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In Time and Space

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1. Preface

The fifteenth and sixteenth centuries were times thick with events and dominated by several major problems. To the south, in particular on the Iberian Peninsula, the Arabs still pressed at the edges of the continent. In the east, Constantinople fell into the hands of Mohammed II, and as the Byzantine era came to an end the Ottomans, a people hostile to Christianity, loomed and spread terror on the eastern frontiers of Europe.

During those same years the great navigators, in a series of adventurous voyages, pushed ever farther along the west coast of Africa, and between 1497 and 1500 Vasco da Gama circumnavigated the African continent. In 1492 Christopher Columbus (1451-1506) crossed the Atlantic and made landfall on unknown lands that he thought were the Indies.

During the course of roughly a century Europe marked out its confines. In 1492, the armies of Isabella of Castile and Ferdinand II of Aragon conquered the Kingdom of Granada, the last Arab outpost on Spanish soil; in 1571, a great fleet collected and armed by Philip II in the name of Christ inflicted a ruinous defeat on the Turks at Lepanto, thus putting a definitive stop to an expansion that had been aimed at the heart of the old continent of Europe.

These events helped Europe to acquire a more lucid self-awareness and an awareness of the value of the faith that it knew and practiced; at the same time, comparison with the "infidel" peoples (Arabs and Turks) and with the "savage" populations of first Africa and then the Americas (the "Indes") gave Europeans a clearer view of the traits of their own civilization.

Between the fifteenth and the sixteenth centuries Europe was a world tormented by doubts and questions that at times could be dramatic and extreme. The legal field underwent a frontal attack: for centuries (at least from Irnerius and Gratian) jurisprudence had traditionally been thought of as one and universal, serving the entire human race; now it was discovered that a large proportion of humanity had no knowledge of the law, had never had occasion to know it, and was incapable of comprehending either its practice or its spirit.

2. Legal Humanism: An Overview

New currents of thought -- legal humanism, the Secunda Scholastica, the usus modernus Pandectarum --rose to confront the traditional jurisprudence of the fourteenth century (Bartolus and his successors). All these movements, but the first two in particular, threatened an equilibrium that had permitted the Ius commune and the iura propria to coexist within the order of a sistema iuris. Furthermore, in many parts of Europe, by casting doubt on the organizational function of the Ius commune, they helped to redefine the roles of the jurist, the scholar, the philosopher, and the theologian.

Let us take humanism first.[229] Humanism challenged the authority of the Ius commune and attached the certainty, universality, and eternity that it advocated and claimed as its own; when humanism proposed mutability and uncertainty as historical perspectives, it crumbled the monolithic structure and the theoretical basis of the Ius commune. In the process many of the areas that had been the special province of the jurist were gradually occupied by the historian or the scholar or by early experiments in philology, with the result that the jurists' function shifted and their social image was reduced to more modest dimensions. Not only was the universality and eternity of the Ius commune contested and criticized; attempts were also made to replace it with a princely or royal legislation of a strongly national cast that viewed such systems of law as a general (hence a common) law.

In short, for the humanists the relationship between the Ius commune and the ius proprium had been broken, and rightly so. They insisted that the law of the kingdom or the principality should no longer be considered ius proprium but a general and common law that stood in contrast to the variety of customary laws and local statutes. In this point of view the Ius commune became either a residual law or a law to be taken into account on a cultural plane, valuable for the store of human reasoning and human reasonableness that it had elaborated and embodied through the ages. Those who had formerly enjoyed (and still claimed) a monopoly on legal knowledge must move out of the spotlight because their role had shrunk and their prestige and social and political power had declined. Moreover, the humanists (and not only the humanists, as we shall see) insisted on changes in the ways in which Justinian's books and the laws of the church were studied. The Ius commune was increasingly beset and compressed: relegated to the past, it was to serve as a means for gaining knowledge of ancient times; as a monument that had survived from former ages, it was to help reveal the true ancient world and, in particular, the grandeur of Rome.

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[229] For a broad range of specific biographical and bibliographical information, see Hans Erich Troje, "Die Literatur des gemeinen Rechts unter dem Einfluss des Humanismus," in Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte, ed. Helmut Coing, 3 vols (Munich: Beck, 1973-87), vol. 1, pt. 2, 615-795.

Scholars debated the relative excellence of the various branches of knowledge; now they wondered whether or not literature and philosophy had preeminence over jurisprudence and medicine. Even though the learned works produced by a scholar who pored over documents from the past asking himself what value there might be in the extant evidence -- narrations, contracts, or other -- might easily have appeared to be an ascetic activity untouched by politics, the place that the scholar, the philosopher, the historian, and the philologist acquired in society of the day and, even more, in the courts of the princes, was not determined by politically disinterested criteria. The scholar's operating space had been taken away from the jurist. Some jurists reacted by recasting their thinking; others only made a show of doing so or more simply adapted to the new method by sharing some of the humanist's tasks, seeking to conform to the trends of the times and to aid the prince or the sovereign in working to construct a "national" order. There were also jurists who fought the new currents with all their might, both on the level of theory and on the level of a practice that remained -- and, they insisted, must remain -- tied to the traditional methods of jurisprudence. Then there were some jurists who played a starring role, occupied center stage, and had a hand in writing the scenario -- although, as has prudently been remarked, the label of "humanist" did not always express a jurist's entire personality, nor did it always represent all the components of his thought.[230]

3. Legal Humanism: France

The new legal humanism had representatives in Italy (as we shall see), in Germany, and in Spain. In German-speaking lands there was Ulrich Zasius (1461-1535), active in Freiburg, who was sensitive to the influence (through Basel) of Erasmus of Rotterdam and Bonifacius Amerbach. Spain had Elio Antonio Nebrija (Nebrissensis) and Antonio Agustín.

But it was in France, with the so-called mos gallicus, that humanism offered the most serious challenge to a still vital equilibrium that had gradually formed from the thirteenth century on within a system of iura propria based in the Ius commune. Some French jurists were motivated by a "nationalistic" sentiment that they displayed openly. They claimed full and preeminent validity for French law on the two levels of the particular laws (city and seigniorial law; royal law), and they assigned to the royal law the function of a general law in respect to the local laws (coutumes, statutes, and so forth). These jurists, however, embodied and documented only one aspect of a more complex phenomenon. Various methodological tendencies competed to reach a common goal of increasing the scope of the national law in force: some jurists accused Justinian of irrationality; others suggested that the reworked legislative materials that they had inherited

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[230] Mario Ascheri, "Giuristi, umanisti e istituzioni del Tre-Quattrocento: Qualche problema," Annali dell'Istituto storico italo-germanico di Trento 3 (1977): 46-47.

could be given a new and rational order; still others studied and used Justinian's compilation only as an important witness to the past.

We need to follow all three of these tendencies. The task of discrediting the Justinian compilation fell in particular to François Hotman (1524-90), a jurist of less than outstanding intelligence but who became famous for the clarity and the incisiveness with which he tackled this historically significant task. Hotman lived in the mid-sixteenth century, an age in which the chief themes of legal humanism were fully mature.

Hotman was the author of a diffuse work, the Antitribonianus, in which he attempted to strip bare the peccadillos, the failings, and the errors of the Byzantine compilers. (Tribonian, as is known, headed Justinian's legislative commissions and bore the major responsibility for compiling and editing the Corpus.) Hotman's critical judgments were openly aimed at promoting the French national law.[231]

Hotman's work was not isolated from the context in which he moved nor from critiques that had preceded it. It was fashionable in some sectors of the humanistic culture of the time to treat all jurists of earlier times as ignorant. Medieval jurists were defamed in long strings of insults: they were "plebei, nocui, inepti, sophistae, barbari (plebs, noxious, inept, sophists, barbarians). . . imperiti (unlearned). . . sordide nostram tractantes disciplinam, rixantes de lana caprina (handling our discipline foully, to contend over goats' wool [i.e. over trifles]) . . . ad aratrum nati, non bene de mente constituti (born to the plough, not well endowed mentally) . . . improbi, ambitiosi, avari (base, ambitious, greedy) . . . exoticae linguae homines (men of exotic [i.e. bad] language)" and worse.[232]

The jurists of the second group worked to reformulate the materials and the arguments of the Corpus iuris civilis on a more rational level and on the plane of historical relativity and to redistribute them in a new architecture. Such men took care to point out (and they made it abundantly clear by the way they themselves operated) that the various topics and legal institutes were bundled together in no proper order in the Justinian compilation, where they were sometimes juxtaposed and sometimes divided among titles and books that were organized with no logical or systematic arrangement. A new order was needed. Among the many jurists who shared such ideas were Guillaume Budé (1465-1530), François de Connan (1508-51), André Tiraqueau (1488-1558), François Duaren (1509-59), Charles Dumoulin (1500-66), and, above all, Hugues Doneau (1527-91) and Antoine Favre (1557-1624), the author of one work, Rationalia ad Pandectas, whose title was a clear indication of his program.

Jurists of the third current in French legal humanism were less apt to expose their political motives and less explicit about their polemic biases. Some of these were jurists who continued to study the Corpus iuris civilis in depth, but

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[231] Domenico Maffei, Gli inizi dell'umanesimo giuridico (Milan: Giuffrè, 1956), 61-63.

[232] Ibid, 34.

with a shift in method and within the context of other sources, which they sought with passion and sometimes found, with good luck. Motivated by a need, a desire, even a yearning to study the past and to appreciate the grandeur of Roman or Greek antiquity, they launched massive scholarly projects. They also inaugurated modern philological studies. They approached Roman law with love rather than criticism, reproach, or aversion, but they saw it with new eyes. They used Roman law as testimony to the past; as documentation that made it possible to know an epoch, a civilization, and a culture that, because they belonged to the past, were no longer entirely of the present. At most Roman law could be regarded as the base or the foundation for a present that was completely different because it had and practiced its new national, regional, or local "laws." There was admittedly a connection between the present and the past, and the past generated interest, curiosity, and a need to know, but the present was not the same as the past, hence the laws of the past could not be the laws of the present.

One of the best-known of the jurists in this third current in French legal humanism was Jacques Cujas (1522-90). A contemporary of Hotman, Cujas followed a totally different direction. Avoiding polemics, accusations, and scornful judgments, he worked constructively in a number of powerful works to relegate Roman law to the past. A few decades after Cujas came Denis Godefroy (1549-1622), the author of a painstaking edition of Justinian's Corpus iuris civilis, and Jacques Godefroy (1587-1652), who wrote a masterly commentary to the Codex Theodosianus.

It should hardly be necessary to note that defining three tendencies in French legal humanism and mentioning the principal figures in each current does not mean that individual humanist jurists were not influenced by tendencies that were not particularly congenial to them, nor that they did not to some extent consciously accept that influence.

4. Legal Humanism: Italy

Humanistic jurisprudence was less intense in Italy than in France. After Francesco Petrarca (1304-74), whose path-breaking and original thought long preceded the new trends, no significant breach was opened in the traditional method.

The scholarly humanism so powerfully represented by such major figures as Flavio Biondo (1392-1463) and Lorenzo Valla (1407-57) had little effect on jurisprudence; nor was it much influenced by the new historiography inaugurated by the genius of Niccolò Machiavelli (1469-1527) -- who wrote not only Il Principe but other works that should be mentioned, the Discorsi sopra la prima Deca di Tito Livio and the Istorie fiorentine -- and continued by an entire school of Florentine historians, notably by Francesco Guicciardini (1483-1540) in his Storia d'Italia.

Legal humanism made sporadic appearances in Milan, Florence, Siena, Bologna, Padua, and Naples. The movement was hesitant, however, and produced

works that more often resulted from wishful thinking than actual projects, as in Bologna with cavaliere Ludovico Bolognini (1446-1508).[233]

Other jurists allowed themselves to be absorbed into the mechanics of a princely patronage that was particularly generous toward scholars and men of letters. In Florence or Milan, for instance, humanism and humanists in league with the governing powers served to project and give cultural expression to the policies of centralization of the emergent signorie (the Medici family in Florence; the Sforzas in Milan), whose interest lay in dividing and disbanding the compact and powerful jurist class.

There were few "humanists" among the Italian jurists. Aside from Bolognini, we can count Ludovico Pontano (d. 1439) in Rome, Felino Sandeo (1444-1503) in Lucca, Matteo Gribaldi (d. 1564) in Piedmont, Lelio Torelli (1489-1576) in Fano,[234] Mariano Sozzini or Socini (1397-1467) in Siena,[235] and in Naples Alessandro d'Alessandro (1461-1523) and Marino Freccia (1531-1603).

One jurist, Andrea Alciato (1492-1550) is considered the major representative of the humanistic school of Italian jurisprudence. In his work, which is impressive for both its mass and its quality (Commentaria ad Pandectas, Paradoxa, Parerga, De re militari, Emblemata, and more), Alciato by and large maintained a balance between demands for renewing and refashioning the law and acceptance of the weighty legacy of Italian legal doctrine of the thirteenth and particularly the fourteenth centuries.

5. The "Ancient" Method in Italy: "Bartolism"

Beyond the small, often isolated, and ephemeral areas within which the few Italian jurists attracted by humanism and by the mos gallicus expressed themselves, the juridical scene in northern Italy was still largely dominated by a traditional method that recognized Bartolus of Saxoferrato as its figurehead, hence those who continued Bartolus's work and shared his stance and his vision of the law, either out of interest or conviction, were known as Bartolisti.

On the southern Italian mainland, in Sicily, and in Sardinia the scene was more varied and is even less well known. Aside from the ideas and cultivated

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[233] There is one important monograph on Bolognini: Severio Caprioli, Indagini sul Bolognini: Filologia e giurisprudenza nel Quattrocento italiano (Milan: Giuffrè, 1969).

[234] Giovanni Gualandi, "Per la storia della 'editio princeps' delle Pandette fiorentine di Lelio Torelli," in Le Pandette di Giustiniano: Storia e fortuna di un codice illustre, Due giornate di studio, Florence, 23-24 June 1983 (Florence: Olschki, 1986), 143-97. On Torelli's three short juridical works, see 149-50.

[235] Paolo Nardi, Mariano Sozzini, giureconsulto senese del Quattrocento (Milan: Giuffrè, 1974).

curiosity of Lucas of Penna, the Dies geniales of Alessandro d'Alessandro,[236] and the modest collected works of Marino Freccia, there appeared few significant traces of legal humanism in southern Italy. Furthermore, it remains to be seen how much those regions were effected (and precisely how) by Spanish innovations in methodology launched by Francisco de Vitoria, the "school" of Salamanca, and the "Secunda Scholastica," a movement that was to dominate much of the European legal scene. It also remains to be seen what role the "system" of Bartolist Ius commune continued to play in these regions, which for centuries had been closely connected to the great university schools of northern Italy and whose jurists usually had an early acquaintance with works of the doctrines of the Ius commune.[237] One example of a practical jurist who was also familiar with these works is a Palermo judge, Tommaso di Carbonito, whom we know (from a donation in 1328), owned a manuscript containing "leges commentatas super Digesto veteri" that included a copy of Cinus of Pistoia's Divina Lectura, a recent work.[238]

6. "Practical Jurisprudence"; Bartolists, Tract-Writers, Consiliatores

In much of Europe the potential of the Bartolist "system" -- that is, its capacities as a tool in legal practice -- are best seen in the massive activity of the practical jurists. When the lawyer or the judge had to think through an act, prepare a defense, or hand down a judgment, he may well have been obliged to apply the law of the ius proprium, but he also had to use the Ius commune in his work, arguing from passages in the Corpus iuris civilis or the Corpus iuris canonici, citing precedents one by one, and accumulating large numbers of citations in support of his argument or his decision.

This was how the jurist protected himself from an increasingly centralized political power that was becoming organized in increasingly authoritarian ways and was stripping many legal operators (the humbler run of lawyers, employees

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[236] Domenico Maffei, Alessandro d'Alessandro, giureconsulto umanista (1461-1523) (Milan: Giuffrè, 1956).

[237] This topic was the focus of a "Settimana di lavori" at Erice in the Centro di Cultura Scientifica Ettore Majorana in October 1983. The Acts of this workshop are available as Scuole diritto e società nel Mezzogiorno medievale d'Italia, ed. Manlio Bellomo, Studi e ricerche dei "Quaderni Catanesi," 7, 2 vols (Catania: Tringale, 1985-87). For other thoughts on the subject, see Manlio Bellomo, "Cultura giuridica nella Sicilia catalano-aragonese," Rivista internazionale di diritto commune 1 (1990): 155-71.

[238] See Domenico Maffei, La "Lectura super Digesto veteri" di Cino da Pistoia: Studio sui mss. Savigny 22 e Urb.lat.172 (Milan: Giuffrè. 1963), 37 n. 104. On legal libraries in Sicily, see Henri Bresc, Livre et society en Sicile (1299-1499) (Palermo: Luxograph, 1971); Bresc, "Egemonia e vita del diritto nello specchio de consumo del libro in Sicilia (1300-1500)," in Scuole diritto e società, ed. Bellomo, 1:183-201.

in the offices of the nascent bureaucracies, court consultants, and so forth) of their autonomy and their freedom of action. It was also how the jurist guaranteed himself and his class a vital and still prestigious social and political position within the princely order.

The consilium was the genre that best expressed the great (or would-be great) Italian jurist's sense of his social position. This was a tradition that had originated long before, in the twelfth century, and had given the "commentators" of the fourteenth century matter for study and theoretical elaboration.[239]

The most significant consilia from the historical point of view were the ones given by the doctores. This is not only because portions of them have been preserved in manuscript codices and printed editions but also because they showed the strict connection between theory and practice more clearly, thanks to the theoretical elaboration called for in teaching, in a focused scholarly output, or in the exercise of practical legal activities on a high level.

This connection is obvious in many instances, but at least two episodes might be recorded here. First, during the first decades of the thirteenth century, Accursius gave a consilium in part derived word for word from a gloss taken from an apparatus of Azo, part of the substance and the form of which Accursius himself later used for a gloss that eventually appeared in the Magna glossa.[240] Second, toward the end of the 1320s Riccardo Malombra, as we have seen,[241] gave a consilium at Bologna that only a few years later (and with appropriate modifications and along with other consilia) passed into the Commentaria of Bartolus of Saxoferrato.

Consilia were requested and given in a wide variety of forms, but they all documented a strong connection between theory and practice. For instance, a judge or a private citizen formulated a question involving the narration of an event and stating a legal doubt arising from that event; or they might describe an act or event that already had a legal solution and outlined the litigation that had arisen or was about to arise concerning that solution; or they might formulate a series of legal questions to submit to a jurist for his opinion in the form of a simple affirmative or negative response.

Requests for consilia were written on a sheet of parchment, or in a special register that the jurists kept in their studios for the use of clients, or they might arrive in a letter from distant lands. The responses (the consilia proper) were

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[239] On the consilia, see Mario Ascheri, I "consilia" dei giuristi medievali: Per un repertorio-incipitario computerizzato (Siena: "Il Leccio," 1982); Ascheri, "Rechtsprechungs- und Konsiliensammlungen," in Handbuch der Quellen, ed. Coing, vol. 2, pt. 2, 1111-21.

[240] See Manlio Bellomo, "Consulenze professionali e dottrine di professori: Un inedito 'consilium domini Accursii'," Quaderni Catanesi 7 (1982): 199-219.

[241] See chap. 7, section 18.

expressed in a corresponding form, on the same parchment or paper sheet as the request, in the same register, or in a letter.

These acts and the related documents accumulated rapidly between the thirteenth and the fifteenth centuries. At the same time consilia written not by a single jurist but by various sorts of groups of jurists (more important, by groups of jurists deliberately brought together for that purpose) began to appear. Some consilia were signed by a number of colleagues and fellow-jurists; some were written up and signed by one doctor and then elaborated upon and linked -- perhaps only with a brief phrase or the addition of a citation from the Corpus iuris civilis or from canon law -- by the doctor's son (himself a doctor) or by a pupil in his school. A smaller number of consilia were given collegially by an entire corporation. The consilia of the colleges of jurist doctors are an example of these.

The emperor, the pope, and lesser rulers made use of well-known doctores to arbitrate quarrels or to help avoid foreseeable controversies. In such cases there was usually a preliminary exchange of letters in which the terms of the questions were clarified, both as to what had happened and what legal rules were involved. At an appropriate time, the parties gathered together, the necessary proofs were marshalled, the legal problems were discussed, and possible solutions were tested. Finally the jurist, as the arbiter of important and divergent interests, made his decision, citing Roman and canon law in the text of his sententia (opinion).

This entire procedure has left only fragmentary traces because the letters were lost and no accurate and complete minutes of the discussions or the testimony of witnesses remain. At best we have references and mentions included in the final act stating the decision. Afterwards the decision might easily have been distorted by being inserted, along with many other fragments of various provenance, into a generic collection of consilia and tractatus. This is what happened, for example, with Vatican codex Vat.lat. 10726, where the compiler quite obviously intended to transfer results of practical activity into the theoretical sphere so that the outcome could be of use to practitioners as well as to theorists.

The price for a consilium was always extremely high. Not only did the principal consultant or an entire college of jurists have to have their recompense but also anyone who had added a signature or a word or two could claim his due. The cost might be as high as the semester's or year's stipend for a professor who taught in the famous and wealthy university schools of the age, and it might even be much larger. For example, at a time when a professor of logic and philosophy in Florence was paid an annual stipend of forty gold florins and a professor of medicine twenty-five, in Bologna one consilium could cost as much as one hundred florins! Here, quite evidently, economic data cannot escape having a precise significance since they express the monetary value of the jurist doctors' power. They also give a concrete sense of how certain decisions could be redirected in one's favor by paying an open, legal price in homage to the power that the doctores in law enjoyed.

There were some nondescript collections made by bundling together the positiones, allegationes, letters, and consultations of a number of jurists,

transcribing them in whole or in part, summarizing their texts or abridging only one portion, on occasion simply omitting references to persons, names, and dates.

There were also better-organized collections that concentrated on one jurist (perhaps adding a scattering of writings of his colleagues and adversaries) or relating to one topic or one major sector such as succession, dowries, or criminal law. There were also collections that carefully documented (or attempted to document) the full range of one jurist's activities. At the turn of the fifteenth century, some famous jurists reworked earlier series of consilia by jurists whose word still bore weight in collective memory, and they took this as an opportunity to emphasize anew the essential relationship between what was produced for the courtroom and what was elaborated on the level of doctrine for the guidance of that practical legal activity.

On occasion open and bitter polemics arose. The most famous of these was a quarrel that raged between Andrea Alciato and Tiberio Deciani (d. 1582), which seems to have originated in an apparently innocuous question:[242] Was it useful or harmful that many, perhaps all, jurists published their consilia, either out of a passion for celebrity or because they were persuaded that they were making an appreciable scholarly contribution to practice or offering useful and practical professional tools?

It was hardly by coincidence that a "humanist" jurist such as Andrea Alciato was hostile to the practice of printing immense sets of consilia. His attack against the rampant tide of consilia that were being turned out by the publishers of his day was in fact perfectly consistent with the central thrust of his work, which aimed at stripping the Ius commune of all potential application to practice and relegating it to the realm of history and "antiquity." With Vico,[243] Alciato held that it would be better to give Roman law back to the Romans, which would remove it from the hands of jurists who had made it a trenchant tool in their practice -- jurists intent on maintaining their personal position and the prestige of a class that resisted the centralization of the new and authoritarian princely and monarchical orders that absorbed all power to themselves.

7. "Traditional" Jurists in Publishing and the Book Markets

The last great season of the Ius commune in its fourteenth-century guise took place in practice, inaugurated by works written above all in Italy. Furthermore, it was not only professors and legal consultants who were responsible for this late flowering; a new attempt to prove the "practical" validity of the Ius commune as

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[242] On this quarrel, see Francesco Calasso, Medio Evo del diritto (Milan: Giuffrè, 1954), vol. 1, Le fonti, 593.

[243] For Giovan Battista Vico's thoughts on the subject, see Maffei, Gli inizi dell'umanesimo giuridico, 160-63.

Bartolus had constructed and used it came from a completely different quarter, and one in which shrewd businessmen made fortunes.

The sixteenth century was a golden age for printing. After Johannes Gutenberg's first successful experiments in Mainz between 1440 and 1455 and the first printers' refined editions (incunabula), book production thrived in a number of cities: Mainz, Frankfurt am Main, Paris, Rome, and, above all, Venice in Italy and Lyons in France.

It is instructive to glance at the catalogues of what the leading printshops of the time produced, or at the lists of their best clients, the jurists. In the middle of an age of juridical reform, between legal humanism and the "Secunda Scholastica," the great works of the recent past were republished repeatedly. If there were acid-tongued humanists who vented their critical humors by coining picturesque insults for the jurists of the thirteenth and the fourteenth centuries (Accursius and Bartolus in particular), there were also energetic printer-publishers ready to invest capital and labor and to run the entrepreneurial risk of printing the Magna glossa of Accursius or the Commentaria of Bartolus of Saxoferrato, Baldus de Ubaldis, Johannes Andreae, and many others.

In other words, the publishing business took over the scholarly production of jurists from the recent and the not so recent past and printed thousands of copies of their works. It was obviously good business to put on the market works that embodied the "system" of the Ius commune from the thirteenth to the fifteenth centuries.

Everything was published, not only the greatest works. We cannot say that this publishing boom resulted from the humanists' ardent desire for a knowledge of ancient Roman law that shifted to an interest in legal works of the more recent past as a way to trace the legal vestiges of a great civilization. This may have happened in some cases. Some publishers may have been interested in offering "historical" testimony of the past, and their efforts may have coincided with a similar interest on the part of the reader. If that had indeed been the case, however, few copies would have been produced and even fewer sold.

The fact is, however, that thousands of copies of Accursius's Magna glossa were printed (in five large folio volumes in the richest editions; in quarto format for less luxurious editions), and equal numbers of the immense Commentaria and the lesser works of Bartolus of Saxoferrato (a total of ten folio volumes!). Hence it is obvious that the public for these works cannot have been made up only of a handful of cultivated humanists eager to know the past; it must have included judges, lawyers, professors, and students who used that rich legacy of works in their everyday activities and who used them as tools and as a vital part of their present, not their past. This is even clearer with such works as Azo's Summa, a work that went back to the twelfth century and that was offered as a volume of manageable size still extremely useful in the courtroom; or the Speculum iudiciale of Guillielmus Durantis, a thirteenth-century work that in practical application even became Speculum iuris, or the great Glossae ordinariae to the texts of the Corpus iuris canonici. I might also note that in 1582 the correctores Romani gave

their approval to print the most important glossed edition of the Corpus iuris civilis of its day.

For nearly two centuries, the printing presses worked ceaselessly to print works on the Ius commune, slowing only in the 1620s or the 1630s. No judge or lawyer of any prominence failed to own in his personal library at least one glossed Corpus of civil law and canon law.

Everything was printed. At times with little success, which means that some examples of the older writings became rare (and are even rarer today). Among these were the Lecturae of Odofredus de Denariis (a thirteenth-century work) and the summae on the Code and the Institutes of an even older jurist, Placentinus (twelfth century).

Some of the books that were printed -- collections of scattered materials and uncertain and incomplete depositions gathered together and reworked -- contained writings not originally conceived as one work. As far as we know in the current state of scholarship, this was how the Commentaria of Jacopo de Arena and Jacopus Bottrigarius the Elder were "constructed," and, in all probability, those of Baldus de Ubaldis (taken from his lecturae from a number of year) as well -- all jurists of the thirteenth and the fourteenth centuries.

Works that the older jurists had never written were also printed -- forgeries, works falsely and surreptitiously attributed to famous jurists. Obviously there were people who sought them and bought them.[244] The authorship of a work might be changed if the publisher thought it convenient: thus a lectura on the Code by Jacques de Révigny (Jacobus de Ravanis, thirteenth century) was attributed to Pierre de Belleperche (Petrus de Bellapertica).[245]

"Historical concentration" was particularly intense concerning works published under the name of Bartolus -- which simply demonstrates the continuing importance of "Bartolism" in Europe, particularly regarding the practical jurist who earned and spent money and who formed the market for legal publishing in the sixteenth and seventeenth centuries and guaranteed its success, both in cultural and economic terms.

8. The "Reception" of the Ius commune in Germany

The "market" for legal works further broadened in the late fifteenth century. This wider demand came from new customers who lived and worked in the German-speaking lands of central Europe.

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[244] Domenico Maffei, Giuristi medievali e falsifacazioni editoriali del primo Cinquecento: Iacopo di Belviso in Provenza? (Frankfurt am Main: Klostermann, 1979).

[245] Hans Keifner, "Zur gedruckten Codexlectura des Jacques de Révigny," Tijdschrift voor Rechtsgeshiendenis / Revue d'histoire de droit 31 (1963): 5-38.