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Towards a legal-historical Bibliography: A Census of 16th Century Legal Imprints

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Deplored by conservatives, decried by purists, exploited not without misgivings by scholars, the triumph of the printing press in the last three decades of the 15th century was nevertheless swift and complete. By the 16th century the mode of transmission of texts had shifted definitively from the manuscript to the printed book. Yet the printed book did not merely accomplish a revolution in the mode of transmission of texts, but, rather more subtly, in the very texts themselves. The literary works of antiquity and of the Middle Ages, with few exceptions, exhibit a single text in a final form, from which the various manuscript copies derogate to a greater or lesser extent. These derogations take the form of variants which have insinuated themselves into the text of the manuscript copies through the inevitable errors entailed in the process of copying by scribes.

The advent of the printing press brings with it a phenomenon which, if not entirely new, becomes for the first time of fundamental importance. This is a moving text, a text which is being continually subject to revision by its author or its editor. No longer does a single version lie behind the several copies with their variants, but rather a succession of different recensions, stemming from different points of time, which have grown out of the original text. Each of these recensions has a claim on the attention of the historian; rather, the whole process of change and development requires to be revealed in each of its phases in order fully to depict the formation and development of the work, and thereby to illuminate the circumstances under which it evolved. Analogous considerations apply to Medieval texts published in the 16th century. If the first incunables merely reproduce a single manuscript, and their immediate successors follow one another without substantial change, in the 16th century these texts become subject to a process of editorial intervention. The end result of such intervention, not least in works of law, may be a text which is very far removed from that of the manuscripts from which it is ultimately derived.

No longer, then, is it a question of minor variants in a single version of a text, but of calculated alteration, executed after deliberation by an author or his editor. Indeed, the divergences between the texts of classi-

cal authors produced in the Renaissance and their modern counterparts pale in significance when set beside the transformation wrought, for example, by Budaeus and Alciatus on their works through successive editions in the course of their lifetimes. The establishment of the text of works printed in the 16th century, through the identification of successive layers of text, is the pre-requisite of their proper understanding. Clearly, then, for scholarship which concerns itself with the printed editions of the 16th century the strict observance of the philological method becomes of paramount importance.

And yet here we are faced with a paradox. For at the very moment when the philological method becomes wholly indispensable it appears instead to be entirely abandoned. It is standard practice for legal historians, both of the Middle Ages and of the modern period, to use and cite an entirely random edition of the text of the authors they are studying, to all intents as if printed editions were simply interchangeable. Documentation, where it exists, usually takes the form solely of the place of printing and date of the edition: Lugduni 1547. This reflects one thing and one thing alone: the edition which chanced to be most conveniently available to the researcher. No attempt is made to determine the position of this edition in the tradition of the text, nor the relation of its text to the original words of the author. It has often been observed that the textual criticism of the scholars of the 16th century was, in the strict sense, unphilological. The humanists were perforce restricted to using a small set of textual witnesses: the manuscripts they themselves owned, those which they might borrow from friends or patrons, and those which they had seen and collated on their scholarly expeditions. And yet this seems a very paragon of critical awareness and textual care when set beside the unreflective employment of a single random text by the modern historian.

In seeking an explanation for this unphilological and unhistorical treatment of early printed books it is hard to identify cause and effect. For the continental printing of the 16th century there still exists no basic bibliographical tool, comparable to that provided for works in English by Pollard and Redgrave's *Short-title Catalogue of English Books 1475-1640*, first published in 1927. Apart from the information provided by a handful of published library catalogues, some even of these not widely available, which editions of legal authors may exist, and where they may be found, remains shrouded in a cloud of unknowing. It is thus extremely difficult to work otherwise than by resort to whatever sources may lie to hand; and so long as scholarship of such a

character has been generally approved no such basic bibliographical tool has been demanded.

Certainly, lists of editions of legal works have been compiled in the past, even in the very recent past, but, alas, these have succeeded only in reflecting the scholarship they were made to serve. It is not so much that these lists are incomplete (for that, of course, is to some degree inevitable), but rather that they were informed by no conception of the desirability of completeness, nor, hence, of the necessity of carrying the work forward towards that goal. Worse, no great harm was perceived in the inclusion of a frightful mass of non-existent editions, so no control was exerted, through the citation of sources, which might have prevented such misinformation spreading like a virus through the bloodstream of legal historical scholarship. In short, such lists were intended only to impart a vague impression of the dissemination of a work, and were constructed in behoof of the scholar who was assumed to be content to work with the random edition preserved in his own university library.

Over against the practice of use and citation of a random printed edition we may formulate some basic principles. Texts transmitted through the medium of the printed book require to be treated with the same philological care as texts transmitted through the medium of the manuscript book; this implies that all editions have to be identified, described, and, eventually, collated in order to determine the different recensions and to isolate the divergences in their texts; as palaeography and stemmatics are the sciences pertaining to manuscripts, so is descriptive bibliography the science pertaining to printed books; the first step towards the construction of a legal-historical bibliography is a finding list of legal works, a finding list which is predicated upon the recognition not only of the unique character of every *edition*, but of the potential uniqueness of every *exemplar* of an early printed book.

A register of individual exemplars of editions of legal works is demanded by the following considerations:

1. *A finding list.* In the first place the historian requires to know, for whatever purpose, where extant copies of an edition are most conveniently to be found. It must be considered that many 16th century editions are now extremely rare.

2. *Manuscript annotations.* Many copies of printed works have important hand-written annotations in their margins, or contain collations of other manuscripts, and thereby acquire the unique status of manuscripts. Of course, in major libraries such copies will be duly catalogued as such, but many important finds undoubtedly remain to be made. The

scissors and ink of the censor also have an important story to tell, while the ubiquitous notes and underlinings of the ordinary reader may not be altogether without historical interest.

3. *Provenance*. Very frequently an exemplar contains evidence of its successive owners through an *ex-libris* in manuscript, stamp, or bookplate. When this information is pooled it becomes possible to reconstruct the libraries of individual scholars or institutions. Even where the name of the owner is obscure or unknown this may still serve to indicate the area in which the book was circulating at the time the *ex-libris* was written. Similar evidence is to be derived from the binding of a book. At this date books were generally sold and transported in sheets or in a cheap paper cover, and properly bound by their owners according to individual taste and means. The codicologist is thus able to identify with a high degree of precision the location of the book at the date of its binding.

4. *Printing history of a work*. In the early centuries of printing the press-run was extremely variable. Information on this point is sometimes to be found in the surviving records of printing houses or in contemporary correspondence. Usually, however, it will be necessary to estimate the size and importance of an edition, first, by establishing edition and issue, and secondly, by attempting to assess the magnitude of the press-run. At this time labour was cheap, paper expensive, and storage, in dubious conditions and without insurance against the risks of fire, flood, vermin, or the incidence of war, a serious hazard. Thus the cautious printer would set up a work anew in print every few years should demand follow, rather than emulate the practice of his more audacious rival who chose to print and store a large number of copies in the expectation of future sales. Hence a mere list of imprints will indicate little about the printing history of a work until we have established edition in the bibliographical sense, and also formed some impression of the size of the edition based upon the evidence of the number of its surviving representatives.

5. *Collections of legal works*. Only if all copies of a work are systematically registered will it become possible to reconstruct the legal collections of individual libraries, towns, or countries. It is of considerable interest to establish which works were circulating in different areas, and the extent to which legal culture in any area was influenced by the commercial considerations of printing and transport costs. In this respect it may be as enlightening to see what is not present in a collection as what is represented. General impressions gained from current library

holdings, though certainly indicative, will of course require to be controlled by a proper historical reconstruction of a collection on the basis of old catalogues, inventories, testaments and the like, evidence which has survived in substantial quantity.

6. *Towards a legal-historical bibliography.* All the above considerations relate to some aspect of the reception and dissemination of an author. But above all else the listing of exemplars of an edition is necessary for its bibliographical description. In view of the limited penetration of the science of descriptive bibliography outside the Anglo-American world, where it has been particularly developed, it is necessary to insist on this point. Books of the hand-press period are not identical. Not only are there, obviously, differences between editions, but within a single edition variants of more or less importance may emerge between different exemplars. Part of the text may have been altered in the course of printing; cancel leaves inserted; or one or more sheets entirely reset. Different versions of part of the book, particularly of the preliminaries, may have been foreseen from the outset. For this reason it is a fundamental principle, perhaps *the* fundamental principle, of descriptive bibliography that the description of an edition must be based upon the consultation of as many copies as is practicable. Any bibliographical enterprise which is not based strictly upon this principle represents some form of list, but by no means a bibliography. The objective of a bibliography is to reconstruct an ideal copy of an edition in the form intended for it by the publisher. To this end many copies, which may all depart from this ideal to some extent, have to be examined. A finding list of the extant exemplars of an edition of a legal work is thus the first vital step on the road to its bibliographical description, and this in turn is the indispensable foundation of the philological treatment of any text transmitted through the medium of the printed book.

The above programme, involving essentially the listing of all extant copies of early printed works of law, may seem at first sight over-ambitious. Yet all of the above propositions have been established and acted upon in the field of incunables for over a century. The date 1500 is nevertheless an entirely arbitrary one, corresponding to no significant change in printing history. It represents no more than a convention, reflecting only the very simple fact that the number of surviving incunables is relatively small. Thus any single collection is likely to be of manageable compass, so that bibliographers have been able to devote to them the degree of care required for *all* early printed books. Hence we enjoy a wealth of incunable catalogues, marked by their detail, their precision,

and above all their scrupulous attention to the individual characteristics of each exemplar, variant states, provenances, annotations, imperfections, illumination, bindings, etc. all being meticulously noted.

These features of an early printed book remain every whit as important and interesting for the period after 1500. The only obstacle that presents itself is that the material after this date expands to what appears unmanageable proportions. The 35,000 editions of the 15th century already give way to a figure of around 200,000 for the 16th century, the latter, too, with a significantly higher average print-run. Hence the task of treating even the 16th century in the same way as the incunable period has appeared a daunting one indeed. Now, however, developing technology has delivered into our hands an instrument which is indispensable for the realisation of this task: the computer.

If it may be permitted to speculate briefly on future developments, I should predict that the fundamental revolution which the computer will accomplish in the transition to a philological treatment of the printed book is the possibility it opens up for the accurate collation of printed texts. The requisite technology has already been applied to such a task in the case of exceptional texts, such as that transmitted in the extant copies of the early editions of Shakespeare. It remains for similar technology to be made generally available for regular application in the ordinary case. The consequences of such a development would indeed be revolutionary. Even so sophisticated a bibliographical technique as the quasi-facsimile transcription of a title-page must seem crudely primitive when set beside the exactitude of photographic or electronic comparison. May we not foresee the day when it is taken for granted by scholars that the texts transmitted by early printed books which they are studying have been established by the computerised collation not only of all editions of a work, but of all extant copies? That, however, remains for the future. For the moment the most apparent asset of computer technology in this field lies at the macro level, namely in its capacity for handling large amounts of data with ease and convenience.

Of course, the computer will accomplish nothing where there is little or no data to process. Thus the construction of an index of 17th and 18th century books published in a general field such as law will remain a distant prospect so long as reliable published catalogues are so few. The 16th century, by contrast, presents a rather more encouraging prospect. Here there already exists a number of important published library catalogues of the highest quality, such as those of Cambridge, Urbino, and Ghent, and the number is growing and will continue to grow. The

combination of these and other catalogues in a single data bank already offers, in my assessment, the prospect of forming the nucleus of a central register of legal works published in the 16th century. Here I should like to call attention to a project I am currently pursuing, with the assistance of a number of student collaborators, to establish such a central register in the Max-Planck-Institut für Europäische Rechtsgeschichte in Frankfurt am Main.

My objective is to construct an index of all legal works published between the years 1501 and 1600, a century of printing of primary interest for the study of the Middle Ages, of legal humanism, and of the emerging *usus modernus Pandectarum*. The basic source from which this index is being compiled is constituted by current library catalogues. Access to the holdings of most research libraries is generally by means of some form of card catalogue (currently being slowly transferred to computer) in which the library's entire collection of printed books from the 15th century to the present day has been registered. In such cases it is effectively impossible to extract a list of all 16th century legal works except through a pre-determined list of authors; months, if not years, would be required to read through a single catalogue. By contrast, where a separate catalogue of 16th century editions exists, it becomes possible in a limited space of time to read through the catalogue in its entirety and to extract the legal titles or authors. The present project is based on this process, which I conceive as falling into three possible stages.

The first stage encompasses the extraction of legal works from the main published catalogues of 16th century books, the British Library, Cambridge, Ghent, etc., and from those catalogues whose scope is limited to legal works, e.g. Milan, the Max-Planck-Institut. Stage 2 carries the same process forwards for those libraries where a separate but unpublished catalogue is maintained in the library itself. The third possible stage is to use the aforementioned process as a key to unlock the 16th century holdings of important individual libraries. From Stages 1 and 2 a list of names of juristic authors has been established, and these names may then be checked in any general catalogue. This will, of course, be a closed list, so jurists not hitherto identified will be missed; yet it may be reasonably assumed that the vast majority of legal authors will have been identified from the range of libraries encompassed in the earlier stages. Experience, however, has revealed the practical difficulty of pursuing the third stage effectively within a reasonable time scale. We have to reckon, first, with some 2,000 names; this has further to be

multiplied by the variant forms a single name may take in different catalogues: Dinus, Dynus, Mugellanus, Muxellanus, De Rossonibus, Rossonibus. Such variants emerge and can be standardised where catalogues are read in their entirety, whereas even a slight change, or an error in cataloguing, will cause an author to be missed and the consequent misrepresentation of a library's holdings. It has therefore seemed best to restrict Stage 3, for the present at least, to a single source of paramount importance, the National Union Catalogue, the splendid undertaking which has pooled the main library resources of the United States.

A more certain basis for the future development of the project must rest with the libraries themselves. Most libraries are now in the process of computerising their catalogues. When this task is completed it should afford the possibility of automatically producing a catalogue of works of individual centuries. We may thus confidently expect that many more catalogues of 16th century works will become available in the coming years. With a central register of reasonable comprehensiveness already in existence each successive 16th century catalogue may be checked in a limited amount of time and the new information which it affords consolidated in the index.

Two possible objections to such a scheme present themselves, one, in my view, superficial, the other of considerable importance. The first is the problem of defining a legal work. To this difficulty I shall respond only that, *pace* my German colleagues, I believe that a legal historian, informed by the foregoing centuries of the Western legal tradition, should be able to identify a work of law, and that in the vast majority of cases this presents no problem. What is also clear, of course, is that there exists a grey area of overlap with other disciplines, most obviously that between canon law and theology. Here it seems to me that the compiler of a legal index simply has to make a decision about whether or not an author is to be included. Such a decision need not be final; if the consensus of opinion registers dissent the author in question may be duly taken up into the index. The problem will be seen in its true perspective if it is recalled that we are speaking of some marginal, debatable cases in a list of some 2,000 authors. At any rate, the difficulty is in no way resolved by calling attention to the impossibility of arriving at a final definition of what is law, and as a corollary abandoning so rich a field for the arid plains of theoretical discussion.

The second possible objection is of rather more substance. This relates to the very conception of constructing an index from catalogues,

and without direct consultation of the books themselves. Is this not, it might be suggested, precisely to follow the discredited ways of the past, and to run the risk of perpetuating the errors inevitably to be found in the catalogues? This is a serious point, yet one which in the present case has to be firmly rebutted on the following grounds:

1. The catalogues used are current library catalogues, often of the highest quality; there is no question of admixing the dross of Lipenius, Dekkers, or more recent handbooks.
2. Such catalogues are themselves based on autopsy – the autopsy of the librarian or bibliographer who compiled the catalogue. Behind every entry stands the classification of a book by the librarian. That is of course not to suggest that such a work is without error; only that for the compilation of an index it is unnecessary, after Adams, to see every book in Cambridge for a second time. This is a logical fallacy, otherwise it would never be possible to cite any bibliography or catalogue.
3. Most important of all, it is a basic rule of the project that every entry in the index is accompanied by the source from which it is derived. Thus any error in the catalogues used will be strictly controlled and so ultimately may be eliminated. The status quo at least does not deteriorate; on the contrary, as more catalogues are registered individual entries receive repeated corroboration by the presence of exemplars of the same work in other libraries. Thus not only are possible errors in the catalogues controlled, but they are actually exposed by the isolation of editions with a single, and perhaps suspicious, library location.

In fact, contrary to superficial appearances, the contradistinction of catalogues and autopsy reveals a basic misunderstanding of the character of bibliography rather than a scrupulous insistence on its requirements. The dichotomy is not accurately expressed between a bibliographical enterprise based on autopsy (good) and one based on catalogues (bad). Both conclusions are non-sequiturs. The dichotomy is rather between a list, whether or not it has been compiled by direct consultation of the books, and a true bibliography. A true bibliography will be easily recognisable from certain indispensable features which it will always exhibit: a transcription of the title-page, a transcription of the colophon, the bibliographical format, the signature collation, a list of contents tied to the collation, the identification of edition, issue, and state, and a list of the several exemplars consulted. The distinction between a list, whatever it may be called by its compiler, and a bibliography in the proper sense has been consistently emphasised by bibliographers since the foundation of the science. It cannot be sufficiently stres-

sed, therefore, that the present project falls into the former category; it represents a location list, thus the foundation for a bibliography, not its realisation. The objective and theoretical basis of the project is perfectly expressed on the first page of Fredson Bowers' standard *Principles of Bibliographical Description*:

"Descriptive bibliography is an outgrowth of the catalogue, or handlist, a type of compilation which will always exist as one of the basic needs of scholarship. Although certain distinctions are sometimes made between a catalogue and handlist (or check list), it is convenient to treat the two forms as synonymous. Their primary purpose is to make available a listing of books in a certain collection or library, or else in a certain field, such as a specific period, a particular type of literature, a definite subject, or an individual author. Noting the existence of these books is the end-all and be-all of a catalogue, and under ordinary circumstances only the minimum of identifying details is provided, as the author, title (abbreviated when necessary), the date and possibly the place of publication, and occasionally the format. Some catalogues may include the name of the printer or publisher, or both. The writer may compile his list partly from other catalogues and partly by personal examination of the books, supplemented by notes furnished by contributing libraries or scholars ..."

In the present case the description of the individual entries encompasses the following elements:

1. Author
2. Abbreviated title
3. Place of printing
4. Publisher
5. Date
6. Format
7. Bibliographical references
8. Library locations.

The desired form is often reached by combining the best elements from diverse catalogues. Thus Saponi's catalogue of Milan provides a more complete title transcription than that afforded by the British Library short-title catalogues; and in contrast to the latter, Adams' catalogue of Cambridge libraries indicates whether information on publisher and printer is drawn from the title-page or from the colophon. The completed form of an entry may be illustrated by the following example:

Augustinus, Antonius

De legibus et senatusconsultis liber, cum notis Fulvii Ursini, multo quam antea emendatius, additis etiam locorum quorundam notis . . .

Lugduni, apud Franciscum Fabrum, 1592. 4°.

I.A.101.976, Adams A.2232, Machiels A.1072

A:

B: GCB (2 copies)

CS:

D: FMPI, MSB, ManUB

E: MBN

F: BN

GB: AUL, C/Cla C/Tr, ELFA, O/AS O/Mag

I: FFG, MUS

NL: GUB

US: CU, DfO, DLC, ICU, MH, NjK, NjP, NjR, TxU

The authors are arranged alphabetically, and the editions of their works chronologically. The chosen sigla for the libraries are arranged in alphabetical order within individual countries, represented by their international abbreviations.

The objective of the project, it has to be stressed, is quite other than to aim at something approaching completeness in one fell swoop, by falling upon every scrap of information on 16th century printing to be gained by ransacking the reference shelves of a research library. This would indeed result, initially, in a more complete list of editions. Yet such a chaotic procedure entails the serious risk of losing control over the sources used; its end result, a check list of editions as opposed to a finding list, is of only limited value; and its objective, in any case, a vain hope. The aim of the project, then, is rather to build up, slowly and systematically, a register of the holdings of a number of stated research libraries. Only those libraries are included for which it is possible to report their holdings in their entirety. It is hoped that by carefully consolidating what is now available, even if this has its undoubted lacunae, the enterprise will thereby be placed upon a sure foundation for the future.

The title of the project, a Census of 16th Century Legal Imprints, is intended to indicate its primary feature. The index is not intended to

exhibit a final form at any foreseeable date, but rather will always remain open for infinite revision, correction, and extension. This, once again, is a concept to which we have become accustomed through the facility afforded by the computer for the alteration and adaptation of a text. If this facility is also to be shared by the user it follows that the Census has to be produced in a computer format. Accordingly, it is intended to distribute the Census, which may eventually run to some 20,000 entries, not as a multi-volume work of great expense, but in the form of diskettes or compact disc, sold at a nominal price. Every interested party may thus have immediate access to the material through the personal computer in his study. Just as important, he may then also use it as intended, namely as an index or directory, analogous to a telephone book, to be discarded as soon as the next up-dated issue appears.

This format also frees us from the necessity of waiting indefinitely until such a work is "complete", as in the past (the *Index Aureliensis*, begun in 1962, has arrived at the letter C), but enables us to present the user with information at any stage which may be considered as an aid to his studies, whether this represents 50% or 70% or 90% of all 16th century editions of legal works. The user will simply be presented with a list of those libraries which it has been possible to include up to that date, and will then be able to carry on from that point. The present intention is to make the first issue of the Census available when it encompasses: 1. All the main published 16th century library catalogues; 2. Unpublished catalogues of 16th century works of specific libraries as these have come to my attention (information on such a facility in individual libraries would be greatly appreciated); 3. The checking of the resulting author list in the National Union Catalogue.

The Census is now proceeding not by letter of the alphabet, but library by library. Within some months I should hope to have completed the entry of all the British libraries included in the Census – British Library, Cambridge University Library and Colleges, Oxford Colleges; Aberdeen UL, Edinburgh UL, Glasgow UL, Library of the Faculty of Advocates & National Library of Scotland, Mitchell Library (Glasgow), Library of the Royal Faculty of Procurators (Glasgow). It would perhaps be rash to predict a date for the completion of the first issue; at any rate, at the time of writing, the Census contains just over 7,000 entries of an estimated total of around 20,000.