

Civil, Canon and Common:

aspects of legal history

An exhibition of books and manuscripts
in the Kenneth Spencer Research Library

UNIVERSITY OF KANSAS

Lawrence, Kansas

1996

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The tower of justice, on a foundation of charity and true faith, approached by the stairs of hope, and built of truth and other virtuous qualities.

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Catalogue and exhibition by ALEXANDRA MASON;
designed by JAMES HELYAR

Patricia Stephenson, 1921-1995

In 1984 the Stephenson Lectures in Law and Government were created by the Honorable Donnan Stephenson, a 1948 graduate of the University of Kansas Law School who served on the New Mexico Supreme Court after a distinguished career in private practice, and his wife, the late Patricia Stephenson, who also attended KU. Through this lecture series, the Law School has been able to bring to the campus such distinguished speakers as Justice Byron R. White, Justice William J. Brennan, Jr., Judge A. Leon Higginbotham and Attorney General William P. Barr.

Justice White was the first speaker in the series and the events surrounding his return visit this year are dedicated to the memory of Mrs. Stephenson who died in June 1995. Mrs. Stephenson played an integral part in the conception and sponsorship of the lecture series. She took a great deal of pride and maintained a keen interest in the series throughout the years. Justice Stephenson has noted that her "role was in no way subordinate to mine or of lesser value and consequence."

Introduction

Every profession must have its tools. It is impossible to imagine physicians without medical instruments or accountants without calculators. For lawyers, the tool of choice is, and always has been, words. Lawyers live their lives surrounded by words, in documents, in court pleadings, in books and treatises. So long as there have been lawyers there have been legal books and documents. This catalogue serves to show the intimate connection between the life of the legal profession and the law books and legal documents lawyers use. Since the time when Babylonian scribes took up their tools to produce cuneiform script on clay tablets, lawyers have always been dependent upon the written word.

The Spencer Research Library, through the generosity of generations of donors, possesses one of the richest collections of both manuscript and printed law materials in the United States. All of the major areas of legal study are represented: Roman and Civil law, medieval Canon law, and the broad scope of Anglo-American Common law. The collection is a legal scholar's dream, for it incorporates not only most of the standard texts and treatises, both primary and secondary, necessary to do research in these fields of law, but it also is rich in unpublished legal materials from all periods as well as many printed materials which are either rare or unique. As a research resource it is matched by only a few other libraries in the United States.

As one walks through the exhibit catalogued herein, one cannot avoid being struck by certain aspects both of the collection and of what it represents about law and the legal profession. First and foremost must be the vastness of legal materials and the difficulty presented to the student who seeks to master them. The primary materials of each branch of legal science are formidable in their size and their unruliness. One need only look at the vast printed tomes which comprise Justinian's *Corpus Iuris Civilis* or the medieval religious legal equivalent, the *Corpus Iuris Canonici*, to sense that these are not texts to be treated lightly or learned easily. It is not at all surprising that in the medieval universities, students would often labor for a decade or more before they could claim the title of doctor legum. It is equally not surprising that some of the first books to be indexed, beginning in the late thirteenth century, were law books and that from the thirteenth century until our own, much of legal publishing was devoted to volumes designed to make the basic legal texts more accessible to lawyers and juristic scholars. That vast category of literature comprised of *glossa*, *reportoria*, and *rubrica* owed its existence to the need to organize and simplify the large body of legal rules which lawyers had to learn and understand. And, of course, this was equally true for those lawyers trained in the Anglo-American Common law tradition which is

dependent not only on treatises and codifications, but also on the ever increasing corpus of judicial decisions. Thus, we find in this collection of materials a small book of rhyming couplets published by Lintott at London in 1712. Each couplet represents a case presented in the standard textbook of the day, Sir Edward Coke's *Reports*. This small volume of verse is obviously intended to be an aide-memoire, a mnemonic device which would help young law students learn and put to memory the cases from Coke which they needed to recite for their Bar examinations. Indeed, the greatest of all English treatises, Sir William Blackstone's *Commentaries on the Laws of England*, was most original in imposing philosophically reasoned categories upon the seeming chaos of cases which made up the Common law of his time. This book swept England and America and became the leading law textbook of its own and succeeding generations, in large part because of its ordering of the common law into learnable categories.

A second aspect of the relationship between lawyers and legal texts highlighted by this exhibit is the absolute need of every lawyer not simply to study law from books, but also to actually possess at least some law books himself. It is impossible to imagine a lawyer practicing in the thirteenth or the eighteenth or the twentieth century who did not own some type of a law library, no matter how small. But to own a law library was not always an easy thing. Once again, the vast size and typographical complexity of many of both the manuscript and printed volumes of law contained in this exhibit make it clear that a law library has always been an expensive possession. Thus, booksellers in medieval Paris sold law books in parts, known as *pecia*, so that they would be affordable to the often penurious law students. So, too, law books, such as the copy of Littleton's *Tenures* on exhibit, came to be produced in less expensive pocket size versions. Indeed, in many of the early legal volumes, particularly those printed in the late fifteenth century, that period of transition from manuscript to printed book known as the incunabula period, one finds that the spaces left for the insertion of painted initial letters were left blank because the owner could not afford to pay an illuminator.

A third, and highly significant aspect of many law books of the past five hundred years, including many of the volumes owned by the Spencer, is that these are books that were produced for use and that were used heavily. These are not the deluxe productions like the books of hours produced for royalty or the later printed emblem books intended to amuse the aristocracy. Law books were made to be used by serious practitioners. Many are bound simply and cheaply. Often they lack illustrations and other amenities. And, often today, they are fragile from

the years of handling and heavy use they underwent. The deep creases found in the manuscript *Tractatus Iuris* (MS C236) eloquently speak to years of such rough handling. Many of the books in this exhibit are notable also because they contain annotations as well as ownership marks. These handwritten additions are often as valuable to the legal historian as the printed text. Scholars are just coming to realize how important the study of provenance marks can be for reconstructing the intellectual life of the law, including the spread of new doctrines and ideas. One example of such a volume is the copy of Sir John Davies' *Le Primer report des cases . . . en les Courts del Roy en Ireland* contained in this exhibition. This volume of Irish legal cases printed at Dublin in 1615 reveals the interest shown by English barristers in Irish legal matters through its ownership signatures of three successive members of Gray's Inn during the seventeenth and eighteenth centuries. Gray's Inn was one of the English Inns of Court during this period. By using the evidence provided by these provenance marks one can speak not only of the trade in law books between Ireland and England during this period, but also of the broad interests of English barristers in Irish legal matters. A second example of the importance of such manuscript additions for legal historians is provided by the 1569 Lyons edition of the *Digestum Vetus* from the library's Summerfield Collection, included in the exhibition. This volume was once owned by Joannes Wollfrum of Montech in France. In addition to the printed text, the volume contains a manuscript outline of the contents and, on the book's end-leaves, notes of law lectures which he attended. Such notes give us an unparalleled insight into legal education of the sixteenth century.

This exhibition opens a vast number of avenues for research into legal history and bibliography and illustrates a major fact about the Spencer Library and its legal collections. Several amongst the exhibits are noted as presenting "research problems." The importance of the texts presented under this title as well as the enormous value research on these texts will have for future legal historians, points out just how rich a resource the Spencer Library legal collection is. There can be no doubt that further study into its many volumes, both printed and manuscript, will lead to important discoveries in the history of law, the legal profession, legal bibliography and the history of law libraries. Generations of scholars and students have already benefited from this collection. Generations more will continue to do so.

MICHAEL HOEFLICH
Dean of the School of Law, Professor of Law
& Courtesy Professor of History
February 1996

Compiler's preface

The law, as one of the most important aspects of human civilization, has been of particular interest to the Department of Special Collections, the department of the Spencer Library responsible for this exhibition, from its foundation in 1954. The department continues active development of this subject area, and holds over 3,600 volumes of law and laws, mainly before 1801, as well as thousands of manuscript legal documents, such as deeds, contracts, wills, and marriage settlements, all available to students and other researchers in the history of law.

This exhibition can show only a few samples of the Spencer holdings in legal history. Whole areas of law have had to be omitted or given minimal attention. There is no international or maritime law shown, no forest law, little legal philosophy, only a nod given to notaries and justices of the peace, no French customary law, or Milanese legal proclamations, or French Revolutionary law—all areas in which the library has considerable strength. On the other hand, the lack of American law in the exhibition reflects a similar lack in the Spencer's holdings; our library was founded far too recently to collect Americana, one of the most expensive fields in all of rare book collecting and one which is well-covered in several of the nation's older libraries. Nevertheless it should be clear from what we have been able to show that remarkably strong resources for the study of legal history are available here at the University of Kansas.

To emphasize one of the missions of the Spencer Library, the provision of resources for our students and faculty in the areas of research and teaching, a few items which seem to me to be particularly interesting and in need of work have been captioned as 'research problems.' The Spencer Library welcomes interested readers of all ages and degrees of expertise and has thousands more of these historical puzzles waiting to be solved.

In the catalogue entries I have included the names of the donors of books and manuscripts with one exception. Since books purchased with the support of the Summerfield Fund of the KU Endowment Association (which has, for the past forty years, made possible our acquisition of European books printed before 1701) are identifiable by the inclusion of the name Summerfield in their callmarks, no note has been added. Notes have been added to identify books which were located in the old Green Hall Law Library before the Spencer Library began to act as the rare books library for the KU School of Law, as it has for all of the Lawrence campus schools and departments since its opening in 1968.

at the Kenneth Spencer Research Library

The woodcut illustrations in this catalogue are drawn from Guillaume Le Rouillé, 1494-ca. 1550, *Justicie atque injusticie descriptionum compendium*, Paris: C. Chevallon, 1520 (Summerfield D349).

The references to "Goff" and "Wing" printed immediately following the Spencer Library call numbers in several entries refer to Frederick P. Goff's *Census of incunabula in American libraries*, and to Donald G. Wing's *Short-title catalogue of books printed in England ..., 1641-1700*, 2nd ed.

Bibliographers should be aware that I have normalized place names—"Venetiis" has become "Venice", for instance—and shortened printers' and publishers' names in imprints. On the other hand, original spelling and punctuation within titles has been transcribed without change.

ALEXANDRA MASON, Spencer Librarian
February 1996



The king with his law book and his two legal interpreters.

THE CIVIL LAW

When Justinian I, Roman Emperor of the East from 527 to 565, took office, he inherited a chaos of law—statutes, decrees of the Senate and writings of the old jurists—so vast and disorganized that no complete set of it could be found, even in the public libraries. In an extraordinary effort of organization and scholarship, a group of imperial jurists worked their way through this chaos and brought it to a state of order by 533. They first surveyed, compared and organized the imperial edicts and issued the *Codex Constitutionum* in 529. They then attacked the vast body of older law existing within the writings of the jurists, removing inconsistencies and organizing the resultant extracts into a text which was enacted in 533 as the *Digesta* (or *Pandects*).

While this work was being carried out, Tribonian (the emperor's chief adviser and the director of the enterprise) and other scholars compiled an introduction to the main work. This treatise, the *Institutiones*, which was based on the standard textbook by Gaius (ca 111-180), has served ever since as the introduction to the Roman Law. It was the first part of the civil law to be printed—in Mainz by Peter Schoeffer in 1468.

Despite the accretion of later Byzantine additions and a great variety of local customary laws the *Corpus juris civilis*—the body of law of the city of Rome—survived the fall of the empire which produced it. From the eleventh century onward it was the subject of study in the universities of Europe while the law was transmitted by an enormous number of manuscript editions of the text and its growing body of commentary and interpretation.

In the manuscript editions and the earlier printed editions, the *Corpus juris civilis* was divided into five parts:

the *Digestum vetus*: books 1 to 24, fragment 2, of the *Digesta*,
the *Infortiatum*: book 24, fragment 3, to book 38 of the *Digesta*,
the *Digestum novum*: books 39 to 50 of the *Digesta*,
the *Codex*: books 1 to 9, and the *Volumen parvum*: books 10 to 12 of the *Codex*, the *Institutiones*, the *Novellae* (also known as *Authenticum*), two books of feudal law and some enactments of the mediaeval German emperors.

1 The opening text of the *Corpus juris civilis*

The style of writing makes it likely that this leaf, separated from the rest of its book at some unknown time in the past, was written at the great law school at the University of Bologna in the 14th century.

Digestum vetus. Proemium, f.1, with *glossa ordinaria*,
Bologna? 13-- (MS J6:3:A3)

This leaf hung on the wall of the *Law Review* office in old Green Hall until it was transferred to the Spencer Library in 1977.

With the introduction of the printing press and its ability to produce large numbers of identical copies, the civil law became even more widely available. It became the subject of theoretical consideration and legal speculation and exercised enormous influence on the development of all later European national legal codes, not only the theory-based codes like the Code Napoléon but even on many facets of the practice-based bodies of law like the English common law.

2 Exchanging vows

This miniature illustrates Book V, on the matrimonial and family law, of the first printed edition of the *Codex*, which contains Books I through IX with the *glossa ordinaria* of Accursius.

The *Codex*, although usually counted as the fourth part of the *Corpus*, was the first section of the Roman laws organized by Justinian's editorial group. It organizes the imperial enactments from Hadrian (117-138) to Justinian into twelve books: I. ecclesiastical law, law sources, duties of higher officials; II-VIII. private law; IX. criminal law; and X-XII. administrative law, usually published as part of the *Volumen parvum*.

Codex Justinianus, Mainz: Peter Schoeffer, 26 Jan 1475

(Summerfield H22; Goff J-574)

In his colophon, Schoeffer states proudly that this book has been produced not with pen and ink but by the printing art. This fine copy is the Spencer Library's earliest printed law book.

3 A law student's book

In 1573 when he wrote his outline of the *Corpus juris civilis* inside its front cover, Joannes Wolffrum of Montech (a small town near Montauban in France) was in Wittenberg. In July 1574, when he wrote on the title-page, he was twenty-four and at Jena. By 1577, when he transcribed Professor Michael Teüber's Wittenberg law lectures on the end-leaves of the book, he was a notary at Jena and about to get his law degree .

Digestum vetus, seu Pandectarum juris civilis tomus primus, Lyon: [Heirs of Jacques Giunta], 1569

(Summerfield E928 Vol. 2)

This 5-volume edition of the *Corpus juris civilis* was published by the Heirs of Jacques Giunta and the Grande Compagnie des Libraires de Lyon. It contains glosses and commentary ranging from Accursius to Alciati.

4 Ripa's Repertorium

Joannes Franciscus de Santo Nazario de Ripa (d. 1535) published a lengthy series of commentaries, referred to as his *Repertorium*. Shown here is one volume devoted to parts of the *Digesta*. This is but one of hundreds of commentaries in the Spencer Library's collections.

Ioannis a Ripa super digesto novo veteri et codice, Lyon: Mathias Bonhomme for Vincent de Portonariis, 1541

(Summerfield G130)

The preceding part of this volume is the index to Ripa's commentaries, published a year later.

5 A small book for a small price

The title includes a claim of careful editing by learned jurists and the printer while a note at the foot of the title-page points out that this is not an expensive folio but a volume small in both size and price.

Infortiatum quod decem et quattuor continens libros

pandectarum est medium: pervigili jurisperitorum ac impressoris exactiore cura, Paris: Andreas Bocardus for Jehan Petit, 1515 (Summerfield C1357)

In this edition of the *Infortiatum*, the glossators are easily identified. Bartolus de Saxoferrato is noted frequently in red ("Bar." or "Barto.") in the central block while Accursius ("Accur." or "Accursius") turns up in the marginal notes.

6 Why is this book called "volume"?

The printer of this edition of the *Volumen parvum*, Baptista de Tortis, explains in his preface that this book (with a title page reading simply "Volumen de Tortis") is called "volume" because it is composed of many different texts all "rolled up" into one: the *Authenticum*; books X through XII of the *Codex*, devoted to administrative law; two books of feudal law; and the *Institutiones*. A letter of Hieronymus Confortus, printed at the end, describes the amount of editing which the printer had to undertake, correcting error and including the *glossa ordinaria* of Accursius as well as glosses of Bartolus, Baldus, and others.

Volumen de tortis, Venice: Baptista de Tortis, 28 Oct. 1492 (Summerfield G186; Goff J-598)

7 The enduring textbook

Written by Tribonian before 533 as an introduction to the new Justinian compilation of the laws, the *Institutiones* has continued to fulfill its purpose over the centuries. This 18th century English edition provides the Latin text and a translation with explanatory notes such as that on page 79 which describes the difference between the Roman and the English treatment of a will in which parents leave their property away from their children.

The four books of Justinian's Institutions, translated into English, with notes, by George Harris, London: C. Bathurst and E. Withers, 1756 (D3145)

8 On inheritance

Most early editions of the civil law include glosses by recognized jurists, one of the most noted of whom was Accursius. This volume prints his commentary on the first four books of the *Institutes*, probably taken down by students from lectures.

Guillelmus Accursius (1246-1313), *Casus longi super instituta*, Strassburg: J. Prüss, ca 1488

(Summerfield D448; Goff G-555)

Authorship of this text is sometimes attributed to Guido de Comis, a professor of law at Orléans.

9 A quick finding aid

Editions of the *Corpus juris civilis* and the *Corpus juris canonici* printed during the 15th century were cumbersome large folios and not all of them had indexes or useful tables of contents. Publishers soon discovered the need for "ready reference" books like this little table of contents for both sets of laws.

Rubrice sive Tituli juris canonici et civilis secundum ordine librorum redacti, Cologne: H. Quentell, 1487?

(Summerfield A678)

10 No one should be ignorant of the law

Anton Koberger introduces this edition of his dictionary of civil and canon law terms by pointing out that no one should be ignorant of the law and that to understand the law one must understand its vocabulary. This dictionary, arranged alphabetically, defines the legal terms and often cites the location of their usage, making it useful as an index to the two codes of law as well as a source of definitions.

Vocabularius utriusque juris, Nuremberg: Anton Koberger, 1496

(Summerfield C1506; Goff V-355)

11 Law as public entertainment

This pamphlet is an announcement of the topics of a public lecture series on the civil law by the juriconsult Denis Godefroy (1549-1621), to be held at the Strassburg law school throughout the year.

*Index chronologicus: legum & nouellarum . . . quas
Dionysius Gothofredus IC in Academia Argentinensi . . .
publice interpretaturus est hoc anno 1592, Strassburg:
Antonius Bertramus, 1592* (Summerfield B1927)

The title-page of this copy is stamped V. Engelshofen 186, presumably indicating ownership.

12 "Quod non capit Christus, rapit fiscus"

Andrea Alciati (1492-1550) was one of the first humanist jurists, applying his knowledge of classical history and literature to the elucidation of lesser known words and allusions in the civil law. He published extensively on the *Corpus juris civilis* as well as writing works on weights and measures, the meanings of words, and other topics, translating Aristophanes' *Clouds* into Latin verse, and writing commentaries on Ausonius. Today he is best known for what he probably considered his hobby, his "emblems", verses written to accompany pictures in interpretation of mottoes or moral sayings. The edition of his emblem book shown here is the first correct edition, preceded only by a badly edited edition of 1531 with which the author was greatly displeased. The motto in this emblem may be interpreted "What the church doesn't grab, the tax man does."

Emblematum libellus, Paris: Christian Wechel, 1534
(Summerfield B1655; the Rahir-Hoe copy)

13 A research problem

Most of Alciati's life was spent as a professor of law—he taught at Avignon, Bourges, Milan, Bologna, Pavia, and Ferrara, and lectured at Paris—and a prolific writer of legal commentary. The manuscript shown

here is one of his *consilia* (MS P474), an article on a particular point of law. It appears to be in Alciati's own handwriting, is signed by him and bears his personal seal. It has not been studied.

CANON LAW

Without an understanding of canon law—that body of law essentially concerned with the organization and discipline of the Christian Church—it is difficult to comprehend either the ecclesiastical issues of central importance to mediaeval Europe or those areas of later secular law concerned with marriage, property, succession, crime and punishment, proof, and evidence, which were influenced by canon law. Protestant church law, international law, church-state relations, and many other issues of legal concern owe a great deal to the work of the canon lawyers and the scholars of canon law.

The *Corpus Juris Canonici* is the body of canon law consisting of Gratian's *Decretum* (1141-1150), the *Decretales Gregorii IX* (compiled by Raymond of Pennaforte in 1234, also known as the *Liber Extra* or *Liber Extra Decretum*), the *Liber Sextus* of Boniface VIII (1298), the *Clementines* of Clement V (1313) and the *Extravagantes Joannis XXII* (1325) and *Extravagantes Communes*. Intensively studied, annotated, and interpreted by the great glossators such as Johannes Teutonicus, Bartholomaeus Brixiensis and Joannes Andreae, the *corpus* and its separate parts were issued in many manuscript editions and became (along with the parallel *Corpus juris civilis*) a main stock in trade for the early printers.

14 A censor at work

A 15th century edition of Gratian's *Decretum*, the earliest part of the *Corpus juris canonici*. Some of the *glossa ordinaria* of Johannes Teutonicus and Bartholomaeus Brixiensis were apparently found offensive by a former owner and have been inked over while others have been obscured by paper labels.

Gratian, *Decretum*, Venice: Andrea Torresani, 26 June
1498

(Summerfield B2142; Goff G-389)

15 The enigma of the count with twelve knights, of whom four were his sons . . .

This is one of a series of diagrams of problems in canonical relationships from the first of six 15th century manuscript and printed books in a canon law collection (MS D199) bound together by Jakob Bittner, who worked from 1540 to 1593 in Augsburg. The distinction between printed and manuscript books which is important to us in the 20th century meant little to our predecessors; to them a book was a book, whether written by hand or printed on a press.

The books in this volume are *Super arboribus consanguinitatis*, a work by the glossator Joannes Andreae on the tables of consanguinity and affinity, printed in Strassburg by Heinrich Knoblochtzter around 1483 (Goff A-625), *Casus in terminis libri sexti decretalium*, by Fridericus Meckenlocher de Wendelstein, printed in Strassburg by Martin Flach in 1490 (Goff M-418), *Casus longi sexti et clementinarium*, by Helias Regnier, printed in Strassburg by Johann Pruess in 1488, (Goff R-117), "Statuta provincialia moguntina", a manuscript of both lay and clerical statutes of the diocese and province of Mainz written in the late 15th century, *Statuta synodalia Herbipolensis*, printed in Wurzburg by Georg Reyser, about 1486 (Goff S-741), and "Reformationes Rudolphi episcopi herbipolensis" (Rudolph von Scheerenberg, bishop of Wurzburg, d. 1495), a manuscript in late gothic cursive written after 1487.

16 Glosses upon glosses

Most of the glosses are by Joannes Andreae and Helias Regnier. Former owners have added their own notes to the glosses, including (in the outer margin of the opening shown) a sketch of a pointing hand in imitation of a symbol used by the printer (visible in the inner margin of the same opening).

*Sexti libri decretalium in concilio Lugdunensi per
Bonifacium octavum editi compilatio summaris:
divisionibus: casibus longis; ac quibusdam aliis
additionibus illustrata . . .*, Lyon: Jacobus Saccon, 1507
(Summerfield G108)

With this text (finished printing on 18 March 1507) are bound similar editions of the *Clementines* and the *Extravagantes communes*, both finished on 27 April 1507.

17 Making a will

This edition of the *Corpus Juris Canonici* contains the *Liber sextus*, the *Clementines*, the *Extravagantes*, the *Extravagantes communes* and some minor texts, with additions, glosses and commentary by Joannes Andreae, Helias Regnier, Joannes de Imola, Giovanni Francesco Pavini, and others.

Sextus decretalium libri . . ., Venice: Lucantonius de Giunta, 1514 (Summerfield C1182)

The woodcuts shown illustrate texts on benefices and wills in the *Clementines*.

18 Writing the *Clementines*

This edition of the *Corpus Juris Canonici* contains the same texts as the Giunta edition. It differs in some of its tables of contents and indices and its illustrations.

The lists of contents on the separate title-pages for the texts show the editor's name (Joannes Chappuis) in acrostic.

Sexti libri materia . . ., Paris: Jean Petit, 1524 (Summerfield C1415)

The large woodcut of Clement V writing his book in the presence of an apparently sceptical crowd of his predecessors is at the beginning of the *Clementines*.

19 The post-Tridentine *Corpus juris canonici*

This is the second volume of an authorized edition of the *Corpus juris canonici* published with the privilege of Gregory XIII just two years after the re-editing of the entire corpus according to the reforms of the Council of Trent. The preliminary matter of this edition includes alphabetical lists of canons and glosses. At the end of the volume are "Tabula" (a classified

subject key by Lodovico Bolognini) and "Margarita Decretalium" (an alphabetical subject index).

The *Decretales Gregorii IX* were compiled by Raymond of Pennaforte in 1220-34; they are accompanied by the *glossa ordinaria* of Bernardo of Parma.

Decretales D. Gregorii Papae IX. suae integritati una cum glossis restitutae, Venice: Magna Societas, 1584

(Summerfield D482 v.2)

17th(?) century inscriptions on the title-pages of all three volumes indicate that this set once belonged to the Vinci family.

20 A research problem

A collection of 264 *casus* (261 of them numbered) by an unidentified compiler, probably written in Spain or southern France in the late 14th century (MS G18, incipit: *An in restitutione que petitus fieri de beneficio*).

Most of the items are canonistic *quaestiones*, many of them mentioning specific circumstances, most concerning Spain, with some from southern France. Of particular interest is a marginal note on fol. 206r, annotating the final *casus*, which asks whether the prince has the right to expel Jews, Moslems and Pagans from their land without due cause. This note indicates that the annotator was an eyewitness to the expulsion of the Jews from France in 1394.

Although this manuscript has been worked on by a KU mediaeval history seminar, which speculated that it was written in Aragon and decided to call it "*Quaestionum canonisticarum collectio Aragonensis*," much further work is needed.

ENGLISH LAW

21 Unwritten law and local custom

The opening text of Henry de Bracton's classic exposition of the common law comments upon the English use of unwritten laws and local customs. Defined and approved by "counsel and consensus", common acceptance, and the authority of the king, these had all the force of written law. To remedy the confusion resulting from inadequately educated judges trying to apply inadequately known laws and customs, Bracton set out to make a systematic compilation of the existing laws, judicial interpretations and accepted customs. He considered their general validity, practical applications in the common law courts, and underlying legal principles, drawing upon his own experience as clerk to some of the great judges of the 13th century and his twenty years as an itinerant justice as well as what he could find written down.

Bracton's book, composed between 1250 and 1256, was cited in the courts down to the eighteenth century, and is still considered a model for legal literature. The formulation of principles at which he arrived is sometimes credited with determining the whole development of English law, of which the use of precedents is perhaps the most characteristic. His method was adopted and carried on by Littleton and Coke.

Henry de Bracton, d. 1268, *De legibus & consuetudinibus Angliae Libri quinque*, London: Richard Tottell, 1569.

(D189)

This is the first complete edition of Bracton. Richard Tottell, who printed it, was the leading English publisher of law books in the second half of the sixteenth century.

22 English canon law

William Lyndwood was bishop of St. David's, Keeper of the Privy Seal, and chief legal officer of Archbishop Henry Chichele. His *Provinciale*, a digest of the synodal constitutions of the archbishops of Canterbury, and a principal authority for English canon law, circulated in manuscript until 1481 when it was first printed.

In the passage shown, the Church responds to a "new book" by John Wycliff "the great heresiarch," restricting it from study outside the

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The judge, with the lawyers for the two parties to the case and (in the foreground) the notary recording the proceedings.

universities of Oxford and Cambridge except under the most stringent controls.

William Lyndwood, 1375?-1446, *Provinciale seu Constitutiones Anglie cum summariis atque justis annotationibus: honestis characteribus: summaque accuratione rursus impressa*, Paris: A. Bocard, 1501

(Summerfield E231)

The Spencer Library copy of the fifth edition is bound in blind-stamped calf, ornamented with the "GW" stamp (*see also* No. 46). The binder "GW" worked in Cambridge between 1478 and 1507 so it is likely the book was bound new for an English owner.

Beginning in the late 13th century the longstanding reliance of common law practitioners on judges' memories was supplemented by verbatim reports of court proceedings called "Year Books." They are anonymous, perhaps the work of students attending the courts, almost certainly not of official court officers. They were at first quite informal and their initial purpose may have been instructional. As time passed these reports became more formal and more concerned with academic questions of law. By the 16th century, when such reports were first printed (and the use of the title "Year Books" for newly composed reports was ended), authorship began to be attributed to them, often mistakenly. The majority of these reports continued to be circulated in manuscript well into the 18th century and many have not yet been printed.

23 The abridgments

Practicing lawyers, trying to get control over the increasing number of cases and opinions, kept commonplace books or made abridgments arranged alphabetically by type of case. The Inns of Court compiled some of these for the use of their members and eventually major books of abridgments were published. One of the most important abridgments, first published in 1516 and frequently republished, was compiled by Sir Anthony Fitzherbert, a justice of the Court of Common Pleas and a collector of legal manuscripts, including Bracton's notebook and several Year Books which have since disappeared.

Sir Anthony Fitzherbert, 1470-1538, *La graunde abridgement*, London: Richard Tottel, 1577 (D1602)

This abridgment systematically arranges over 14,000 cases under 260 subjects.

This is one of the books formerly located in the Law Library which were transferred to the Spencer Library.

24 The first Irish law reports

For publication in this first report of cases arising in Ireland and decided in the Courts of Justice there, Sir John Davies selected cases of particular Irish importance, intending his work "for the use and benefitt of our practisers heere in Ireland."

Sir John Davies, 1569-1626, *Le Primer report des cases & matters en ley resolves & adjudges en les Courts del Roy en Ireland*, collect et digest per Sr. John Davys Chivaler Attorney Generall del Roy en cest realme, Dublin: John Franckton, 1615 (D692)

This copy previously belonged to Robert Booth "de Grayes=Inn 1648," John Fletcher "de Grays Inn 1700," and R. Donaldson, 18th century.

25 Throughgood's Case: one of Coke's reports

In this typical report, Coke sets forth the entire proceedings (plea and arguments) in six and a half pages of Latin, then provides his own brief English interpretation, with references to other cases.

Sir Edward Coke wrote his reports while carrying on an active and increasingly political life as Solicitor-General, Speaker of the House of Commons, Attorney-General, and eventually a member of the Privy Council. He conducted many of the most important trials of the early 17th century, prosecuting Essex and Southampton, Raleigh, and the Gunpowder Plot conspirators, and spent some time in the Tower of London as a prisoner himself after he became leader of the Parliamentary opposition. His reports, first published from 1600 to 1615, with two posthumous sections published in 1655 and 1658, were frequently reprinted and are still referred to.

Sir Edward Coke, 1552-1634, *The reports of Sir Edward Coke, Kt., in English, compleat in 13 parts*, London: E. and R. Nutt, and R. Gosling, for D. Browne [and 12 other publishers], 1727 (C10941)

This copy of the 1727 edition of Coke's *Reports* belonged to C. J. Peile, a 19th century member of the Temple. It was donated to the Spencer Library by Mrs. Ray Eversmeyer.

26 "Thoroughgood, If a deed be read amiss "To one unlettered, voidable it is."

Among the many methods devised to help lawyers remember cases is the reduction of the citation to verse (*see also* No. 37). In the case referred to here and shown in the 1727 edition of Coke's *Reports*, an officious bystander interrupted the reading of a legal agreement to an illiterate person and paraphrased it deceptively.

The reports of Sir Edward Coke, Kt., in verse, London: Henry Lintot for J. Worrall, 1742 (B8619)

At the end of the book are printed a subject index and an advertisement of "Law-books lately publish'd, sold by J. Worrall."

27 A pocket edition of *Littleton's tenures*.

Littleton's treatise on land tenure was the first work on English common law to be printed, coming out in London in 1482, the year after the author's death. Now accepted as the most important book between Bracton and Coke, it rapidly became the standard authority on what was then the major branch of the common law. Used by students and practicing lawyers alike, Littleton was published in 49 editions in its original law French and another 36 editions in English before 1640.

Thomas Littleton was the earliest recorded Reader of the Inner Temple, concentrating on a chapter of the Statute of Westminster devoted to conditional gifts—his reading is still extant in manuscript, the beginning of the work for which he is now remembered. After a career as a practicing lawyer and judge, he returned to his interest in property, writing his great treatise, in which he classified the different kinds of

property rights, defining each succinctly, and illustrating it with either a report of actual decision or a hypothetical case.

Sir Thomas Littleton, 1402-1481, *Tenures in French and English*, London: J. Streater [and others], 1671.

(A291: Wing L2588)

This copy of the pocket edition belonged to Richard and John Arthur, late 17th or early 18th century.

28 Coke upon Littleton

Based upon Littleton's *Tenures*, this is a virtual legal encyclopaedia. Coke's comments (printed in a column parallel with the French and English text of Littleton and frequently extending over numbers of subsequent pages) were not restricted to land tenure but went on to discuss points brought to mind by words or phrases used by Littleton.

In this (the thirteenth) edition, the comments printed across the foot of the page are those of the 18th century editor, Francis Hargrave.

Sir Edward Coke, 1552-1634, *The first part of the Institutes of the laws of England or, A commentary upon Littleton*, 13th ed., London: T.Wright for E. Brooke, 1788.

(G439)

Coke's *Institutes*, the first textbook on the modern common law, was published in four parts, the first in 1628, following his stormy legal and political career and removal from office, and the remainder posthumously in 1641. The second, third, and fourth parts of the institutes are concerned with Magna Carta and mediaeval statutes, high treason and other pleas of the crown and criminal causes, and the jurisdiction of courts.

Before Blackstone's *Commentaries* (1765-69), future lawyers learned their law by working as apprentices or clerks to established lawyers, learning by example and by experience. Some read more widely—books on political science and philosophy, the older books on English law, of which the best, for instructional purposes, was probably Thomas Wood's *Institute of the Laws of England* (1720), even some Roman law. Some English and a few American students went to the Inns of Court in London. Many, like Daniel Webster in America, began by reading *Coke upon Littleton*. Shortly after Blackstone's *Commentaries* were published,

sets were being imported into America; an American edition appeared at Philadelphia in 1771-72, and from that time *Blackstone* was a staple of American legal studies.

29 The first chair of English law

In 1752, after a mediocre legal career, Blackstone retired from the bar to devote himself to academic life. His public lectures attracted considerable attention, and in 1758, when Charles Viner endowed a chair of English law at Oxford, Blackstone became the first professor of English law. His inaugural lecture, "A discourse on the study of the law", later prefixed to his *Commentaries*, marked the beginning of modern Anglo-American legal education.

Sir William Blackstone, 1723-1780. *Commentaries on the laws of England*, Oxford: Clarendon Press, 1765-69, 4 v. (D1521)

Originally published over five years in four quarto volumes (as shown here), the *Commentaries* were reprinted in smaller sizes and in many editions. They were translated into French, German, Italian and Russian, and remained the textbook for students for many years.

30 Modern commentary begins

The first substantial work of Jeremy Bentham was this critical examination of Blackstone's theory of the organic growth of the British constitution, the many eccentricities of which did not meet his test of sufficient utility to justify their existence.

Jeremy Bentham, 1748-1832, *A Fragment on Government; being an examination of what is delivered, on the subject of government in general, in the introduction to Sir William Blackstone's Commentaries: with a preface in which is given a critique of the work at large*, London: T. Payne, 1776 (C5079)

The child of a legal family, Jeremy Bentham was, although called to the Bar, not interested in practicing law, concentrating instead on studying the English legal system. In this publication he introduced the utilitarian

principles which greatly affected the development of the 19th century reforms of British legal procedure and led to the "ethical utilitarianism" which was developed by his pupil John Stuart Mill.

31 A research problem

A manuscript of the *Registrum brevium*, written in England, perhaps at Lincoln, or in Wales, the major text from around 1375, the minor texts after 1426 (MS B61)

The first 206 leaves of this manuscript contain a 14th century version of the Registrum Brevium (Register of Writs). The Registrum Brevium is the oldest book of English common law, containing the texts of the forms of writs accepted in the courts. Each action had its appropriate writ, which could not be used for other purposes, and governed the practice of the courts with its own appropriate process, mode of trial, and mode of execution. The Registrum became an official collection about 1220, and thereafter grew as writs became more numerous; it had stopped growing by 1471.

This part of the manuscript has 68 sections, each containing examples of writs, rules for their use, and notes. It is mainly in Latin, with some rules and notes in Law French.

The minor texts, occupying leaves 207 to 215, include four writs connected with Pembrokeshire and Humphrey Duke of Gloucester, the first dated 1426, and a short text which mentions the Franchise of Cardigan.

Annotations which may indicate former ownership are "Joh'ns D[avi?]sson de longge Wyte ?? chapl' ", dating perhaps from the 15th century, "Smith" from the 18th or 19th century, and "J.G. Cumming, Lichfield, Feb 1856."

No one has yet researched this manuscript.

LEGAL EDUCATION

Legal education is almost as old as law. There were law schools in ancient Rome and Constantinople and both civil and canon law were studied in the law schools and universities of Europe from their founding. In England both were taught at Oxford from the 15th century, with occasional interruptions, and later at Cambridge, while the uncodified common law was learned mainly by working under established lawyers and by intensive reading. The "Inns of Court" in London, where most lawyers lived and had their offices, and where the law clerks got their experience, have been described as places of learning but not of teaching.

Textbooks as known today are a relatively modern development. The great law texts, such as the *Institutiones* of the civil law, were far too expensive for most students to afford. Students borrowed texts and summarized them, attended lectures and court proceedings, took them down in manuscript, and sometimes passed their notes around or bought copies from the commercial stationers, who existed at great university centers like Paris. The Spencer Library collections include a number of manuscripts which are likely to be student notebooks.

32 Pocket notes

This manuscript contains legal maxims, extracts from and comments on the *Corpus juris civilis*, and practical notes including citations to canon and civil law, the classics, and at least one logician.

The humanist style of handwriting suggests an Italian writer, probably working in the late 15th or early 16th century.

Tractatus juris, Italy? ca 1500

(MS C236)

The visible creases in the paper, which occur all the way through the manuscript, suggest that this book was folded for carrying about in a pocket or briefcase before it was bound in the 18th or 19th century.

Only further study will determine when and where this was written and whether it is the commonplace book of a jurist or the notes of a student of law.

33 A summary of the civil law

This summary of the Pandects, Codex, and Institutes appears to have been made by a French student, probably in the late 16th or 17th century.

Genius Triboniani, 16--? (MS B82)

This manuscript came to the library as part of a collection of manuscripts from the family of Fletcher of Saltoun. The label on the spine is the same style appearing on other Fletcher library books. The style of handwriting makes it unlikely that it was made by any of the Fletchers but it would not be surprising if some member of this family of Scottish lawyers and politicians had acquired it while studying in Europe.

34 Notes on the Institutes

A composite volume of short texts of various sizes in several different 16th and 17th century hands, ranging from the relatively formal to the scribbled.

Notae in tres priores Institutionum libros, France? 16--
(MS B14)

Authors mentioned include Maranus, Willem Masius, Jacques Cujas, and Jacobus Corsius.

35 "The reason why judgment may be altered the same terme is because . . ."

A student's notes on proceedings in the Court of King's Bench in November 1657.

Notes of cases in various courts, 11 May 1656 to 18 May 1659, London, 1656-1659 (MS A40)

This notebook is from the North collection family papers. It appears to be the notes of a student who was present in the courts. Generally each entry is dated, the court is identified, the names of counsel, parties, and judges are given, along with the plea and an account of the arguments and decision in the action. There are quotations from counsel and note is made of particular legal points and principles to remember, such as

"When you breake a rule & goe beyond all former presidents succeeding ages will goes as farre beyond yours," which seem especially appropriate to a student.

36 Scottish law

David Hume (1757-1838), nephew of the philosopher of the same name, became professor of Scots Law in the University of Edinburgh in 1786 and was still lecturing in 1821. These notes by one industrious student cover two years' worth of lectures.

Notes from Professor Hume's Lectures on Scots law,
sessions 1801/1802 and 1802/1803, Edinburgh University,
1801-1803 (MS D104)

The library also owns five volumes of notes (MS D158) for lectures given from 26 October to 9 March (probably in 1818-1819) and subsequently. The subject matter and wording are so similar that it is likely that these too are notes of Hume's lectures. The five volumes have the bookplates of James Brodie of Brodie (1744-1824); he is unlikely to have made the notes himself but it is possible that he obtained the notes from a student as a reference book since Hume's lectures were not published.

Works of reference particularly intended for the use of students began to be printed within a few decades of the invention of printing. Some of these were probably useful to practicing lawyers as well.

37 Versified law

Turning a legal text into verse, presumably to make it easier to remember, is a teaching device which lasted for centuries. One hopes that the effect was superior to the quality of the verse.

Honoratus Draco, *Institutionum imperialium metrica epitome*, Lyon: Franciscus Conrardius, 1581

(Summerfield A1003)

Another example of verse as a help to memory is shown at No. 26.

38 The law in outline

This is a series of outlines of the books of civil and canon law keyed to the appropriate sections. Shown here is the outline of the *Codex*, Book IX, on criminal law.

Nicolaus Reusner, 1545-1602, *Partitio, sive Oeconomia juris utriusque, civilis, et canonici: in usum studiosorum juris*, Strassburg: Bernardus Jobinus, 1585

(Summerfield C1396)

Reusner was a professor of law at Strassburg.

Law was recognized from antiquity as a subject appropriate for study not only by those who sought it as a profession but also by any civilized person. It was, however, not until the late mediaeval period that books of law for the layman were written.

39 Law for the layman

De laudibus legum Angliae, probably the first legal book intended to instruct a layman in the elements of law, was written before 1470 while Sir John Fortescue was in exile with the young Lancastrian Prince of Wales, Edward. Presented as a dialogue between Fortescue and the prince, the text urges the young prince to become acquainted with the laws of England, compares civil law with English common law, describes legal education, and provides the earliest known description of the Inns of Court.

The passage shown explains that the common law is not taught at universities since the common law requires the use of three languages, English, Latin and French, while the universities use only Latin!

Sir John Fortescue, 1394?-1476?, *De laudibus legum Angliae*, written originally in Latin by Sir John Fortescue Lord Chief Justice, and after Lord Chancellor to King Henry VI. Translated into English, illustrated with the notes of Mr. Selden . . . the second edition, London: In the Savoy: by Henry Lintot for Daniel Browne, 1741. (E954)



The convicted criminal with four court officers, one carrying out the sentence.

Former owners who wrote their names in this book were Ed. L. Fawkes and S.T. Phillips. This is another of the books transferred to the Spencer Library from the KU Law Library.

Fortescue, a member and governor of Lincoln's Inn, had a long and well-respected legal career. In his old age he supported the Lancastrian cause and went into exile with Edward, Prince of Wales, in 1463. During this exile, he wrote *De laudibus legum Angliae*. Fortescue was pardoned after the end of the conflict and apparently ended his life as a member of the Yorkist King Edward IV's council.

40 The study of the laws of England

Thomas Wood, barrister, clergyman and writer on legal education, felt strongly that a knowledge of the common law was essential to anyone in business or the church. This essay first published in 1705 includes an attack on the universities for teaching the civil and canon law (which he finds of academic interest only) while neglecting the useful common law, and proposes a method of learning the common law for those who do not intend to make the law their profession. It includes a bibliography -- *Coke upon Littleton* is the primary source recommended -- and lists the areas of the law which have changed most radically since the books he recommends were written.

In 1720, Wood published *An Institute of the Laws of England*, the first modern attempt at a systematic textbook. It was frequently republished until 1772 when it was superseded by Blackstone.

Thomas Wood, 1661-1722, *Some thoughts concerning the study of the laws of England*, London: by E. and R. Nutt [and others], 1728 (Brodie 100:7)

This third edition is from the Brodie of Brodie collection, 134 volumes containing about 1200 pamphlets acquired by the Spencer Library from the Brodie Castle sale. This copy has the bookplate of William Brodie.

A multitude of manuals and books of forms for the use of law clerks were published. As time passed and the idea that the law was a subject for proper interest for any person, not just attorneys, the publishers began to bring out "do-it-yourself" law books.

41 According to Cocker

Cocker's series of helpful books of forms and legal information had such a reputation for accuracy that the expression "according to Cocker" came to mean "doing it right".

Edward Cocker, *The Young clerk's tutor enlarged; being a most useful collection of the best presidents*, the ninth edition, London: Thomas Basset and Robert Pawlet, 1690
(B123)

Besides precedents, this useful book includes directions for writs, calculations of interest, exact dates of monarchs' reigns, names of occupations, the legal calendar, model legal handwriting, and a great deal more.

42 "Also necessary for Gentlemen, Landlords, Stewards, Tenants, &c &c &c"

No longer intended just for law clerks, this derivation of Cocker is advertised to a wide range of possible buyers.

The Attorney's compleat pocket-book Containing near three Hundred and Fifty of such choice and approved Precedents in Law, Equity, and Conveyancing, as an Attorney may have Occasion for, when absent from his Office; ... Calculated for the Use of Practisers in general, but more particularly for the Assistance of Country Attornies and their Clerks: Also necessary for Gentlemen, Landlords, Stewards, Tenants, &c &c &c, London: In the Savoy, Printed by Henry Lintot, for C. Ward and R. Chandler, at the Ship without Temple-Bar; and at their Shops in York and Scarborough, 1741
(B7017)

Simon Dearden, who wrote his name on the title-page of this book, also recorded the date and price of purchase on the fly leaf "Simon Dearden July 21st 1743 Pret. 2s.6d".

The library has also the 1756 edition of this useful work, enlarged to include "near four hundred of such choice and approved precedents".

43 Knowledge of the law for the client

This is a book of helps for those using the particular forms of Scottish law, which differs considerably from the English. It is intended to protect the client from errors of advice from the attorney.

Forms of writings used in the most common cases in Scotland, with such part of the principles of the law as appear connected therewith. In a manner so plain and simple, as not to require any previous practice in the Law for using them. To which is added, a table of stamp duties, &c. Edinburgh: for Elphinston Balfour, 1784

(B2814)

The preface of this book, published in Presbyterian Scotland, states "Divinity, Law, or Physic, are not properly the study of one man, or body of men; but of all men, to a certain extent: and to that extent Ignorance is culpable. Common sense, with proper helps, is capable of much; and seldom betrays us, if we do not betray it. But it is certainly inconsistent to give the practitioners *in the trade of the law*, the entire direction of our judgment in it, and to blame the Roman catholic for trusting the keeping of his conscience to his priest. It is as bad an excuse in the one as in the other to say, I never thought of it; I left that to those who live by it: For the client is answerable for whatever is urged by his Procurator, Agent, or Counsel; and for the effect of every word the writer he employs may use in a Deed."

Gift of the Class of 1964 Fund.

44 "Letter that party stunk of brimstone, and had the itch, libellous"

With this manual the step has been made from information about the law for the layman to the suggestion that the individual can be his own lawyer. Its popularity seems to have been great; it went through many editions and twelve publishers felt it worth selling this tenth edition.

Giles Jacob, 1686-1744, *Every man his own lawyer: or, A summary of the laws of England in a new and instructive method*, the tenth edition, London: A. Strahan, and W.

Woodfall, for J.F. and C. Rivington [and 11 other publishers], 1788 (C3444)

This copy was owned in 1827 by S. Lee of Doctors Commons, the association of lawyers practicing in the Ecclesiastical and Admiralty Courts, according to a manuscript note inside the front cover.

Gift of Lester S. Parker.

45 American law

The English manuals of law crossed the Atlantic to America with little change, still citing very English provisions from Blackstone and Wood thirty years after the Revolution.

Henry Toulmin, 1767-1824, *The Clerk's magazine and the American conveyancer's assistant; being a collection adapted to the United States of the most approved precedents*, by Harry Toulmin, secretary of the state of Kentucky, Philadelphia: Mathew Carey, 1806 (B425)

The 19th century owner of this copy was Ann A. Ellis.

46 A research problem

The office of notary is of great antiquity and is known in all Western European countries. In Roman law, a *notarius* was a person who took notes of judicial proceedings. Later notaries had the duties of drawing, attesting and certifying deeds and other documents, administering oaths and taking affidavits.

De notariis et tabellionibus : notarial handbooks,
[England? France? late 15th century] (MS C264)

A composite volume of two 15th century books, one manuscript and one printed, both concerning notaries, including model documents and contracts, ethical standards, and style and form of written documents.

The binding is an early 16th century blind-stamped binding with the "GW" stamp and a St. Martin panel. The binder "GW" worked in Cambridge between 1478-1507 (*see also* no. 22). Bound at the end are two

vellum manuscript leaves which served as pastedowns before the binding was re-backed in the 20th century.

This binding and a 16th century inscription on the blank leaf preceding the beginning of the manuscript text ("Possessor huius libri est Joh[an]nes Stephanus testantibus Joh[an]ne Carvel et Will[el]mo Vyvyanis") indicate that the bound volume was in England in the 16th century.

The printed book is a French imprint, Stephanus Marcilleti's *Doctrinale florum artis notarie sive formularium instrumentorum*, [Lyon : Jean Fabri, ca 1494]. The only other known copy of this book is in the Bibliothèque Municipale, Toulouse. Inscriptions on the first leaf indicate that the volume had English owners, Richard Collis in the 18th century and William Mason in the 19th.

The text of the 12-page manuscript begins "Incipit tractatus de tabellionibus per dominum Bar. co[m]pilatu[m]". The script is a gothic cursive book hand, and it is written on paper. The script looks French or perhaps English; no watermark has yet been discovered in the paper.

No one has yet done the necessary work to identify "Master Bar", the compiler, or to determine whether this is a French or an English manuscript.

Gift of the Helen Foresman Spencer fund.

LEGAL RECORDS

The Spencer Library's collections include thousands of legal documents, mainly from the late mediaeval period through the 18th century. They offer great opportunities for research for students as well as mature scholars.

47 The library's oldest legal record

Record of execution for parricide, Umma?: ca 2033 BC

(MS Q4:6)

Lugalhili and Lugalabba from Umma killed their father Lugalezen.

This and the next item are part of a collection of ten cuneiform tablets from the mounds of Jokha (ancient Umma) and Drehem (ancient site of Sillush-Dagan, near Nippur), acquired from a bookseller some 45 years ago.

48 Court case

Testimony before a jury of patricians, Erech: before 529

BC

(MS Q4:10)

Nabu-aha-iddina, the Royal Commissioner and Executive Officer of Eanna, swears that Snullumu has stolen his servant; Snullumu denies it.

49 "... those false seditious and malicious pages"

Against Sir Robert Cotton (1571-1631), whose library eventually became the foundation of the British Library collections, for seditious publication.

Copy of the judges' petition in Star Chamber against Sir Robert Cotton for circulating a seditious manuscript tract,

November 1629

(MS 155:3)

The tract in question ("A proposition for His Majesty's service to bridle the impertinence of Parliament") was sent from Italy by Sir Robert Dudley around 1612 and was later, in the 1620s, circulated and found seditious. The present document recites the entire text of the tract, advises that the author should be discovered since he intended to inflame the public by pretending that the King had these tyrannous objectives, and requests a *subpoena* to summon Cotton and others, including the legal writer and antiquarian, John Selden, before the Star Chamber since they "published" the tract without consulting the King or any magistrate.

Cotton was known to be anti-royalist. It was also thought that he had too many public records in his library, to which he gave any scholar access. Cotton was arrested, his library searched and "an original" of the tract was found on 29 November 1629. The King pardoned the defendants a few months later in celebration of the birth of Prince Charles but the tract was burnt and Cotton's library officially sealed. Cotton tried fruitlessly to have the library opened, and died heart-broken in 1631.

This document is from the library's collection of four manuscript volumes and six separate manuscripts associated with the Star Chamber.

Gift of the Helen Foresman Spencer fund.

50 Impeachment for treason

Against Thomas Wentworth (1593-1641), earl of Strafford, and lord deputy of Ireland.

Copy of charges, answers, and proofs, February 1641 or later (MS Q11:4)

Strafford, the King's chief advisor, was a threat to the Commons, which resolved to accuse him of high treason. This document is a copy of the 28-article charge against him, that in general he acted unwisely as a public servant—one article is concerned with the tobacco monopoly in Ireland and another with his reform of the flax industry—and that he used his Irish army and his influence with the King to threaten the liberties of England. Each article is followed by the Earl's answer, and by the "proofs" which consist of brief statements concerning points in the article, with the name of the witness or document testifying thereto. Some proofs include statistics.

Strafford was convicted and executed on 11 May 1641.

Some notes on this copy suggest that it may have belonged to one of the parties in the case, and other notes (on the back of various sheets) such as "4 off this more" seem to be notes of the people who produced the multiple copies needed for all those involved.

Gift of the Helen Foresman Spencer Fund.

51 The fate of St. Gregory College, Sudbury

On the disestablishment of the monasteries, Henry VIII sold the holdings of St. Gregory College, Sudbury, to Sir Thomas Paston. Among these lands was the manor of Neales, which contained Windmillfield, small parcels of which Paston leased out to Sudbury inhabitants.

Bargain and sale and Obligation, the two parts of an indenture assigning the lease of five acres in Windmillfield from the executors of the estate of Martin Cole to Richard Fyrmin, 18 December 1596

(MS 192:4 and MS 192:5)

The seals are those of the Cole family members, the bird for example belongs to Thomas Cole.

This indenture is from a group of six documents related to this land, acquired as part of a very large acquisition of several thousand English legal documents from the booksellers Hofmann-Freeman in 1969.

52 ". . . that they stayed there drinking until one or 2 of the clocke this morning"

A statement made in magistrate's court by Edward Herbert in his preliminary examination before Thomas Fauconberge, Esq., Justice of the Peace for Westminster. He says he was drinking and wandering through London with Owen Jefford and a man named Mason. Although Jefford or Mason found two cloakbags near the bridge he knew nothing about it and had no intention of robbing the Exchequer.

The Examination of Edward Herbert of Charterhouse Lane near Smithfield Barr, taken the Vth of December 1647

(MS P581)

Herbert was previously a soldier in the parliament service under Colonel Vinors. His night's wanderings took place just four months after the Independent army under Fairfax and Cromwell had captured London and overpowered the Presbyterian parliament, garrisoning Westminster Palace and the Tower.

This appears to be the original record made in the court, probably by the magistrate's clerk.

53 Criminal cases in mediaeval Bologna

Ubertus, son of the late Henricus de Norfa, a German, came to the house of Gimignanus Ramainus and stole a woman's tunica colored green and worth 10 pounds. Talianarius the notary translated the charge into German for him. He confessed everything.

Liber excusationum in causis criminalibus, Bologna, 31 October 1380 to 24 January 1381

(MS E77)

Jacobus de Burgo Sancti Sepulcri, fl. 1380, was a notary and magistrate's forensic official for misdeeds in Bologna. This is his official record of the charges and pleas he handled in twenty cases involving Bolognese citizens. The cases are mostly minor assaults and theft although there is one long case of sorcery, seduction, quackery and con-games.

SATIRE OF THE LAW

Of the ancient professions—law, medicine and theology—law, with its private language, its proud practitioners, its high fees, and its dependence on procedure and detail, much of which has no obvious meaning to the lay public, has been the easiest target for satire. The rise in frequency and venom of the satire appears to have coincided, at least so far as the English-speaking world is concerned, with the rise in the use of English in the courts. Once the barrier of Latin and Law-French was lowered, the satirist, like the writer of do-it-yourself law manuals, felt qualified to attack this arcane world.

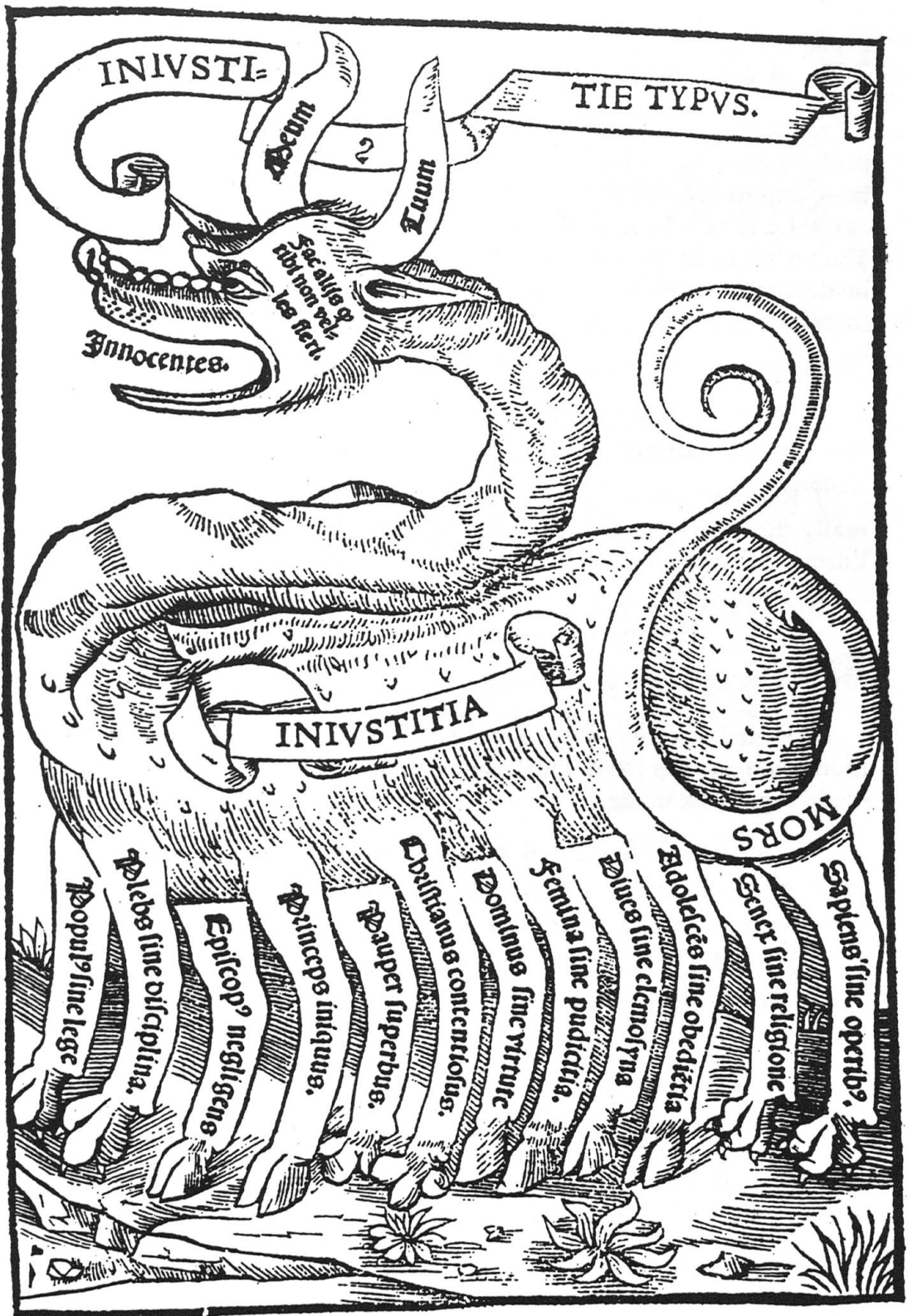
As concern for social justice developed in the 19th century, satire of the law turned from pure mischief-making to exertion of effective pressure for law reform.

54 "Law is a Bottomless-Pit, it is a Cormorant, a Harpy, that devours everything"

By the early 18th century, satire of the law was such a recognized and accepted genre that John Arbuthnot, physician to Queen Anne, was able to satirize contemporary English politics under the guise of satirizing an extravagant lawsuit. This pamphlet is the second in his series known as the *History of John Bull*.

John Arbuthnot, 1667-1735, *Law is a bottomless pit, exemplify'd in the case of the Lord Strutt, John Bull, Nicholas Frog, and Lewis Baboon, who spent all they had in a lawsuit*, The second edition, London: for John Morphew, 1712 (Bond B290)

A contemporary owner has added notes identifying the parties and concepts involved. The lawyer, "Hocus" (for "Hocus pocus"), is the great general, Marlborough, whose supposed political ambitions—or those of his dangerously capable duchess—were greatly resented.



The beast of injustice, devouring the innocent, standing on legs of "a people without law" and other characteristics of an unjust society, with death as its tail.

55 A university squabble

Sparked by a reported argument between professors of law and professors of medicine about which profession should take precedence at table and in procession (apparently resolved amicably enough by agreeing to take turns), this mild satire is attributed to Jonathan Swift. The writer must certainly have incurred the disfavor of the lawyers when he decided that medicine was both older and more necessary and should therefore take precedence.

The right of precedence between physicians and civilians enquir'd into, Dublin: Printed: And Reprinted at London, for J. Roberts, 1720 (Curll B68)

"J. Roberts", whose name appears on the title-page as the publisher, is really the sharp-practicing Edmund Curll. The Spencer Library's Edmund Curll collection is unrivaled in North America.

56 Deceptive advertising

Marketed as an exposé of the sharp practice of lawyers, this is nothing more than another list of legal points, such as the age at which a will could legally be made.

Law quibbles, or, A treatise of the evasions, tricks, turns and quibbles, commonly used in the profession of the law, to the prejudice of clients, and others . . . To which is added, An essay on the amendment and reduction of the laws of England, London: In the Savoy: by E. and R. Nutt, and R. Gosling for Thom. Corvett, 1724 (B5041)

The anonymous *Essay on the amendment and reduction of the laws* urges an increase in severity of punishment for some offenses, a decrease in others, and provides sample texts which merge numbers of existing laws into one and simplify the language used.

Formerly in the KU Law Library.

Some of the most effective satire on English law was written by Charles Dickens. His experience with the law began with his father's

imprisonment in the Marshalsea for debt. As a youth he clerked for two lawyers in the Inns of Court and then worked for several years as a shorthand reporter, first for Doctors' Commons, the association of lawyers who practiced in the Ecclesiastical and Admiralty Courts, and then for a number of London newspapers. Dickens was greatly interested in law reform and the pictures of the English legal system drawn in his novels helped to raise public concern.

57 "I say systematic villainy, gentlemen"

Part of prosecuting counsel's argument in the case of *Bardell v. Pickwick* for breach of promise in Dickens' *Pickwick Papers*.

The prison scenes in the *Pickwick Papers* may be based upon Dickens' memories of visiting his father in prison, while the trial scenes make use of his experience as a law clerk and court reporter.

Charles Dickens, 1812-1870, *The Posthumous papers of the Pickwick Club*, London: Chapman and Hall, 1837

(C2613)

This copy of the first edition was formerly in the library of P.S. O'Hegarty of Dublin.

58 A legal comic opera

A number of Dickens' works were adapted for the stage. The theatrical character of trials, along with the popularity of the comic *Pickwick Papers*, made this stage adaptation of *Bardell v. Pickwick* successful enough that the published version went through several editions.

The Great Pickwick Case, arranged as a comic opera.

From the *Pickwick Papers* of Charles Dickens. . . . words by Robert Pollitt, Manchester: Abel Heywood & Son Ltd, 1884

(C11202)

The music for this adaptation was arranged by Thomas Rawson.

This copy of the first edition, in original green printed wrappers, is the gift of the Jeffrey E. Rockwell Memorial Fund.

59 Jarndyce v. Jarndyce

Of the many descriptions of courts and legal matters in the novels of Charles Dickens, perhaps the most bitterly striking is that of the fictional Chancery Court case of Jarndyce v. Jarndyce, shown here in the first (March 1852) of the twenty original monthly installments of *Bleak House*. The case was never resolved, ending only when the entire estate under dispute was eaten up by court costs. This exaggeration of reality was not as outrageous as it might seem, for the Chancery Court, four centuries earlier the place of appeal from the technicalities of the other law courts, had become so entangled in its own technicalities that only reform by Parliament could cure it.

Charles Dickens, 1812-1870, *Bleak House*, . . . , with
illustrations by H.K. Browne, London: Bradbury & Evans,
1852-1853 (C3142)

Complaints of inordinate delay in the settling of cases were not new when Dickens wrote. Sir John Davies, in his *Le Primer report des cases & matters en ley resolves & adjudges en les Courts del Roy en Ireland*, 1615 (see *item* No. 24), comparing the pace of English courts with those of France, quotes a French source of 50 years earlier:

". . . our causes for the most parte being orderly pursued may come to their Period in a yeare, with the course of the *Sunne*, when there are many processes in foreine countries that seeme to be governed by *Saturne*, which planet doth scarce finish his course in the space of thirty yeares: as *Bodin* doth testifie of his owne country, that their were more suites in lawe depending in *France*, then in all Europe besides, & that many of those causes were an hundred yeare old: as that of the countie of *Rais*, saith he, which suite hath been so well entertained in all the *Chambers of Justice*, as albeit the parties that began it, are long since deade, yet the suit it selfe is still alive".