilem se tuendi ac defendendi causâ, cùm in Germania itinera passim minus essent secura & tuta, da das Faustrecht im schwange gieng/ in montibus, aliisque locis oportunis exstructæ; Postea verò ab Imperatoribus & Civitatibus, qvod Illi (Nobiles) à prisca virtute degenerantes alios non tantum opprimere, verùm etiam confratres alios opprimentes receptare cœperint, arces istæ, als Raub-Schlösser/ dirutæ sunt ac dejectæ; unde tot in Germania passim adhuc exstant rudera. plur. vid. Speidel. *Spec. voc. Ganerben. It. voc. Schlösser.* Sic in specie ann. 1282. Rudolphus Rex duo ejusmodi Latronum castella non procul à Rheno sita cepit, ac funditus delevit. Idem *voc. Raub-Schlösser: ex Trith. L. 2. 35 annal. f. 20.* qvæ dissipatio arcium prædatoriarum non solum licita, sed etiam ex Constitutionibus Imperii præcepta, præsertim R. L. de anno 1559. §. nachdem aber hierin 28. daß solche Raubschlösser verbrennet und sonst umbgerissen werden sollen. plur. Supplem. Speidel. *voc. Raubschlösser.*

Qvid de Excelsis sentiendum, plur. vid. Mart. Schoock. 36 *Exerc. 15. de Excels. ubi n. ult. docet Eadem extirpanda non esse, qvod neqve serviant usui idololatrico, neqve exstet præceptum DEI de illis abolendis. Quò loco etiam ostendit, campanas à Pontificiis relictas omninò tolerandas esse, qvamvis illæ superstitiosum in modum* 37

who could not purge himself of the awful crime of usurpation, by which he was stigmatized because he had built a house on the top of the Velisian Hill in Rome, until he finally transferred his house down to level ground and built at the foot of the hill. Sigon. (*Regarding the Italian Realm*) mentions an approximately equivalent example of the people of Genua and Pisa.

- 34 Likewise, when construction opposes public security; the castles of diverse associations of co-heirs should be mentioned as an example: *Ganerben-Houses or -Castles*, built on mountains and other advantageously situated locations by some aristocrats of noble birth in order to provide against hostile assault and to defend themselves, while in Germany the travel routes were nowhere secure nor guarded, *since the right to private warfare held sway*. But later they were destroyed and demolished by the emperor and by the cities because those [the nobles], fallen from their old virtues, not only oppressed others but also began time and again to give shelter to their brethren, who likewise beset others, whence in all of Germany up to the present time there are ruins to be seen everywhere. See further Speidel. *Spec. voc Co-Heirs, It. voc. Castles*. Thus, in a special case in 1282, King Rudolf captured two such thief's forts not far away from the Rhine and destroyed them down to the foundation walls. Same *voc. robber-baron castles: from Trith. L.2, annal. f.20*.
- 35 This crushing of the robber barons' strongholds was not only tolerated, but also prescribed according to imperial decrees, first and foremost those from the year 1559 (§. *accordingly however herein 28. that such robber barons' castles ought to be burned or otherwise demolished*); for more see the supplement to Speidel. *voc robber-baron castles*.
- 36 But as for what is to be thought of churches that were built on higher ground, see further: Mart. Schoock. *Exerc. 15. de Excels. ubi n. ult.* He shows that these must not be obliterated because they neither serve an idolatrous use nor is there a commandment of God regarding their abolition. *At this place* he also shows that the bells bequeathed by the bishops must be sustained,
- 37 although these were christened in a superstitious

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baptizatae sint & ridiculum in modum, die quasi iustico
38. proprium nomen acceperint. Tandem *sub fm. ejusd. n.*
& *Exerc.* mentionem facit Galli aenei Campanili seu ca-
cumini turris imposui. Cujus symboli non una affertur ra-
tio; Quidam fingunt, Pontificios pro hoc usu Gallos
hos frequentasse, ut forent quasi praecones resipiscen-
tiae, quod Petro usum hunc Galli cantus exhibuerit, at-
que ideo submovendos illos esse clamant. Exemplum
cujusdam Pastoris habet B. Schoockius, qui physicam po-
tius rationem agnoscit, nempe quod animal hoc, uti san-
guine calidiori & spiritibus subtilioribus gaudet; Ita mox
levissimam aëris & auræ mutationem percipiat: Inde-
que Gallus aeneus in cacumine turris ponitur, ut
auræ quasi ventorumque sit index. Interim ornamen-
ti etiam loco fieri, autumant alii; Sic Turri Jaurinensi ad
portam aquaticam Turcae eo tempore, quo Jaurinum
precedenti seculo tenuerunt, gallum aeneum imposue-
runt, cum inscriptione: Jaurinum à Christianis tunc re-
cuperatum iri, quando Gallus iste cantaturus esset. Quos
tamen augurium hoc fefellit, & Jaurinum singulari stra-
tagemate Baronis Schwartzenbergii A. 1598. 29. Mart. in
Christianorum potestatem redactum est. Es hätte ih-
nen wohl noch gethan daß der Hahne sie mit seinen Geschrei
erwecket hätte/damit sie nicht also stillschweigend wären über-
39 fallen worden &c. Ortel. P. 2. f. 234. Gallorum in summis
templorum symbola plures Eruditis meditationes sug-
gesserunt, scil. intelligi per illos Concionatores, qui no-
bis verba salutis enunciant, & jacentibus in tenebris &
umbra mortis Lucem, quæ Deus est, prænunciant, & à
nobis mentis nostræ veterum ac corporeum suo cantu
excitant Girald. ap. Gesner. *de Anim. L. 3. f. 408.* It. ad-
monem Christianos omnes, docentes pariter ac discen-
tes,

manner and have received their proper names, as it were, in a ludicrous manner on a consecrated day

38 Finally, he mentions *at the end of the same paragraph & in the Exerc.* the bronze cocks of the bell-tower, that is, those which are placed at the peak of the tower. There was not only one reason for this symbol presented. A few imagine that clergymen had gathered a great number of these cocks together for the following purpose: that they are going to be heralds of the regaining of one's senses, because the song of a cock gave Petrus the benefit of this, and for that reason they raise a howl, that these must be done away with. B. Schoockius has the example of an anonymous priest who rather recognized a physical reason, obviously because this animal — as it enjoys a genuinely hot blood and truly subtle sense — thus quickly perceives the slightest change of the air or of the gentlest breeze. And therefore a bronze cock was placed at the peak of the tower, that it may be, as it were, the harbinger of the air and of the wind. Meanwhile others maintain that they are made for decoration; thus the Turks set a bronze cock on the tower of the city Györ [Raab], at the flood-gate at the time they held Györ in the past century, with the inscription: Györ would not be recovered by the Christians before this cock prepared itself to crow. However, this oracle betrayed them and Györ was led back into the command of the Christians by the remarkable strategist baron Schwartzenberg in the year 1598 on the 29th of March. *It still would have turned out well for them/ that the cock had awoken them with his cry/ so that they hence would not have been silently surprised &c.* Ortel. P.1. f.234.

39 The symbols of cocks upon the peaks of the temple have furnished the scribes with numerous things to ponder. Namely, they understood them as preachers who proclaim to us the words of salvation and who promise to those lying in the gloom and in the shadow of death the light which is God, and with their song cast out the filth and indolence of our spirit. Girald. ap. Gesner. *de Anim.* L.3. f. 408. Likewise, that all Christians be exhorted to vigilance, the teachers just as the

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tes, vigilantiae : Item, quemadmodum Leo & Basiliscus
tūm aspectum, tūm vocem Gallinacei extimescunt; ita
Diabolum, quem Sacra Leonem rugientem, Draconem,
serpentem, toues vocant, hinc totāque Ecclesiā esse ar-
cendum. Plura vide ap. Durand. *Rational. divinor. Offi-*
cior. Lib. 1. Cap. 1. n. 22.

CAPUT IV.

DE

JURE PRINCIPIS AEREO

AD AUGENDUM ÆRA-

RIUM COMPETENTE.

SUMMARIA.

A erarii justitia & neces- sitas. 1. 2. 3.	Rationes habitandi cum respons. 22. 23.
Reditus intuitu Principis Domi- nii in aerem. 4. 5. 6. 7. 8.	Quid juris circa aucupium in Princip. Ambat. & alibi. 24.
Tributum aerium. 9.	25. 26.
Pecunia ab advenis solvenda. 10.	Emolumenta & fructus aucupii contra Bacchorum. 27.
Tributum Tegularum. 11.	Gallinae ferae in specie Phasian- Hüner. 28.
Jus Reg. Hisp. primam sibi domu- um Madrid. contignationem vindicanis. 12.	Turdi &c. 29.
Pena contra altitudinis modum iterum fruuentis edificium jam directum. 13.	De hünensteege. 30.
Tributum fumarium. 14.	Corumnices. 31.
Caminarium. 15.	Anates Sylvestres. 32.
Molendina pneumatica, 16.	Privatis aucupium conceditur pro certa pensione. 33.
Eorum Reditus. 17. 18.	Subditi tenentur dicere & nocere aves capere. 34.
Jus aucupii commune. 19.	Exemplum Henrici I. Imp. 35.
Principibus hodie competit. 20. 21.	D : Prin-

students. Likewise, as the lion and the basilisk now fear the sight, now the voice of the cock, so should the devil thus be kept away from the entire church, whom the Holy Scriptures everywhere name the roaring lion, the dragon, the snake. See further Durand. *Rational. divinor. Officior. Lib.1. Cap.1. n.22.*

Chapter Four

The Jurisdiction of the Prince over the Air which Applies to Increasing the Treasury

Summary

O f the treasury's legitimacy and necessity.	1,2,3	Which today falls to the princes.	20.21
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Fees imposed on newcomers.	10	Gains and profits of bird catching. reasoning against Bachovius.	27
The tax on roof-tiles.	11	Wild fowl – here especially:	
The right of the Spanish king, who claims the first floor of houses in Madrid for himself	12	<i>pheasants.</i>	28
The penalty for the re-building of a house infringing the allowable building height, which had already been demolished once.	13	Thrushes & c.	29
The tax on smoke.	14	<i>Springe-paths.</i>	30
On chimneys.	15	Quails.	31
Windmills.	16	Forest ducks.	32
Examining them anew.	17,18	Private persons who, in exchange for a certain rent are granted the bird catching.	33
The right of fowling common to all.	19	Subjects will be obliged to catch loathsome and parasitic birds	34
		The example of emperor Heinrich I.	35

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- P** Principibus ac Regibus bona quædam esse assignanda, unde dignitatem suam sustineant, rectè monet Incomparabilis ille Grotius *de J. Bell. ac P. lib. 2. c. 8. ib. s.* cum quoque in finem, ut tributa solvamus, honestum est ac conscientiam obligans, ut Apostolus *Rom. 13. v. 3. 4. 6.* explicat. Idem *L. 1. c. 2. §. 7. n. 12.* cum Principes sumptus permultos quotidie facere habeant necesse. Illustris Dn. à Seckendorff in *Teutschen Fürsten-Staat P. 3. c. 4. num. 4.* cit. Henel. *Tr. de erar. procem. §. c. 4. §. 1.* Quot verò modis & quibus ex rebus illi desumendi, atque in Principis ærarium inferendi sint, consul. Dd. qui ex professione de hac materia scripserunt, in genere instar omnium Döring. *Bibliot. Jctior. Voc. Ærarium.* Hoc loco fisci augmentum in aëre quærendum, intuitu quidem juris & dominii in aërem, quod Principi competere *cap. 1. num. 5. 17. & seqq.* expositum, & hic exemplo erectionis furcarum illustrandum: Symbola namque illa patibularis justitiæ, seu signa repræsentant signatum, nimirum Jurisdictionis & Imperii qf. possessionem; Furcæ siquidem sunt res & signum, denotantque dominium aëris, Knichen. *de Jur. Territ. cap. 3. num. 398. seqq.* ex Bald. *cons. 445. in f. Lib. 5. plur. vid. Speidel. Spec. Voc. Galgen.* Inde quicquid mulctarum poenarumq; nomine colligitur, ex totius ferè Germaniæ consuetudine, de fructibus Jurisdictionalibus esse perhibetur, per Dd. à Carpzov. *Pr. Crim. Part 3. Qv. 109. num. 41. seqq. citt.* Et Jure Saxon. in recompensationem oneris erogandorum sumptuum ad erectionem furcarum, aliorumq; signorum Jurisdictionalium, ad Superiorem deferuntur Gerada & res expeditoriæ, in casu, quo vir aut mulier moritur non relictis heredibus harum rerum legitimis. Idem *d. l. n. 70. & seqq.* Sæpius quidem Magistratus

- 1 **T**hat to princes and kings must be adjudicated a certain amount of property, whence they should uphold their dignity, correctly admonishes that incomparable man: Grotius *de J. Bell. ac. P. lib.2. c.8. th.5*.
- 2 It is honorable and a duty of conscience that we pay taxes for this purpose, as the apostle, *Romans 13. v.3, 4, 6*, expresses it.
- 3 The same says *L.1. c.2. §.7. n.12.*, because the princes deem it necessary to transact a great many disbursements daily, so Illustr. Dekan von Seckendorff (*in the German Prince-dom*) *p.3 c.4. num.4.* cit. Henel. *Treatise on the Treasury, Foreword & c.4 §.1.*). As for the question, of how many kinds and from what sources are they to be sought and conveyed into the treasury of the prince, one may consult the doctoral candidates who have written comprehensively about this topic; the testimony of *Library of the jurists: coffers of the state* by Döring. on the whole corresponds to all the others.
- 4 At this point, the expansion of the treasury regarding the territory of the air is to be investigated, obviously in consideration of the right and dominion over the air that applies to the prince, the nature of which was expounded in Chapter 1, section 17 ff., and is elucidated here through the example of the building of executioner's blocks.
- 5 These symbols or signs of the jurisdiction over life and death exhibit what has been branded with a mark or seal – undoubtedly, as it were, the property of jurisdiction and territorial reign – because the gallows are facts as well as symbols and display the reign over the air. Knichen. *About the Territorial Right cap.3 num.398 seqq. according to Bald. cons. 445. in f. Lib. 5.*, beyond that see Speidel. *Spec. voc. Gallows*.
- 6 Therefore it is said that everything assembled under the notion of corporal punishment be supplied by the revenues of the jurisdictional administration, according to the custom in almost all parts of Germany. According to Doktorand von Carpzov. *Pr. Crim. Part.3. Qv. 109. num.41 seqq. cit.*
- 7 While according to Saxon law honorary offices as well as unclaimed fortune – in case a man or woman dies and leaves no legitimate heir to their wealth – will be transferred to the sovereign as repayment of the burdens accrued through the expenses for the erection of gallows and other signs of jurisdiction. *Ibid., d.l. n.70. & seqq.*

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29

Aratus inferior hæc sibi commoda & fructus vindicaf, plerumque tamen hic titulo oneroso merum Imperium habet: Ita Senatus Servestanus quotannis 500. aureos Rhenanos ad Cameram Principalem perferre tenetur. Sed propius ad rem. Et statim paucis modò tangendum *ἀερος* 9 tributum pro cœlo & spiritu aëris à Michaelē Paphlagonē, juxta Cedrinum, inventum. Cujac. *l. 10. Obs. c. 7.* Klock. *de Ærar. L. 2, c. 147. n. 10.* Tob. Magir. *Polymn. voc. Tributum n. 5.* Döring. *Bibl. 7 Ct. d. l. num. 226.* hoc verò tyrannicum apud Politicos meritò audire, notat Oldenburg. *cit. sapient. Tit. 4. ab init.* Nam

Quis probet Urina vectigal? Quis nivis? umbra?

Aëris? & decimas quaslibet illicitas?

Klock. *d. c. post Summ.* Pro tali autem tributo habenda 10 non est pecunia ab advenis, qui in civium numerum recipiuntur, solvenda. Mev. *ad Jus Lubec. t. 2. rubr. num. 28.* Georg. Mund. *de Mun. honor. & oner. c. 2. n. 445.* non enim ideo est solvenda, ut in civitate saltem vivere queant, sed etiam, ut honorum atq; munerum sint capaces. Rectius tributo aërio æquiparandum, quod in singulas 11 ædificiorum tegulas impositum fuit, quod pro inaudito, & novitate magnitudineq; admiranda exclamat Adr. Turneb. *l. 29. advers. c. 10. circa fin.* Magir. *d. l. n. 6.* Singu- 12 lare est in regno Hispaniæ, ubi Rex sibi domuum civicarum Madrici exstructarum primam contignationem vindicat: Der König hat ein Recht über die Häuser / so man in Madrid bauet / das Ihm viel einträgt. Eines jeglichen erstes Stockwerck gehöret Ihm zu / wann man es nicht wieder erkauffet / kan ers geben / wem es Ihm beliebt &c. Spartische Reisebeschr. *c. 20. p. 138. vers. Germ.* Apud Romanos non 13 lionisæ modum altitudinis usitatum excedere, ita ut factâ nunciatione, illicitè ædificatum diruendum fuerit,

- 8 Quite often, of course, a subordinate office claimed these proceeds for itself. However, the sovereign usually exerts pressure by proclamations and holds the true reign. Thus the senate in Zerbst is held annually to hand over 500 of Rhenish gold coins to the court chamber. Still closer to the point.

- 9 While directly addressing with only a few words the "wind-tax" procured by Michael Paphlagonus for enjoying the weather and breathing the breeze in the vicinity of cedar wood. Cujac. *l.10. Obs. c.7.* Klock. *On the State Treasury. L.2. c.147. n.10.* Tob. Magir. *learned dictionary: Tax, n.5.* Döring. *Library of Jurists, loc. cit. num.226.* But this tax rightly has a reputation in the political sciences of being overbearing, as Oldenburg. remarks: *at the often quoted spot Tit. 4. beginning. Because — thus writes Klock. d. c. according to the summary:*
Who should approve the tax on urine? On snow? On shadows?
On the air? To be sure, who would sanction any unlawful tithes?

- 10 For such a tribute one must not raise the sum from newcomers, but it is to be paid by those who are included in the rank of citizens (Mev. *on Lübeck law t.2. rubr. num.28.* Georg Mund. *regarding honorable and arduous taxes c.2. n.445.*); the tax, namely, is not to be paid as a minimum tax so that they can live in the city, but also so that they are enabled to rights and duties.

- 11 One must more accurately compare the tax on the air with the one imposed on each individual tile of the houses, a tax that – because of its unprecedented novelty and admirable consequence – Adr. Turneb. *L.29. advers. c.10 almost at the end,* Magir. *loc. cit. n.6* name with approval.

- 12 There is a unique rule in the Spanish kingdom which allows the king to claim the first floor of citizen's houses built in Madrid for himself: *The king has a right over the houses/ thus one builds in Madrid/ which yields him much profitableness. Every first floor belongs to him/ if no one buys it again/ then he can give it to whomever he pleases, &c. (Spanish travelog.. c.20. p.138.; in German lines).*

- 13 As for the Romans, it is a fact that it was not permitted to exceed the agreed upon measure of altitude, such that after a charge was pressed the forbidden structure must be torn down;

- 30 **CAPUT IV. DE JURE PRINCIPIS AEREO,**
 constat ex *L. 1. §. 11. ff. de nob. oper. nunc.* Quod si igitur di-
 ritum hoc ædificium Dominus, neglecto altitudinis mo-
 do, rursus struere non vereretur, fisco cum solo cessit su-
 14 perficies. Klock. *de Aerar. lib. 2. c. 95. num. 41. seqq.* Tribu-
 ti fumarii à Nicephoro Phoca impositi meminit Magir.
 15 *d. l. n. 6.* Nostra etiam ætate à sagacibus tributorum ex-
 actoribus excogitatum esse vectigal aut tributum, quod
 à singulis domorum focis & caminis exigitur, vulgò ob
 id Caminarium, focarium, per fumantes dictum von den
 Herd/oder Feuer-Statt/unde Germanis Herd-Recht/Herd-
 Zins/Camin-und Schorstein-Geld; Eò quoque pertinere
 die Rauchhennen/so man aus den Häusern und Herdstätten
 giebet/ habet Besold. *Thesaur. Pract. voc. Camin &c. & in*
add. It. Diether. Contin. Thes. Besold. Georg. Mundius Tr. de
Muner. Honor. & Oner. C. 4. n. 22. seqq. Peller. in annot. ad
Klock. de Aerar. L. 1. c. 1. n. 100.
 16 Ad Molendinum *πνευματικός* s. ventosum, i. e. quod
 ventorum flatibus agitur, Windmühle/progredior; Rei-
 publ. enim & ærario conducit maximè, habere instructas
 complures molas. Klock. *de Aerar. l. 2. c. 8. n. 33.* Eas quidem
 in præsens non intelligo, quibus loca palustria & aqvosa
 pascua, imò & in latifundiis integra stagna lacusque ali-
 quot miliarium exsiccantur, & in Batavia frequentes sunt;
 Sed illas tantum, quibus frumentum frangitur; ex eo enim
 amplum cogitur tributum. Peller. *in annot. ad Klock. d. l.*
 17 *n. 9.* Hæc molendina pneumatica s. alata nemini in suo e-
 rigere licet, nisi ærem à Principe redemerit. Gryphiand.
de Insul. c. 11. n. 27. Klock. *d. l. n. 3.* ut sic ipsa naturæ ele-
 18 *Amb.* Ratio autem interdictæ molendinorum ædifica-
 tionis promiscuæ est, ne publicæ rei per nimiam eorum
 frequentiam fraus fiat. plur. Peller. *d. l. p. 483.* deinde
 etiam

according to *L.1. §.11 ff. regarding the denunciation of new constructions*. Accordingly therefore, if the building's owner dares to rebuild this demolished building, disregarding the allowed measure of altitude again, building and real estate both will come to the treasury. Klock. *On the State Treasury, lib.2. c.95. num.41. seqq.*

- 14 The tax raised on chimney smoke by Emperor Nicephoros Phokas calls to memory: Magir. *d. l. n.6.*

- 15 In our own time as well a tribute or tax has been shrewdly designed by tax collectors which is imposed on individual hearths and chimneys of the houses and which is duly called chimney, hearth or smoke tax in the populace: *of the hearth/ or fire=place/ hence in German hearth=right, hearth-/ zinc=/ fireside= and chimney=money*. Besold. (*Thesaur. Pract. voc. Camin &c.&c. in the addendum*) showed that the *smoke hens* also belong there, *if one gives from the houses and the hearths (likewise Diether. Contin. Thes. Besold., Georg. Mundius Treatise on the Honorable and Arduous Duties, C.4. n.22. seqq., Peller. in annot. ad Klock. On the State Treasury L.1. c.1. n.100).*

- 16 I now move on to "pneumatic", or, because it is driven by gusts of wind, the "wind-driven" mill, *windmill*. For it is extremely beneficial to the state and to the treasury to have had many mills set up. Klock. *On the State Treasury l.2. c.8. n.33.* However when considering this expression I do not have in mind the mills by which marshy places and well-watered regions become drained, indeed even newly arisen lakes and pools of a thousand meters on great estates, and which are numerous in the Netherlands, but only those by which grain is ground. For a significant tax is collected from that. Peller *in annot. ad Klock. loc. cit. n.9.*

- 17 It is permitted to no one to erect such a "pneumatic" or windmill from his means, unless he has rented the air from the prince. Gryphiand. *de Insul. c.11. n.27.* Klock. *loc. cit. n.3.*, such that in this manner even the natural elements have been measured by the effectiveness of money. Gryph. *loc. cit. n.28. ex Plin. & Amb.*

- 18 But the reason for the regulation that indiscriminately building windmills is forbidden is that no fraud may arise to the state's disadvantage by their great number. See further Peller. *loc. cit. p.483.*

AD AUGENDUM AERARIUM COMPETENTE.

etiam, ne molendinorum multitudo sibi ipsi officiat. Sed ne actum agam ad cit. saepe Klock. & Hering. *de Molend.* provo: conf. *Mund. de Mun. &c. C. 6. n. 135.*

Supereſt Jus aucupii, das Vogelfangs Recht: Hoc quidē Jure Gentium commune & liberum eſt omnibus, ita ut Volucres, quæ in cœlo, h. e. ære, naſcuntur, ſiant capientis. §. 12. *J. de R. D. L. 1. §. 1. L. 3 pr. & §. 1. ff. de A. R. D. L. 1. §. 1. ff. de acq. poſſeſſ. L. 16. ff. de S. P. R.* Klock. *Tom. 1 Conf. 29. n. 746. & de Aerar. L. 2. c. 5. n. 104.* Hodie tamen uſu Juris publici Germaniæ aucupii jus determinatum jureque Regalium cenſetur. Illuſt. *Dr. de Rhetz J. Jur. Publ. l. 2. §. 26. §. 6. Camman. de jur. Majeſt. Diſp. 7. th. 4. Beſold. in diſput. de regal. c. 9. §. 6. Sixtin. de Regal. L. 2. c. 18. n. 32. & 45. Klock. d. Conf. 29. n. 185. & de Aerar. d. l. n. 102. ſeq.* Dubium hoc aliquando viſum in aula Madritenſi Caroli V. Imperat. referente id ſequentibus Hub. Thom. Leodio: *Quodam autem die, cum me oblectarem conſabulationibus ante Caſariæ cubiculum, vocavit me de janua Dominus à Præto & introire juſſit, ibi audiente Caſare interrogavit me, num. verum eſſet, quod ruſtici in Germania prohiberentur capere perdices & hujusmodi aves, quæ inter feras nominantur? Reſp. veriſſimum eſſe quidem, & ne dum ruſtici, ſed & nobiles, niſi ex ſingulari indulto Principis conſecuti eſſent jus aucupandi. Imò non ſolum perdices, ſed & turdos, alaudas, & alias aviculas aucupari prohibentur. Quæ de cauſa rogat ille? Quantum ad ruſticos facilis eſt, inquam, ratio, ne hujusmodi otio deditæ agriculturam negligant. De ignobilibus ignoro. Atqui, inquit, non manent in uno loco, nunc in hac ditione, momento temporis ſunt in alia. Ad hac cepit Imperator ridere, & capite, ut dimitterer, annuere. Poſtmodum reſcribi, ſuam majeſtatem noluiſſe credere aucupium in Germania interdictum, de poſitioneque facta veritatem*

Hence, so that the windmills likewise do not stand in the way of each other by their sheer quantity. But in order not to again examine topics already thoroughly examined, I refer to the oft quoted Klock. & Herring. *regarding windmills, compare Mund. de Mun. &c. C.6. n.136.*

- 19 There remains nothing more to add than the right of bird catching, *the fowling right*. Certainly this is, according to international law, common and free for all, hence the birds that are born in the sky, that is, in the air, become the property of the fowler. §.12. *J. de R. D. L.1. §.1. L.3. pr. & §.1. ff. de A. R. D. L.1. §.1. ff. de acq. possess. L.16. ff. de S. P. R. Klock. Tom. Cons. 29. n.746. & on the state household L.2. c.5. n.104.*

- 20 Yet nowadays the right of bird catching is established according to the public legislation of Germany and is appraised in consideration of the privileges of the king; according to Illustr. Dn. de Rhetz *J. Jur. Publ. l.2. t.26. §.6. Camman. de jur. Majest. Disp. 7. th.4. Besold. in disput. de regal. c.9. §.6. Sixtin. de Regal. L.2. c.18. n.32. & 45. Klock. d. Cons. 29. n.185. & On the State Treasury loc. cit. n.102. seq.*

- 21 This has some time before been drawn into doubt at the Madrid Imperial Court of Emperor Karl V., according to the report of Hubert Thomas Leodius in the following passage: *But one day, as I was strolling in front of the imperial chamber, engaged in light conversation, the Lord of Prato called me from the doors and bade me enter. Right there, while the emperor listened, he asked me whether it was by any chance true that it was forbidden for the peasants in Germany to catch partridges and birds of the kind, that are numbered among the wild fowl. My answer: indeed, this is actually true, and not only the peasants, but also the nobles — unless a unique favor were granted by the prince — have to strictly adhere to the bird catching law. And indeed not only partridges, but it is also forbidden to hunt thrushes, crested larks, and other small birds. "By what reason?" he asked. As far as the peasants are concerned, the reason is easy, I replied, namely that they not neglect farming by indulging in idleness of that kind. Regarding the insignificant birds I knew of no information. "But in any case", he replied to me, "they do not remain in one place, but are now under the one and the next moment under a different jurisdiction." At that the king began to laugh and nodded his head that I may be dismissed. A short time later I received the report that his majesty had not been willing to believe that the bird catching is forbidden in Germany and — after he had dismissed me —*

31 CAPUT IV. DE JURE PRINCIPIS AEREO,

- 22 *zatem seire voluisse &c.* haftenus Leodius in *Annal. de vit. & reb. gest. Frider. II.* L. 10. p. 196. Verum omni dubio jus Principis circa aucupium caret; Obstat quidem videtur prima Lex Creationis: Subjicite vobis bestias. Dominamini in volucres coeli; Attamen haec capiendi facultatem concedit homini, non verò ut capiat, imponit, necessitatem Dn. Praeses in *annot. ad §. 12. §. de R. D.* vel, habet haec concessio privilegii, non praecepti, rationem. Clariss. Dn. Pufendorf. *Elem. Jurispr. Univ.* L. 1. §. 7. p. 41. Majestas igitur hic LL. figere & refigere debet. Generos. Dn. à Seckendorff *Teutsch. Fürsten-Staat* p. 441. Oldenb. T. 4. §. 18. p. 461 Nec obstat aucupium esse juris naturalis; concedendum enim hoc est de jure naturali permittente, non concedente. Grot. *de B. ac P.* L. 2. c. 3. §. 5. potest autem Lex civilis naturalem libertatem circumscribere & vetare, quod naturaliter licebat. Idem L. 2. c. 2. §. 5. conf. c. 8. §. 5. Principes proinde Germaniae jus sibi reservant, quod Romani Imperatores in suo primævo statu reliquerunt, omnibusque concesserunt, adeoque Romanorum decempedâ justitiam hujus juris aucupandi metiri non licet. Relfendf. Herom. *de Summ. Princip. Germ. potest.* c. 2. p. 40. haec enim ex Imperii & Superioritatis territorialis viribus clarè satis patet. Dn. Ziegl. *de Jure Majest.* L. 2. c. 14. §. 21. ut, qui territorii vel castri Dominus est, idem jus aucupandi habeat. Klock. *Tom. 1.*
- 24 *Conf. 29. n. 745.* Ita Serenissimi Principes Anhalti, Domini mei Clementissimi privatos ab aucupio verbis sequentibus excludunt: Desgleichen soll auch niemandes keine wilde Hühner / Gänse / Enten / Trappen / Kraniche / Auer oder Birkhähnen / oder Feder- Wildpret in unserem Gehölze / Feldern / Wässern / Teichen / Gehägen schiessen oder fahen &c. Fürstl. Anhalt. Landes. Ord. *Tit. XXII.*
von

had wished to know the truth.

That is what Leodius writes in his *Annals of the Life and Deeds of Friedrich II.* L.10 p.196.so far.

- 22 However, the right of the prince concerning the bird catching is free from all doubts. Nevertheless, the first law of creation seems to oppose him: Make the animals subject to you! Rule over the birds of Heaven! But God had granted to man permission for the bird catching, but is not coerced by him to catch them; Dn. Praeses. in annot. ad §.12 J. de R.D., and this consent considered a privilege, not a precept. As is explained most clearly by Dn. Pufendorff *Elem. Jurispr. Univ.* L.1. §.7. p.41. Accordingly, the sovereign of the state must here proclaim or repeal laws in his capacity of legislator. Generos. Dn. von Seckendorff *German/Prince=Dom* p.441. Oldenb. T.4. §.18. p.461.
- 23 Nor is this procedure opposed by the fact that the bird catching is a sign of natural right. It must be conceded that bird catching is derived from a natural right that permits, and not one that grants. Grot. *de B. ac. P.* L.2. c.3. §.5. But civil law can curtail the natural freedom and forbid what is allowed by nature. Id. L.2. c.2. §.5. cf. c.8. §.5. Consequently, the princes of Germany reserve the right for themselves that the Roman emperors had left in its original state and had conceded to everyone; indeed, it is not even allowed to assess the legality of the right of bird catching according to the standard of the Romans. Relfends. Herom. *de Summ. Princip. Germ. potest.* c.2. p.40. This legality shows itself clearly enough by the power of territorial reign and superiority. Dn. Ziegl. *de Jure Majest.* L.2. c.14. §.21., whence precisely he who is master of a castle or ruler of a country has the right to hunt birds. Klock. *Tom. 1. Cons.* 29. n.745.
- 24 Thus the princely highnesses of Anhalt, my most gracious lords, exclude private persons from bird catching with the following words: *Likewise no one is to shoot or hunt any wild pheasants/ geese/ ducks/ cranes/ wood- or black-grouse/ or feathered game in our woodlands/ fields/ waters/ ponds/ or enclosures &c.* *Princely Anhalt. Country Reg.=Reg. Tit XXII. about hunting on hunting ground.*

AD AUGENDUM ÆRARIUM COMPETENTE.

von Wild-Bahn und Jagten. Magis extensum jus
 aucupii & juris strictissimi est in Ducatu Wurtenber-
 gico, ut ne quidē aviculas minores sclopetis liceat trajicere,
 teste Oldenburg. *d. l.* Aliās certis temporibus aucupi-
 um, ubi subditis id permissum, justē interdicitur, ne va-
 stentur species. Georg. Mor *tr. de jur. venand. auc. pisc.*
P. I. c. 2. n. 59. Quò minor autem de aucupandi jure du-
 bitandi causa & necessitas, cò major circa utilitatem ejus
 à Bachovio movetur quæstio, dum omne penitus emo-
 lumentum ex aucupio proveniens, contra Wesenb. *inpa-*
rat. ff. de A. R. D. n. 7. in not. Lit. R. negat: Verum frustra
 est Bachovius, qui aliās etiam non tam suæ sententiæ ad-
 structor, quàm alienæ destrutor audit Vinnio *de Pæd.*
c. 11. n. 9. Etenim in deliciis habentur à Principibus feræ
 Gallinæ, inter illas præcipue diæ Phasianhüner/pro quibus
 peculiare hortos Cellis & alibi extrui testatur Oldenb.
dict. sep. t. 4. §. 16. & in Marchia earum capturam prohi-
 beri, ex affixis in sylvis interdictis, unâ cum depicta ipsa-
 rum figura, videre est; Ita & alias nobiliores aves, e. g.
 turdos, qui inter volatilia habentur delicatissimi Horat.
L. 1. Ep. 15. (Krammesvogel / Drossel) capere non licet;
 neque priyatis rectē in sylvis competunt, diæ Dohnenste-
 ge. Oldenb. *d. l. p. 461.* Ex hoc reservato sibi aucupandi
 jure sat commodi Principem capere, quis ibit inficias?
 Hostiensi Episcopo ex Coturnicum aucupio millia nu-
 mū aureorum amplius quatuor quotannis obvenire,
 testatur Zonareta *de Gen. Venat. fer. n. 23.* Quantum
 etiam anatum sylvestrium captura Principum ærario
 proffit? ad Experientiam provocat, Klock. *de Ærar. L. 2.*
c. 5. n. 116. & nullus est, qui sordidum esse sibi persuadet,
 Principem mercaturâ avium quæstum facere. Id. *n. 94.*
 Nec minus ad fisci complementum facit, si certâ pensio-

- 25 In the duchy of Württemberg the privilege of bird catching extends further still and is the issue of a very strict legal norm, so that it is not allowed to even shoot smaller birds with a sling. Oldenburg. *loc. cit.*
- 26 Moreover bird catching, at least where it is otherwise permitted to the subjects, is forbidden at certain times so as not to thereby exterminate the species. Georg Mor. *Treatise on the hunting, fowling and fishing right.*
- 27 But the fewer reasons and constraints there are to have doubts about the privilege of bird catching, all the more endless is the investigation that Bachovius puts forward considering its utility, by persistently denying every benefit that results from bird catching (by comparison Wesenb. *in parat. ff. de A. R. D. n.7. in not. Lit. R.*). But Bachovius, who in other respects also follows Vinnius *de Pact. c.11 n.9*, not as a constructor of his own but as a destroyer of others' thoughts, is mistaken.
- 28 And in fact the wild fowl are assigned by the princes a place in the very midst of their enjoyments, and among them especially *the pheasants*/, just for which, as is evidenced, gardens are built in monasteries and elsewhere (Oldenb. *dict. saep. t.4. §.16.*) and their capture is forbidden in the margraviate, as is to be seen on prohibition sign boards that are put up in the forests together with their sketched silhouette.
- 29 So too it is not permitted to capture birds of a nobler kind, as for example thrushes, that are considered to be the best tasting among the fowls, Horat. *L.1. Ep.15 (fieldfare / thrush)*;
- 30 nor do private persons have a rightful access to *the springe-paths* in the forest. Oldenb. *loc. cit. p.461.*
- 31 Is there anyone who will still dispute that the prince can draw sufficient benefit from the right of bird catching reserved for himself? Zonaretta (*de Gen. Venat. fer. n.23*) attests that more than four thousand gold coins annually were allotted to the well-known Bishop of Ostia from the quail hunt.
- 32 Klock. (*On the State Treasury, L.2. c.5. n.116*) also suggests a test to find out how much the capture of forest ducks will contribute to the state treasury, and there are none who will persuade themselves that it is contemptible that the prince draws a profit through the sale of birds. *Id. n.94.*
- 33 It serves no less to supplementing the state household if the subjects are

- 34 **CAPIT IV. DE JURE PRINCIPIS AEREO,**
 ne aucupium conceditur subditis Dn. Struv. *S. 7. C. Ex. 47.*
16. 12. quod in specie de alaudarum aucupio, & arcis
Wenfreid/afferit. Jac. Kylling. Diss. de Venat. ult. cit. Dietl.
 34 *in Cont. Thes. Pract. Besold. voc. Vögel/Vögelfang.* Uti ve-
 rò Princeps sibi jus capiendi volucres reservat; Ita sub-
 ditis non tantum concedit noxias & diras capere, exce-
 ptis Falconibus, Falken und Blausuß / Ferd. Weizeneg-
tr. de Servitut. Diss. s. c. s. n. 7. sed in nonnullis etiam lo-
 35 cis coguntur rustici certum capitum ejusmodi, Sperling-
 und Kreyenköpffe / numerum sub certa poena loci Præsc-
 cto apportare. Oldenb. *p. 463.*

Coronidis loco hisce annectere mihi liceat exem-
 plum Henrici I. qui in aucupio constitutus, nuntium ac-
 cepit, se in Imp. esse electum, unde unâ cum cognomine
 Aucupis Imperiale aucupatus est Diadema Klock. *de Erar.*
c. 1. n. 106. & Peller. annot. Ziph. 56.

CAPUT V.

DE

JURE PRINCIPIS AEREO

AD CAPIENDAM DELECTA- TIONEM COMPETENTE.

SUMMARIA

<i>1. Principum præsertim Germaniæ</i>	1.
<i>2. cum eo delectatio.</i>	2.
<i>3. Magnæ impensæ nam obstantibus,</i>	3.
<i>4. Nec dissidiis temporis.</i>	4.
<i>5. Electio</i>	5.

permitted to hunt birds for a certain rent (Dn. Struv. *S. J. C. Ex. 41. th. 12*); which Jac. Kylling. *Disp. de Venat. ult.* firmly establishes in a special case regarding the hunt and the regions of the crested lark *netting of larks*/: *cit. Dieth. in Cont. Thes. Pract. Besold. voc. Birds, Bird catching.*

- 34 But while the prince reserves the privilege to hunt birds, he not only allows the subjects to capture loathsome and parasitic birds, excepting falcons (*falcon and saker falcon*/ Ferd. Weizeneg. *tr. de Servitut. Diss. 5. c. 5. n. 7.*), but in a few places the peasants are even forced on penalty to bring a certain number of heads of these kind, *sparrow- and crow-heads*, to the prefects of the district. Oldenb. *p. 463.*
- 35 Instead of a final observation, allow me to here append the example of Heinrich I who — having come to an appointment for a bird catching — received the report that he had been chosen to be sovereign, from whence he had gained the imperial diadem, together with his epithet "the bird-catcher".

Chapter Five

The Jurisdiction of the Prince over the Air which Applies to Pursuing his Pastime

Summary

I ntroduction	1	Particularly the German princes' pleasure	
Bird catching	2	derived from it	6
As precisely that of herons, the <i>heron</i>		For the sake of which great expenditures are	
<i>falconry</i>	3	of no impediment.	7
The opinion of the King of England, James,		Nor great expenditures of time	8
about this.	4		
The opinion of Patricius.	5		

AD CAPIENDAM DELECTATIONEM COMPETENTE. 33

<i>Electoris Brand. interdictum de</i>	<i>springer.</i>	13.
<i>non capiendis philomelis.</i>	9.	<i>Pro fascinatione sapino habenda.</i>
<i>Ignes letifici, Seuerwerdfe.</i>	10, 11, 12.	14.
<i>Agilitas funambulorum, Lufft.</i>	<i>Conclusio.</i>	15.

Quemadmodum Princeps infinitis, iisque gravis-
simis curis die noctuque premitur; Ita plures sunt,
quibus earum sarcinam aliquantis per deponit, re-
creationum modi: Inter quos aucupium primo loco, 2
quod ab ejus-juris expositione modo digressus, comme-
morandum mihi sumo, quatenus id nimirum ad solam
voluptatem ac delectationem à Principe exerceri solet.
Nulla idcirco mihi res est cum aucupio, quod fit retibus,
laqueis, pedicis, præcipitiis, arcu, visco, hamo; Sed cum
Eo saltem, quod industriâ & ope Nisi & Falconis in ar- 3
deas peragitur, germ. Reigerbeige. Qui aves avibus capi-
endi modus priscis seculis aut ignotus fuit aut paucis
agnitus, Georg. Mor. de jur. ven. auc. pisc. P. 2. C. 12. n. 19.
conf. Klock. de Erar. L. 2. c. 5. n. 107. & Peller. in annot. ho-
die autem Principibus satis superque exploratus, usita-
tusque. Jacobus quidem Anglorum Rex doctissimus, 4
parcius illud laudat, quamvis non damnet, quia non
item militiam refert, ut venatio: quia infortunis magis
est expositum: & quia bilem cæterasque animi pertur-
bationes supra modum irritet. Don. Reg. L. 3. p. 77. ed.
Francof. Cujus primæ rationi contradicere viderur Patric.
Senenl. de regn. & reg. inst. L. 3. tit. 7. p. 186. non dissimilem in 5
disciplina militari speciem habere asserens sequentibus:
*Disponit namq. juvenum comitatum, equitum quasi alas
adjicit, indagatores cum sagacissimis canibus quasi milites le-
vis armatura præmittit, qui aves terrore excitent, & ad ve-
nandum compellant, speculatores in montium verticibus statu-*

The decree of the Electors of Brandenburg,		bounders.	13
not to capture nightingales.	9	Which is very often taken for sorcery	14
Pleasing fires, <i>fireworks</i> .	10,11,12	Conclusion.	15
The adroitness of the tightrope-walkers, <i>Air=</i>			

- 1 **J**ust as the prince is oppressed by endless and extremely serious concerns day and night, so there are numerous kinds of recreation by which he lays aside their burden for a while.
- 2 Among them falconry stands in first place which I – having just finished the exposition of its jurisdiction – may be allowed to produce as memorable inasmuch as without doubt it is usually pursued as the exclusive enjoyment and exclusive delight of the prince. For this reason the capture of birds, be it pursued with nets, snares, foot-chains, bows, bait or lime-twigs, is of no concern to me, only the hunt that is performed by the diligence and the assistance of at least a sparrow-hawk or falcon against herons; in German: *Reigerbeize* [*Heron Falconry*].
- 3 This practice, to capture birds by birds, was either unknown in the earlier centuries or was perceived by very few. Georg Mor. *Treatise on the hunting, fowling and fishing right* P.2. C.12. n.19. cf. Klock. *On the State Treasury* L.2. c.5. n.107 & Peller. *in annot.*; but nowadays is more than sufficiently explored and employed by the prince.
- 4 But the learned King of England, James, does not particularly praise it, although he does not condemn it, because it is not as conducive to military service as game-hunting, because it is more frequently exposed to misfortune, and because it provokes melancholy and other mental disturbances beyond tolerable measure. *Don. Reg. L.3. p.77. ed. Francof.*
- 5 Whose first reason seems to contradict Patrizius Senens. (*de regn & reg. inst. L.3. tit.7. p.180*), who establishes with the following words that this branch of hunting is very similar to military discipline: *He divides the troops of young men, adds the cavalry as a flank, sends in advance the trackers with the keenest dogs as though lightly armed soldiers, who startle the birds with bugaboos and force them to participate in the hunt, posts the scouts who keep watch*

36. CAPIT. V. DE JURE PRINCIPIS AEREO,

ut, qui volatum observent. Adfunt suo ordine qui elatâ sinistrâ manu accipitres servant, adversusque volantes alites artificii jactu eos dimittant. Alii surgentem è terra volutem, quam primum reperiunt. Alii per opertum volantem invadunt. Alii in sublime sese efferentem, deinde singuli vocati sibiloque affecti ad notam proprii heri levam redeunt &c. Clarius hic lusus nobilis cognoscitur.

6 ex Klock. c. l. num. 110. Eoque Germaniæ præsertim Principes voluptatem capiunt, Sacratissimus cumprimis Imperator noster LEOPOLDUS Laxenburgi in Austria; teste Oldenburg. *It. Jurid. d. t. 4 §. 18. p. 461.*

7 Quamvis autem multi in apportandis ex Norvvegia & aliunde Accipitribus fringillariis, iis alendis, habendis-que Præfectis (Falkenmeister) atque receptaculis (Falkenhäuser) impendendi sumptus, Dn. à Sectend. in Deutschen Fürsten-Staat P. 3. C. 3. reg. s. n. 3. Oldenb. d. l. Verum quanti quanti illi sint, pro minimis tamen reputandi, quibus molestiæ Principis ac sollicitudines pro salute subditorum compensari queant. Neque idcirco attendendum, multum consumi temporis aucupando; Norunt enim optimè Optimi Principes, quod Jacobus R. A. Filium suum docuit, moderationem esse tenendam, neque horas muneri obeundo destinatas, negligendas. *Dan. Reg. c. l. p. 77.*

9 Occasione hujus tangenda singularis Potentiss. Electoris Brand. prohibitio de non capiendis lusciniis, quarum cantus suavitate delectatur magnopere.

10 Ad hanc classem maximè spectant Pyrotechniæ, sive ignes lætifici seu recreativi, Raggeten und Feuerwerck; non tantum enim in aere e. g. stellæ & scintillæ igneæ Pyrotechnicæ, Stern-Feuer / Feuer-Pugen: rota versatilis: Organum pyrobolicum &c. sed etiam aere com-

moti

on the flight direction high atop the hills. There are sentries in proper line who serve the goshawks and other harriers flying towards them with uplifted left hand and by skillful throw allow them to fly away again. Some will find the wild fowl lifting off from the ground as soon as possible. Others will seize it when it flies through the thicket. Others soar high in the air. Thereupon — one by one called and decoyed with whistles — they turn back to the familiar left hand of their respective masters, & c. One can come to know this noble game more clearly via Klock. c. l. num. 110.

- 6 From which especially the princes of Germany derive their pleasures, especially our most august Emperor LEOPOLD in Laxenburg, Austria, according to the testimony of Oldenburg. *It. Jurid. d. t. 4. §. 18 p. 461.*
- 7 Although many expenses must be covered for the acquisition of birds of prey from Norway and elsewhere, for their nourishment, for the appointing of supervisors (*falconer*) and storehouses (*falcon houses*), Dn. von Seckend. *in a German Prince-dom P.3 C.3. reg.5. n.3.*, Oldenb. *loc. cit.*, nevertheless the resources by which the troubles and the cares of the prince for the welfare of his subjects can be recompensed, must be viewed as thoroughly insignificant, no matter how high they are.
- 8 For this reason, too, it must be ignored that considerable time passes in falconry. The splendid princes know best – as James, the King of England, had taught his son – that a certain moderation must be observed and the hours which are allocated for the pursuit of duties must not be neglected. Don. Reg. *c. l. p. 77.*
- 9 Referring to which the excellent decree of the high and mighty Brandenburg Electors shall be dealt with here: [namely] that nightingales, whose song gives such a great pleasure by its sweetness, must not be caught.
- 10 The "pyrotechnic" products, or the pleasing or uplifting fires belong most of all to this type of pastime, *Rockets and Fireworks*; there are not only, for example, stars and the flashes of sparkling fireworks displayed in the air, *star=fire/ fire=rockets*, a revolving wheel, a fire-throwing instrument &c., but also **through** the air, which is set in motion

AD CAPIENDAM DELECTATIONEM COMPETENTE. 37
 moto seu spirante vento presentantur, e. g. draco, Aquila &c. de quorum, aliorumque spectaculorum exhibitionibus artis pyrotechnicæ ope instituendis, vid. Kirch. *in mundo subterr.* L. 12. Sect. 5. P. 4. *de Arte Pyrabol.* C. 8. pr. 1. & seqq. meminit earundem quoque Klock. *de Aerar.* L. 2. c. 108. inf. Principum hæc esse oblectamenta, neminem, II
 latet; & licet his ipsis uno quasi momento multa florum millia inutiliter profundantur, & leves mittantur in auras. Vent. de Valent *Parth. Litig.* L. 1. c. 13. num. 21. Klock. *d. l. n.* 17. 18. quibus Principes sibi ipsis, suisque subditis plurimum commodare, & omnibus necessitatis casibus obniti possint. Diether. *Contin. Thes. Pract.* Besold, *voc.* Feuerwerck; Idem tamen repetendum, quod modo de aucupio dixi. Privatis autem omnino hæc interdicienda esse svadet ratio; Illi enim invitantur ad otium: 12
 Opes facile consumuntur: & incendia procurantur.

De petauristarum volutationibus aut funambulorum 13
 periculationibus non est, quod monetur; histrionibus enim & agyrtis ad panem lucrandum inserviunt. Jacob. *Reg. Angl. Don. Reg. d. l. p.* 76. adeoque istæ à Principe 14
 non exercendæ sunt, sed interdiciendæ, uti omnes inhonesti ac turpes ludi, Cam. Borell. *de Magistr.* Edict. L. 2. c. 11. n. 83. præsertim cum sæpius pro meris præstigiis & fascinationibus potius, quam agilitate, habendæ. Speid. *Specul. Observ. Jur. Polit. Hist. voce,* Gauckler; ubi inter alia ex Godelman. L. 1. de Lam. & Sagis C. 3. n. 17. f. 28. hæc refert: Præstigiator quidam Magicus Magdeburgi equulum, theatro frequenti, per circulum transilientem ostendebat certâ stipe; In fabulæ exitu exiguam se apud mortales collegisse pecuniam questus, se in coelum conscendere velle, ait. Hinc in sublimi erecto fune consequitur in altum equulus: præstigiator, quasi cum caudâ

or through the blowing of the wind, as for example the Dragon or the Eagle &c. Regarding the production of performances of these and similar spectacles of the art of fireworks see Kirch. *In the Subterranean World* L.12. Sect.5. P.4.; *On the Art of Fire Projectors* C.8. pr.1. & seqq. Klock. also recalls this same thing; *On the State Treasury* L.2. c.108 chiefly.

- 11 It is concealed from no one that this is the pastime of the princes and it is allowed to no one else than them, that, as it were, in a moment many thousands of florin be needlessly squandered and sent into the mild breezes. Vent. de Valent *Parth Litig.* L.1. c.13. num.21. Klock. *loc. cit.* n.17.18., whereby the princes render to themselves and to their subjects the greatest kindness and are able to withstand all predicaments. Diether. *Contin. Thes. Pract.* Besold. *voc: fireworks*; nevertheless what I have observed about the bird catching must here be repeated again.
- 12 However, that this is to be entirely forbidden to private persons is what rational thinking would advise, as they will be invited to idleness; their fortune will be recklessly squandered, conflagrations will be caused.
- 13 Moreover I hope that it need not be expressly warned against the tossing of the jugglers or the experiments of the tightrope walkers, because this is done to make a living for actors and beggars. Thus James, the King of England, *Don. Reg. loc. cit.* p.76.
- 14 And precisely these arts must not be practiced by the prince but must be forbidden, as all dishonorable and shameful games; Cam. Borell. *Regarding the Decrees of the Magistrate* L.2 C.11 n.83; especially since they are mastered more often by pure deception and bits of witchcraft rather than by skill. Speid. *Specul. Observ. Jur. Polit. Hist.* under the keyword: juggler, where he recounts, among other things, the following from Godelman. L.1. de Lam. & Sagis. C.3. n.17. f. 28.: A certain juggler in Magdeburg, who had magical power, displayed a small horse that jumped through an hoop in exchange for a certain contribution, in a well-visited theater. At the end of the presentation he lamented that he had only collected a small amount of money from the mortals and said he wished to ascend into heaven. Immediately the horse gained height by a highly-strung rope: the juggler, as though with the intention to hold it back by

35. **CAPIT. V. DE JURE PRINCIPIS AEREO,**
 retenturus, quoque ascendit, cujus uxor maritum apprehendens affectatur, itidem ancilla, ut viderentur a se confusa contiguo, velut concatenati simul aërem petere. Hæc dum populus ad stuporem spectaret, cuidam Civi eò fortè declinanti, quærentique, quidnam rerum ibi gereretur? Responsum est, circulatorem cum equulo in aëra conscendere: hic se statim vidisse eum in vico ad diversorium abeuntem asseveravit. Illusos itaque se cum animadverterent, discesserunt.

15. Hic me subsistere, non argumenti, sed temporis penuria jubet: Plura enim alia huc facientia potuisse addi, pluribusque illa, quæ festinante calamo congesti, Doctorum, Juris publici præsertim, authoritatibus illustrari, fateor; Verum tempus huic negotio impendendum mihi in præsens non concedit fortuna. Quare Benevolum Lectorem Dissertationis hujus non tantum brevitatem, sed etiam methodum, dictionem, atque omnia æqui bonique consuevit esse, totus confido. Tibi verò, DEUS O. M. pro concessa mihi Gratia, præstitoque auxilio ex imis mei cordis penetralibus persolvo gratias, humiliter Te adorans, ut mea impofterum studia cæptaque ita prosperare velis, quo curram, non ut in incertum, pugilemque agam, non ut aërem cedens.

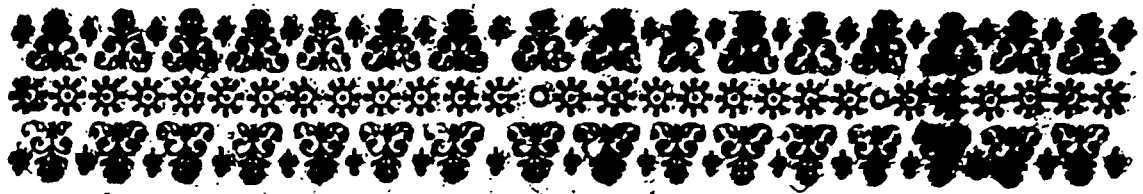
FINIS.

the tail, likewise ascended. His wife attempted to grab the husband, likewise the maid, such that in a neighborly ascent, as though chained together, they appeared to hurry into the heights. While the people stared at this in general astonishment, a citizen, who had accidentally turned this way and asked what sort of thing happened here, was given the answer: the charlatan arose with his little horse into the air! Immediately he pointed out that he had seen how – quite the reverse – he had gone in the opposite direction. Hence, when they noticed that they had been ridiculed, they dispersed.

- 15 Not the paucity of arguments but rather the lack of time commands me to stop here. For I confess that much more written material could have been added for this purpose, and that what I have written with hastening quill could have been illuminated by many more examples, especially of the doctors of public law. But, as things stand, fate did not permit me the time that might have been allotted to me for this task. Therefore I entirely trust that the kindly reader of this dissertation will deem not only the brevity but also the method, the language and everything fit and proper.

But to you, all-mighty God, I shall repay thanks from the innermost reaches of my heart for the proven grace and assistance offered to me and humbly beseech you that you will grant my studies that will be begun hereafter the desired success, that I may pursue no dubious, course affairs, not acting as someone who leaves air [to posterity].

THE END

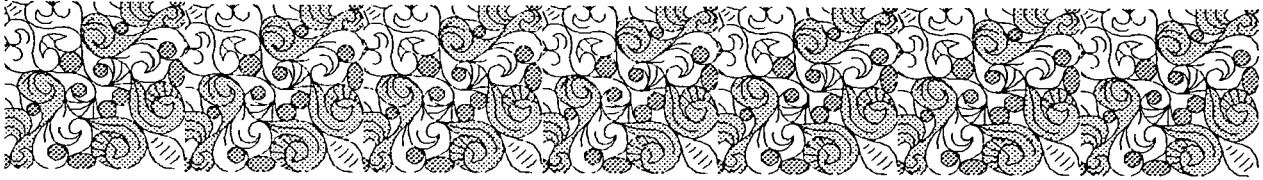


Princeps sublimi Stygius non
aëre regnat,
Sed quos impietas, hos regit
ipse Draco.
Aëre mortales vescuntur & aëre
vivunt,
Aëris & regimen jure capessit
homo
Quod verò Princeps, meritò qui PRODEUS
audit,
Regnet & aëreis perpetue jure plagis
DANCOVILUS mirà, velut asolet, explicat
arte
Sicque refert celeberrimam non sine laude
PATREM.

*Hic celeberrimi Parentis optimo Filio,
Clarissimo Domino Candidato,
Amico suo suavissimo
applaudetur*

JOHANNES SIMONIS, D.
& Theol. Profes. Ordin.

Præ-



The Stygian Prince reigns not in the lofty air,
But the dragon rules over them, whom ungodliness controls.
Mortals nourish themselves on the air, by air they live,
Man rightly seizes power over the air as well.
But that the prince, who deservedly ranks as the representative of God,
Also rules over the airy regions according to eternal right
Affirms Dancko, as usual through wonderful artistic skill
Und thus he brings – not without praise – his father back.

*By these words the admirable son of the famous father,
the splendid candidate,
his dearest friend
is applauded by*

Johannes Simonis,
Doctor and Professor of Theology

ABOUT THE AUTHOR

A short biography of the author can be found in the famous General Encyclopaedia of Scholars in four volumes, edited by **CHRISTIAN GOTTLIEB JOERCHER** in Dresden, 1750-51. The original title reads as follows:

Allgemeines Gelehrten-Lexicon: Darinne die Gelehrten aller Stände sowohl mann- als auch weiblichen Geschlechts, welche vom Anfange der Welt bis auf die ietziige 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.

(General Encyclopaedia of Scholars: Where all Scholars Notwithstanding their Rank, Males as Well as Females are Listed from the Beginnings of the World Until the Present Times According to their Births, Lives, Peculiarities, Deaths and Publications from the Most Trustworthy Historians in Alphabetical Order.)

4 volumes, Leipzig, 1750-51. Additional volumes no.1-7 were edited by Johann Christoph Adelung.

On page 20 we find the following bibliographical summary about the author (*translated by the editors*):

DANCKO (JOHANN STEPHAN), J.Crus, born in Zerbst, studied in Franckfurt at the Oder. In 1687 he became Doctor Juris and then Professor ordinarius as well as University-Syndicus whereby he held lessons (Collegia) with diligence. He published *delineationem actionum & interdictorum; delinear. Juris militaris ad feriem Institut. Justiniani; delineationem Processus forensis marchichi*, and he was the editor of a short outline of Prussian Martial Law and he died in 1730.

Further summaries about his life can be found in:

STEMPF, JOHANN-HEINRICH,

Gallerie aller juristischen Autoren von der ältesten bis auf die jetzige Zeit. (*Gallery of All Legal Authors from the Most Ancient Times Until Present.*) Leipzig, 1820-24. (4 volumes.)

SCHMIDT, ANDREAS GOTTFRIED,

Anhalt'sches Schriftsteller-Lexikon: oder historisch-literarische Nachrichten über die Schriftsteller, welche in Anhalt geboren sind oder gewirkt haben, aus den drei letzten Jahrhunderten, gesammelt und bis auf unsere Zeiten fortgeführt. (*Encyclopaedia of Authors in Anhalt: or Historical-Literary News About Authors who were Born in Anhalt or Have Worked there, from the Last Three Centuries and Continued Until the Present Days.*) Bernburg, 1830.