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António Manuel Hespanha

Form and content in early modern legal books

Bridging the gap between material bibliography and the history of legal thought

Abstract

According to common sense, a book is only a way of conveying communicative contents (namely, ideas): on their own, books cannot change or add anything to what authors think about what they want to communicate to readers. The most recent history of books produced a Copernican shift in such a simplistic view about the nature of these (un)faithful companions of writers and readers. Books – as objects, as material devices, with their specific features – do matter in intellectual maturation and dialogue. Their materiality – like page layout, typographical devices, graphics, format, even binding – does convey sense. The article tries to relate intellectual shifts in early modern legal theory to concrete changes in the physical format of law books. The article seeks to call into question the central position that traditional legal history usually gives to an individual ›author‹ – asking once again the disturbing question posed by Michel Foucault: ›What is an author?‹ – and challenges the concept of a merely intellectual evolution of new figures of legal discourse.

Form and content in early modern legal books

Bridging the gap between material bibliography and the history of legal thought

1. Framing the problem

Medieval and early modern learned law is deeply rooted in a literary tradition[1] not only because it arises from ›canonical‹ written books (the *Corpora iuris* [*civilis* and *canonici*]), nor even because every development of legal learned knowledge is embodied in written pages; it is also due to the fact that written form enjoys a particular kind of legal authority. In erudite law, the correct reason (*recta ratio*) is equivalent to written reason (*ratio scripta*).[2]

I will not insist on facts which are known well enough, like (1) the utmost relevance (civil or criminal) of writings (*scriptura*), often taken, in the law of evidence, as the best proof (*regina probarum*, *verba volant*, *scripta manent*),[3] so that their falsification is more strongly sanctioned; (2) the particular danger of written offences (defamatory tracts, *libella famosa*);[4] (3) the fact that bound writings (or books, *libri*: *libri tabelionum*, *liber iudicum*, *acta processualis*, *libri mercatorum*, *libri rationum*, *libellus iudicialis*) are especially entrusted as the sole source of valid knowledge: ›what is not in the books is not in the world‹ (*quod non est in libris non est in mundo*).

In these learned circles, to master the law was, therefore, to read books. The vicinity between grasping the law from a book or from the nature of the things is unproblematic, because books enshrine either pure revelation or its consolidated tradition.[5] To explain (to ›open‹, *explicare*) a legal text is a form of *hermeneusis* closely related to the act of uncovering the secrets of right and wrong hidden in nature.[6] Behind the letter is the Spirit, as behind the things is the Word or the Order of God. Lectures, like empirical observation, are acts of unveiling the truth. The link between the word and the ›thing‹ was so strong that books could become the object of magic, talismanic or religious uses. In this way, books were truth objectified (to swear on a book, be it the Bible or the Constitution).

1 On the other hand, European literary tradition is strongly based on the legal literature, notwithstanding the fact that this is hardly visible in the most praised historians of European books. The space left by Henri-Jean Martin to the legal printing in his already classic study on the social and political history of books in early modern Europe (Martin, Livre, pouvoir, société à Paris au 17e et 18e siècle) is minimal (chapters dealing expressly with legal printing: 3, with a total of 8 pp.). The same can be said of Chartier, Les usages de l'imprimé). The trend to overlook the legal domain when handling general subjects of intellectual history is common. On a parallel observation about the unawareness of legal theory in bringing about a history of interpretation, see MacLean, Interpretation and meaning in the Renaissance, 62 (reference kindly given by Corinne Leveleux Teixeira). The silence of the historians of books on the legal literature is not but a parallel to a general oblivion of the world of law by general historians. Perhaps, the most evident cases are, for the Middle Ages, Le Goff, Les intellectuels au Moyen Âge; and, for early modern age, Fernand Braudel, who, in his masterpiece on Mediterranean early modern civilization (Braudel, La Mediterranée et le monde mediterranéen à l'époque de Philippe II), forgets one of its major achievements: jurisprudence (mainly in Naples and Sicily).

2 On the topic of the centrality of texts in the configuration of legal, political and social ›dogmatic‹, Legendre, De la société; Legendre, Les enfants du texte; Legendre, L'empire de la verité.

3 Martin, Histoire et pouvoirs de l'écrit, 84.

4 Cf. the English word ›libelous‹: ›adj, (used of statements) harmful and often untrue; tending to discredit or malign [syn: calumniatory, calumnious, defamatory, denigrative, denigrating, denigratory, libelous, slanderous]‹ (Source: *Webster's Revised Unabridged Dictionary*, 1913); ›Containing or involving a libel; defamatory; containing that which exposes some person to public hatred, contempt, or ridicule; as, a libelous pamphlet‹.

5 Sirat, La conception du livre chez les pietistes Ashkenazes.

6 On the theme, classical, Foucault, Les mots et les choses.

This does not exclude another approach – apparently concurrent – which stresses that, although the western learned legal tradition is a literary tradition, medieval legal knowledge was born and grew in a scholarly environment where oral transmission and oral dispute played a decisive role (as the names of legal literary genera [*lecturae*, *dissentiones*, *disputationes*, *questiones*] suggest). Also the progress of learned legal culture was closely bound to read/write/correct/rewrite procedures, such as the *lectio*, the *glosa*, the *adnotatio*, the *castigatio*, the *repetitio*. Therefore, the centrality of writing has been an object under construction for several centuries, a factor of harsh intellectual and social conflicts, as neither orators (golden tongues, *os aureum*) nor elegant writers wanted to lose their respective control of knowledge.

In my opinion, although this dispute can be referred to Pierre Bourdieu's well-known *théorie des champs*, it seems that there is something deeper here concerning epistemology. In spite of every appeal to an interpretation which goes beyond the word, to insist in textuality – as legal humanists did[7] – is to appeal to a ›literal‹, ascertained, closed, deductivistic conception of law. On the contrary, oral treatment of law – even of written law – opens the way to dissension, dispute, dialogue, multiplication of opinions, fuzzy (or even almost gnostic) understanding of law.

2. Printed books and personal interpretation

Although some development of these ideas could be made here, I believe that this topic is an already well-cultivated field, even if further elaboration could still be useful.[8] Instead, I would like to briefly stress this reification of written words/phrases/books by lawyers, which could have been the object of an unwritten paragraph by Roger Chartier on the material uses of printing.[9]

In fact, the traditional legal texts (*Corpora iuris*) were not only (instrumental) repositories of written reason (*ratio scripta*), but were almost sacred objects, whose physical or intellectual features were to be worshipped.[10] Thus, the most famous hand-written copies of Roman law were made the object of reverential treatment, like holy relics. Also, their physical features, like page set-up or the colour of the binding, had their own rules. Writing on books, the Portuguese jurist António de Sousa Macedo gives a set of rules concerning the colours of the binding of Justinian's books. The

7 The *Estatutos* (reformation charter) of Coimbra University, reformed under humanist influence in the 16th century, insisted that the aim of legal education was to create ›bons textuais‹ (good readers of legal texts), Silva, Humanismo e direito em Portugal no século XVI); on the theme of legal education and text interpretation, see MacLean, Interpretation and meaning in the Renaissance.

8 I am omitting here, as superfluous to the theme, any reference to the European legal oral tradition.

9 Chartier, Les usages de l'imprimé (XVe–XIXe siècle).

10 On the sacrality of books and its consequences in their daily handling, Wilke, Les degrés de la sainteté des livres, Zerdoun, La sainteté étendue aux matériaux, Sirat, Le livre dans la vie quotidienne, Fabre, Le livre et sa magie.

Digestum vetus' binding should be white, because of the purity and straightforwardness of old law. The *Infortiatus*' had to be black, due to the sadness of the matters handled herein (inheritance, patrimony of dead people). The *Digestum Novus*, dealing with crimes, should be bound in red. The *Codex*, as a text newer than the previous, should have a green binding, while the *Volumen parvum*, as a dual nature compound, should be bound in red and green. In every book, an image of crucified Christ should be kept, according to St. Bonaventura teachings.[11]

Meaningful, too, in its own right was the system and number of divisions (e. g. in books; three, according to the model of Gaius' *Institutiones*; or five, according to the model of the *Decretales*, where the fifth stood always as the *liber terribilis*, concerned as it was with criminal matters; or seven, according to a pervasive Hispanic model: *Siete Partidas*, *Siete tiempos del juizio*).[12]

Below, I will insist on this idea of reification, although expanding its range in a somewhat stronger sense – reification meaning the idea that these things we call books, along with their physical properties, have effects on thought.[13] However, reification can also lead to some loss concerning the multidimensionality of meaning. Once reified as a physical object, meaning becomes »consolidated« in a definite wording. The more closed and fixed it becomes, the more this material sign ceases to support a personified (or personally validated) understanding, which could be changed by the copyist or even by the user, according to their own insights; on the other hand, the reified word (i. e. the book) turns into a kind of cloned, interchangeable, anonymous, piece of meaning. Therefore, the incorporation in a book of any idiosyncratic interpretation or imagination is out of the question or totally irrelevant for a larger audience.[14]

It is in this way that printing turns out to be a new form of reification of meaning, converting the book into a container of a standardized and objectivized sense: no more a fairy, magic, personalised object, an extension of the self, but an interchangeable good, a book *sans qualités*.[15]

3. Printed books and the promotion of authoritative texts

This new wave of reification opened by the printing of legal books had, however, further consequences. With the invention of

11 Macedo, Perfectus doctor in quacumque scientia maxime iurisprudentia, 33.
12 Carruthers, The Book of Memory, 221–257.
13 McKenzie, Bibliography and the sociology of texts 1999; McKenzie et al., Making meaning.
14 For this kind of tension between literal meaning and open interpretation in the Jewish literature, see Frank / Leaman, Medieval Jewish philosophy.
15 Martin, Histoire et pouvoirs de l'écrit, 220.

printing, texts acquired a brand new reliability. From then on, they could not be silently modified by a copyist or an annotator.[16] Authority – namely princely authority – could rely on them as an everlasting expression of its will. In this sense, printing statutes goes along with the frequent prohibition of juridical interpretation in the early modern age. On the other hand, this new authoritative way of diffusing writings instigated a new desire for control on the part of the authorities, as the pervasive printed book could be far more dangerous than the traditional *libellum famosum*. Therefore, the institution of secular censorship can be simultaneously explained by a political conjuncture – normally related to the so-called rise of the modern state – as well as by a change in the disciplinary efficiency of books.[17]

The above remarks on the impact of printing on the movement towards a more fixed and unidimensional knowledge coincide with Elizabeth Eisenstein's well-known thesis about the fostering of a more uniform and homogenous knowledge in the early modern period.[18] This would explain not only the spread of popular culture or a trend towards the homogenization of political bonds, but also a new impulse by the authorities to control this novel instrument of shaping mentalities (›the displacement of pulpit by press‹, as it was called). Eisenstein's views were the object of a quite harsh debate,[19] whose *pièce de résistance* was the space left by printing to the manuscript tradition, where innovation and individuality were still possible. Therefore, a great deal of what was said above, on the new reliability of texts, seems to depend upon another evaluation: that of the balance between the new printed corpus and the surviving manuscript tradition of the same (or concurrent) texts. The permanence of an important production and market of manuscripts in the age of printing is today a well-documented fact, also in the legal field.[20] Although I have a fairly reliable record of the repository of legal manuscripts existing in Portuguese libraries, I am not capable of arriving at an appropriate balance between printed and manuscript legal texts, a balance which should evaluate several items: from the identity of texts (copies versus unprinted originals) to the distinction by literary genres. In these circumstances, the answer to the crucial question about the alternative character of the manuscript legal tradition cannot be definitively answered.

16 According to information given to me by Laurent Mayali, it is not usual to find hand-written annotations in legal *incunabula*.

17 Mayali, For a political economy of annotation, 185 ss.

18 Eisenstein, Printing Press as an Agent of Change.

19 Johns, The nature of the Book.

20 In the framework of a research project on (doctrinal, i. e. not mere pieces of a lawsuit) legal texts written by Portuguese authors between the 16th and 18th century, the following figures were found: manuscripts, 6114 (72%); printed texts, 1823 (21%); unknown, 577 (7%); Total, 8514. Only further progresses in the analysis of data can enlighten the type of relationship existing between the two textual corpora. On manuscript survival, see Love, Scribal publication in seventeenth-century England and Bouza, Para que imprimir?

Although the manuscript copying of printed books testifies to a reading practice that was ›inherently active, discriminating and selective‹,[21] at the same time it cannot but recognise that the reader worked within a mental framework in which *transcription* was an essential part of reading.[22]

4. On form and meaning

In this paper, however, my topic will be concerned with more than this core role of the written word in the learned legal culture of the West or even with the way this feature framed the content of law[23] – rigidity, unidimensionality, self-referentiality, closeness to life (law in the books *versus* law in action) and sense of unity of European legal and political patterns. It will also consider a more limited aspect of the relations between law and communicational support, which was, nevertheless, also essential to the popularisation of that legal culture amongst several layers of the European population.

Taking Ong's classical work on the impact of printing in the evolution of western logic[24] as my starting point, I shall seek to address the question concerning the relation between legal printing and legal learned knowledge. In the case of logic, typography opened the path to a graphically richer layout, which would lessen the efforts to render explicit, by means of diagrams and schemes, the structure of the discourse. In other words, printing became a more economical means to build a pedagogical and efficient discourse on logic. However, in the case of law it demanded a huge effort – both in technical and economical terms – to maintain the traditional layout of learned legal books, which soon turned out to be unbearable. In legal bibliography, efficiency forced a drastic change of page layout, which triggered the appearance of new literary genres.

The use of a large display of typographical and retrieval devices – which only typography could provide at a relatively low cost – allowed the introduction of some (provisional) order and efficiency in a literary corpus which, furthermore, grew enormously from the 15th to the 17th centuries. However, the last step in the inner organisation of legal knowledge came only with the development of a new concept of method (*methodus*), more attached to the idea of internal coherence than to those of efficiency and practical utility.[25]

21 Havens, Commonplace Books.

22 Havens, Commonplace Books, 8–9.

23 On the way how canonical writings (books) configure a specific relation with truth, dividing neatly those that are in and those that are out, cf. Goody, La logique de l'écriture, where the author stresses the rigidity of a written message compared with the ductility of oral transmission. [In this book, Goody retakes the theme of his first book, Goody, Domestication of the Savage Mind, on writing and orality, developing here one specific topic: that of the impact of writing upon political systems. Perhaps, the main interest of the effort is to render problematic prior views on a dependence of politics from socio-economic structures. This merit apart, the book handles legal historiography (mostly western) in a quite perfunctory way.]

24 Ong, Ramus' Method and the Decay of Dialogue. The basic idea of this classical work on the interaction between (ideological) content and (communicative) form, is the way printing improved the graphical illustration of concepts (namely by means of diagrams and conceptual trees) enabling a new and more efficient way of dealing with logical entities, and thus fostering dramatic developments in logic.

25 Ong, Ramus' Method and the Decay of Dialogue, 225 ss.; MacLean, Interpretation and meaning in the Renaissance, 130 ss.; Mazzacane, Umanesimo e sistematiche giuridiche in Germania alla fine del Cinquecento, 9; Herberger, Dogmatik; Cappellini, Systema iuris, Vol. 1.

My idea about relating content to form arose from a trivial observation: the amazing simultaneity between major changes in the way law is thought about and the evolution in the way legal books – as material devices – are organised (divided, ordered, laid out).

5. The formal simplification

In fact, an *incunabulum* – our starting point – has formally (materially) very little to do with, let us say, a late 18th century *compendium* – our point of arrival.

A table of comparison will help:

The first has often a complicated layout, forming a sort of mosaic of text boxes, around a core text.[26]	The second has a simple and straightforward page display, the only concession being the footnotes, clearly marked as secondary[27] (as an example).[28]
The first uses normally the *folio* size, to cope with the complexity of the layout design.	while the latter is normally a *quarto* (or even an *octavo*) volume.
Incunabula are bound to the inner structure of the canonical source (*ordo legalis*) – which appears at the centre of the page.	*Compendia* are organised ›rationally‹, in a way that allows them to exhibit *systematic* indexes instead of indexes of all meaningful words appearing in the text (*totius vocum quae reperiuntur*).
While for the yet heavily symbolically charged incunabula a canon of colours was considered by many as mandatory (green, for canon law, red for civil law, white for theology).[29]	in the new books, having lost their sacrality (by trivialisation), the colour of their binding – as well as other formal features, like an imposing format – became arbitrary.

Passing from material to sociological aspects (from syntax to pragmatics), changes brought by this bibliographical innovation were also important.

26 I am here basically referring to *incunabula* editions of traditional texts of law, from the *Corpora iuris* to the glossed editions of the Castilian *Siete Partidas* (Gregório Lopez' and Arias Montano's). Other legal *incunabula* (namely one author's editions or editions of statute texts) have different formats. This kind of display being a heritage of manuscripts' layout.

27 Freire, Institutiones iuris civilis (criminalis) lusitani.

28 On footnotes, s. Grafton, The Footnote.

29 Macedo, Perfectus doctor in quacumque scientia maxime iurisprudentia.

Readability was improved; books became usable also by inexpert or untrained people. Along with the simplification of their contents, old-fashioned typographical signals (like composed letters or hermetic abbreviations) were dropped. Even if the original addressees of the compendia were law students, historical evidence proves that they were also used by professionals, by other intellectuals or by common people desiring to get acquainted with the law (in more practical matters, such as feudal law, customary law, or even the most practical ordinary of ecclesiastical law).

By losing their imposing format, books became transportable and less expensive. Readability plus transportability and reasonable prices marked, surely, a decisive step in legal book democratisation. Another step was the use of the vernacular languages; although, here, the story could not be told in such a simple and straightforward way, depending also on legal literary genres, regions, languages.[30]

Above all, the *compendium* – as the name already suggests – offered (as we will see further) system, method, order: that is a script in which textual causality is clear, in which the way all the things (ideas, concepts) are linked appeared from the beginning, often in the form of one *tabula* (content table, *table des matières*) or even by means of a graphical representation. The *compendium* could therefore also stand for a practical and useful book – a »*methodical« book* – this being the aim at which the industry of the authors should henceforth be devoted.

6. The substantial *methodical* shift

However, at the same time, new developments were occurring at other levels of European legal culture, which changed intellectual schemes about law as drastically as typography changed the structure of legal books. The trend is quite well-known under such labels as rationalism or, by contrast, legalism, both pointing to two different techniques of simplification of legal discourse: the former, by intellectual means, reducing dialogue to reason, dispute to system; the latter, by political means, replacing doctrinal law by ›legal law‹ (or statute law).[31]

My point is to assess if both trends – material and intellectual – are related and, if so, in what sense. In other words, what I would like to assess is the extent to which what we tend to attribute to a

30 Statistical data for the 15th and 16th centuries, in Neddermeyer, Von der Handschrift zum gedruckten Buch, I 119 ss.; also, Richardson, Printed culture in Renaissance Italy. Basis for a new assessment, Osler, A bibliography of European legal literature to 1800.

31 Hespanha, Introduzione alla storia del diritto europeo, 163.

merely philosophical factor (rationalism) could also be the result of changes in the way of presenting legal texts – through a new technical dispositive – to a continuously broadening audience, all over Western Europe.[32]

On one hand the subject is broad, with a wide range of theoretical implications, going from cognitive sciences to the sociology of texts, of reading and of literature;[33] it supposes technical knowledge from several disciplines and it needs empirical evidence which is scarcely available, namely at statistical level.[34] On the other hand, I would like to avoid the ›genealogical question‹ of the origins of the page layout and editing/publishing techniques of early printed books. This would lead me into a fascinating field, already well cultivated, but totally outside my expertise – that of hand-written legal books.[35]

In a friendly comment on my original, Chartier rightly stressed the fact that my point has important consequences on a decisive theoretical question. As he put it (in the footsteps of Foucault)[36] – the question would run: ›What is a legal author?‹ The one who writes? The one who decides about the destiny of the manuscript (the printing owner or entrepreneur)? The compositor who chooses the template? This is, naturally, a wide-ranging question.

7. Page layout and page size: The ›agora template‹

Apart from practical reasons, I believe that this ›suspension of genealogy‹ can be substantially grounded. In fact, one can hardly explain the material features of early modern legal printing only by the existence of a traditional format or page layout, also because the maintenance of this template from the manuscript period was not easy for the new typography, working with moveable characters. It almost transformed a written page into a picture, in which every piece of text should have a unique place, denoting links with other texts; the dealing of the whole graphical structure would be perhaps less fitting to typographical techniques than to xylographic ones. Henceforth, the option for the traditional layout – quite provisional and located in only specific literary genres – had to be related to substantial issue concerning the ›very content of the book‹.

The ›very content of the book‹ was, in this case, the very structure of legal discourse. In fact, what forced this messy arrange-

32 Legal audience can be very indirectly measured by the numbers of legal edition. Some figures, for the Italian world, in Santoro, Storia del libro italiano, 65 ss., 167: in Bologna, legal *incunabula* were more than a fourth of the total, while in Naples, they rose to 17 per cent.

33 On the distinction of several basic theoretical streams (material bibliography, reception theory, Foucault's archeology of the author) in the most recent history of book, Chartier, Culture écrite et société, 45 ss. For an overview of methodological aspects of a sociology of legal literature, Ranieri, Juristische Literatur aus dem Ancien Régime und historische Literatursoziologie.

34 Neddermeyer, Von der Handschrift zum gedruckten Buch, I 121.

35 Colli, Juristische Buchproduktion im Mittelalter, cf. especially, Ascheri's, Dolezalek's, Soetermeer's texts; and, on data about early printed books' markets, Neddermeyer's work.

36 Foucault, Les mots et les choses; Foucault, Qu'est-ce qu'un auteur?

ment of texts, revolving, by layers, around a central one, was the fact that law was a continuous reference to authoritative texts, organised into multi-levelled hierarchised comments. In a page, this textual relation was rendered by an ›agora‹ model, where the eminent texts – those which were being lectured upon – occupied the central place, while the texts placed around it, often in more than one row, annotated the ›canon‹, or argued amidst them about these annotations.

In fact, this is not the only model for rendering graphically (spatially) the concept of hierarchy. A different one can be found, also in the content of legal books, in the common engraving depicting the *ordo consanguinitatis* or *affinitatis*.[37] There, the *caput* (*stirpis*) occupied the upper position, the successive orders of descendant coming in also successive lower places. In other engravings, namely when the family is represented as a tree,[38] the position is inverted, the stem of the tree then supporting the different successive branches.[39] However, the ›agora‹ layout was certainly that most frequently adopted in the manuscript era, as it was able to encompass the growth of knowledge. The four empty margins were the natural place to record *adnotaniones*, marginalia, *brocarda*,[40] which, being extensive, could accumulate at the bottom, inflating the lower margin.

The *agora* layout was, anyway, difficult to compose.[41] However, it is a layout which suggests, in the blink of an eye, the nature of the discourse carried on in the book: source subordinated and conflicting (even if somewhat ordered) comments on an authoritative source text; which, nevertheless, should not be considered without such an annotative apparatus.[42] The authoritative text was at the centre, like the Jerusalem in medieval maps, or churches and palaces in contemporary depictions of the cities. The attention, not only of the reader, but also imaginary glances of the *glosae* – materialised through references printed in a smaller font – converged immediately upon it. Surrounding it, crowded into one or more rows of texts, declaiming their own interpretation, either of the core text or of one of the other textual interveners. To open a page meant opening a window on a lively debate, where even the core text was summoned or challenged; in a way that it could not be put outside of the textual ambience. Henceforth, the more economical display of footnotes hanging from a text would degrade the commentaries, putting too much stress on the closeness

37 On the theme, fundamental (namely, on the theoretical environment of the scheme and its textual tradition), Errera, Arbor actionum, 1–72; see also Schadt, Die Darstellungen der Arbores Consanguinitatis und der Arbores Affinitatis. On family trees cf. Klapisch-Zuber, L'ombre des ancêtres and Klapisch-Zuber, L'arbre des familles.

38 The source could be the Jesse tree, representing Jesus' genealogy; cf. Errera, Arbor actionum, 55 ss.

39 The dramaturgy or ceremonial furnishes also examples of how to render hierarchy through spatial organisation. The *agora* is one of them, although the central place (the assembly leader's pulpit) was not necessarily at the centre; the same in the parliaments, where the King occupied one top of the hall, attendants sitting in opposite rows, to his right or to his left. In most cases, attendants' sittings bordered the walls, a central space being left empty. In the mass, people sat in rows turned to the place of authority, although some churches disposed of a structure of radiant chapels, from where the divine office could be followed. University classrooms and courts tend to adopt a Mass-type display. From the body imagery comes the topic of the heart enshrined in (and defended by) the lungs and the ribs, occupying therefore a central position, like in the *agora* model.

40 The word means also a valuable embroidering, enriching an also valuable preexisting tissue (»Étoffe de soie brochée d'or ou d'argent. Brocart d'or. Brocart d'argent. Habit de brocart. Jupe de brocart. Du brocart de Venise, de Lyon, de Gênes«, Dictionnaire de L'Académie française, Sixième édition, 1835). In law, however, the most common meaning for the word was ›rule‹, ›practical hint‹ (see Kuttner, Réflexions sur les Brocards des Glossateurs; Cortese, Il rinascimento giuridico medievale, 66 ss.; Schwaibold, Brocardica.

41 Although the traditional template had to drop some manuscripts refinements, like interlinear *glosae*. According to Laufer, Les espaces du livre, 134, the *agora* template was disappearing after the mid-15th century, its last bulwark being the commented editions of the Bible and the Justinian's Code. Cf. however Nicholas of Lyra, Biblia sacra cvm glossis interlineari & ordinaria, where interlinear *glossae* are still kept.

42 Mayali, For a political economy of annotation, 186.

of the main text and not enough emphasis on the symbiotic relation between the whole.

It is worth quoting the fine excerpt of Martin on this transition from handwritten templates to typographical ones:

»Certes, les premiers imprimeurs s'efforcèrent de reproduire très exactement les manuscrits qu'ils avaient sous les yeux. Ils allèrent jusqu'à reproduire, semble-t-il, certains de leurs modèles, ligne à ligne … De même, enfin, les textes glosés, qui témoignent parfois, jusqu'en plein XVIe siècle, de la virtuosité et de la patience des compositeurs de ce temps, recopient avec une fidélité inébranlable leurs modèles originaux à l'intention d'une clientèle de juristes conservateurs. Mais, tout cela coûtait du temps, donc de l'argent. Tant qu'il fallut lutter contre la concurrence des manuscrits, on continua à traiter les nouveaux livres à la manière de fac-similés des anciens, et à en compléter le texte d'initiales et de pieds-de-mouche peints à la main. Mais, bientôt, tout changea. On abandonna, sauf dans les livres d'Eglise, les impressions bicolores qui exigeaient de faire passer deux fois les mêmes pages sous la presse, en appliquant des caches différents sur la forme. On supprima aussi, peu à peu, la décoration manuscrite et on remplaça les initiales rubriquées ou peintes, par des lettres gravées sur bois … On tendit, en même temps, à réduire les formats, à serrer les lignes et à remplir de plus en plus les pages pour abaisser les coûts. Peu à peu, les caractères typographiques, ces petits parallélépipèdes de plomb qu'il fallait aligner au long des lignes comme des soldats à la parade, imposèrent leur logique … De tout cela, devait naître, à l'issue d'une gestation pluriséculaire, la mise en page moderne.«[43]

In the next paragraph Martin assesses what was gained and what was lost with this process of levelling the meaning:

»[…] la typographie favorisa le divorce de l'image et du texte, du présent et du passé, et contribua à faire, au fil des générations, des textes les plus illustres ces sortes de monstres sacrés, hérauts codifies d'un savoir archéologisé, écrits en des langues mortes, qui ne répondent trop souvent que par un froid silence aux interrogations et aux réactions qu'ils suscitent, et ne peuvent plus être abordés, selon l'esprit nouveau, qu'avec l'arsenal d'un savoir erudite.«[44]

Summing up: although a tradition existed of an agora page layout, whose preservation could be explained by practical requirements, its short continuance after the introduction of moveable-type printing can only be explained by reasons which are not merely practical – that is by the evocative power of such graphical disposition. When (or, in the particular cases, where) this evocative power faded, new page templates could prevail. This is what happened after the late 15th century, and for reasons that combined the loss of sacrality of the founding texts, the change in the relative strength of the relation between them and annotative

43 Martin, Livre, pouvoir, société à Paris au 17e et 18e siècle, 221–222.

44 Martin, Livre, pouvoir, société à Paris au 17e et 18e siècle, 222.

jurisprudence, but also a cost analysis done by producers of books. Actually, the economical challenge of producing printed books was far bigger than that of producing a single manuscript, often object to a specific order. In a world of harsh competition amidst publishers[45] – as it was in cities like Venice, Rome, Naples or Lyon – costs did count. However, as we shall argue, this change was not without repercussions for the way learned law was to be conceived.

8. Finding a method to order parent-less texts: the ›repertorium template‹

Let us suppose that the layout of a page according to the above described traditional template became too expensive. Let us assume, furthermore, that the core texts (i. e. *Corpora iuris civilis* and *canonici*, *Glosa ordinaria*) became trivial, having been the object of many editions. Suppose, finally, that the whole of annotative jurisprudence formed a huge volume of textual layers, which could not be accommodated in the *agora* template, even in a book with a large format. All these facts are quite undisputable by the mid-16th century. The last great edition of the Corpus Iuris Civilis with the *Glosa ordinaria* dates from the mid-16th century.[46]

A different risk would however become serious: that of an intolerable division and multiplication of legal literature. And actually legal literature was tending to become a list of disparate small notes (or *loci*), going from a simple phrase (*brocardum*, *regula*) to a more elaborate discussion (*tractatus*, *tractatellus*).

One way of framing this inorganic universe of texts would be an improved development of something which already appeared in prior books: an *Index*, *Promptuarium* or *Vocabularium* (only later, *Dictionarium*). The title could be this or another, like *Adnotationes*, *Observationes*, or even *Quaestiones* or *Tractatus*, although these later should refer to something else, discoursively more elaborated.[47]

In a word, what was going on was the dissociation – also editorial – between primary authoritative sources and annotative jurisprudence, the second one gaining an autonomy it had not – not even materially – while linked to either the Roman or Canon legal sources or to the first layer of annotative texts, like the *Glosa ordinaria*. Unless some authorial or thematic unity were to super-

45 Whose rights were only exceptionally granted by royal privileges (which, on the other side, could not be enforced abroad). See on the evolution of printing privileges, Chartier, Figures de l'auteur, 51 ss.

46 Martin, Histoires et pouvoirs de l'écrit, 296; more detailed, Reulos, Comment transcrire et interpréter les références juridiques.

47 *Quaestiones* should primarily deal with the solution of questions; however, it can occur that a proposed question does not arise from a life issue, but rather from the antinomies or perplexities of a text. The *Tractatus* designation promises an articulated exploration of a theme, but, in editorial terms, the term covered a larger array of literary genres, such as a collection of questions/writings on the same question. On legal literary genres, cf. Cortese, Il rinascimento giuridico medievale; MacLean, Interpretation and the meaning in Renaissance. On *tractatus*, a fundamental literary genre for the reelaboration of jurisprudence in the late 16th century, see Colli, Per una bibliografia dei trattati giuridici pubblicati nel XVI secolo.

sede the textual fragmentation, the very concept of a book, as we understand it today – that is a full, finished and self-contained reasoned text – would be challenged by the model of a mere collection of texts, in the form of a series of volumes (not of ›books‹), where a substantial unity would be replaced by solely editorial considerations.[48]

In order to overcome the complete atomisation of legal discourse, new books had to implement new features, which would enable them to be usable, useful, efficient, practical; specifically in a field of knowledge that – like medicine[49] – was problem solving oriented.[50, 51] Amidst these features, a central one was to replace the order of the founding text (now hidden)[52] – the so-called *ordo legalis* – by an autonomous order of the annotative texts. As these were no more ›father-dependant‹, they could be ordered simply by their own content, their themes.

This led to the decisive importance of indices. Not only of *tabulae materiae*, but mainly of indices of words, authorities, laws or legal *loca* occurring throughout the text (*verborum qui reperiantur*, *auctoritates*, *loca legalia*). Eventually, these indices – which sometimes were the work of someone other than the author, evolved to independent books, whose consultation could *vicariate* the reading of the original. The result is the kind of *Promptuaria iuris*, *Repertoria iuris* or *Vocabularia iuris*, so common in the 16th to 17th centuries. In the 16th century, *Promptuaria* to a single famous jurist dominate; their browsing was deemed to give, for the ordinary lawyer, information enough to use in court. Afterwards, all these types of dictionaries were used to give an external order to entire branches of law, or even to the whole *corpus iuris* of a country or region.[53]

9. The intellectual roots of the ›compendium template‹

Thematic organisation could not be enough. A more ›reasoned‹ connection between texts would certainly be more productive. Actually, what was at stake was the central question of method, crucial to Humanist methodology throughout the 16th century: how to organise a discourse in order for something to be efficiently explained? Translated into printing terms, the issue was: how to organise an efficient book on law? Now the efficiency of the ›agora model‹, with its impressive display of a context of textual discus-

48 Colli, Juristische Buchproduktion im Mittelalter, 29.

49 Herberger, Dogmatik.

50 On this point – with a mistaken idea about the uselessness of artificially ordering the discourse in law –, Ong, Ramus' Method and the Decay of Dialogue, 226–227: »To this rationalized technique of the Greeks [medicine], the Romans added another, that of law […] But law did not generate an interest in method in the same way medicine did. Law is something of and in the mind. In medicine, the problem of method is concerned with the rational approach to an external world about which certain facts are known and much is unknown. Law has no comparable problem of method. Its terrain is already rationalized: law is a rational arrangement«, 227.

51 The efforts made to turn a text in a useful, practical one are described in the very title of some books: Decretum Gratiani, cum glossis d[omi]ni Joha[n]nis Theutonici … [et] annotationibus Bartholomei Brixiensis, diuisionibus Archidiaconi, casibus a Bene. co[m]positis per Bar. Brixi. correctis [et] *pro clariore intellectu plurib[us] in locis extensis, concordia ad Bibliam, tabula marginalium glossularum, omnium canonum [et] conciliorum, Margarita Decreti, additione in margine litteraru[m] quo minusculi characteres lineis intercepti citius legenti apparea[n]t*, Basel 1512.

52 The founding texts did not pose a problem of ordering; but they posed a serious problem of searching. To cope with it, the first medieval Romanists organized a system of indexing, sub-dividing and quoting the canonical texts, which refined the list of books and titles of the original Justinian's source; copyists techniques of (red) highlighting (*rubrica*) and decorating (illuminated [or, at least, much larger] capitals and other pictorial elements) did the rest. See, Gibbs, The development of the illustration of legal manuscripts, and L'Engle, Trends in Bolognese legal illustration.

53 Examples, from all over Europe: [Austria] Ritter von Hein, Promptuarium juris canonici, feudalis, civilis, et criminalis; [Castillian] Montalvo, Repertorium Montalui; [England – equity] Freeman, Repertorium juridicum; [Generally common law] Barbosa, Repertorium juris civilis et canonici; [German Empire – Hessen] Vigel, Repertorium iuris; [German Empire – Mecklenburg] Spalding, Repertorium iuris Mecklenburgici; [German Empire – Saxony] Lufften, Repertorium juris saxonici copiosissimum; [German Empire] Möller, Repertorium rerum verborum et notabilium; [Poland] Sczerbic, Promptuarium statutorum omnium et constitutionum Regni Poloniae; [Portugal] Pereira, Promptuarium juridicum; [United Provinces] Brederode, Repertorium sententiarum et regularum.

sion, is gone forever. Also the inexhaustible *promptuarium* was nearing its end.

One can say that the solution basically followed the trend in the discussion on method during the 16th century. As Ong explains:

»[T]he term *Methodus* is particularly associated with medicine. In ancient Greece, medicine had been the only activity set up as a rationalized technique, and its rationalization had been coincident with its emergence as a curricular subject. It is on the grounds of a practical activity forced into a frame and designed to be communicated, not simply intelligible, that we encounter the real beginnings of the notion ›method‹ in the modern sense … Since the medical tradition had a practical orientation, it tended to generate the notion of a routine of efficiency and to associate this notion with *methodus*. Such notions, however, were never clearly disengaged from others concerned with analytic logical procedure and with discourse, so that the medical tradition remained as much interested on the proper way to approach and to talk about a problem as was in the proper way to cure a patient. Medicine, such as it was, emerged as a rationalized technique not only by curing its patients but also, because of some ability to explain cures. When the patient did get well, it was up to the physician to prove to his students that his method of treatment, not merely nature, had turned the trick […]

Thus, long before the sixteenth century, university teachers had been concerned with something not unrelated to scientific method – the organization of the matter they were teaching … The final turn occurs two generations before Descartes, when the Tübinger Professor Jacob Schegk ›showed how the question of method was centered on the logical organization of science rather than on an order of procedure in external activity … [and] also showed this latter notion of method was intruding on the former one‹.«[54]

Ramus himself progressed – in the course of the successive editions of his work – from a merely rhetorical conception of order to a logical (or substantial) one. In other words, from a pedagogue he changed into a philosopher. In 1555 (*Dialectique*), he identified method with a simple order (*Méthode est la disposition par laquelle entre plusieurs choses la première de notice est disposée au premier lieu, la deuziesme au deuziesme, la troiziesme au troiziesme, et ainsi consequemment*).[55] Progressively, the logical basis of method are stressed. As Ong points out:

»By 1569, in the final edition of the Dialectic complete with commentary, Ramus' method has become entirely laid over with science and axiomatics theory: ›Method is disposition by which, out of many homogeneous enunciations, each known by means of a judgment proper to itself [i.e. the way an axiom is known, without dependence on syllogisms] or by the judgment of syllogism, that enunciation is placed first which is first in the absolute order of

54 Ong, Ramus' Method and Decay of Dialogue, 229.

55 Ong, Ramus' Method and Decay of Dialogue, 248.

knowledge, that next which is next, and so on: and thus there is an unbroken progression from universals to singulars. By this one and only way one proceeds from antecedents entirely and absolutely known to the declaration of unknown consequences …‹«[56]

The path to an axiomatic and deductivist concept of method, ruled by general and evident principles, is straightforward:

»The chief examples of method are in the arts. Here, although all the rules are general and universal, nevertheless there are grades among them, insofar as the more general a rule is, the more it precedes. Those things are most general in position and first in order which are first in luminosity and knowledge; the subalterns follow, because they are next clearest; and thus those things are put down first which are by nature better known (*natura notiora*), the less known are put below, and finally the most special are set up. Thus the most general definition will be first, distribution next, and, if this latter is manifold, division into integral parts comes first, then division into species. The parts and species are then treated respectively in this same order in which they are divided. If this means that a long explanation [only] intervenes, then when taking up the next part or species, the whole structure is to be knit back together by means of some transition …«[57]

In this late quotation, the model of what will turn out to be the compendium as a book template is fully developed: rational order, axiomatic structure, economy of long explanation (*methodus syntheticus*). This was the evolution in legal matters and, specifically, in legal printing. The first step was that of finding a book template which could assure efficiency, both in handling cases and in reasoning on them. The second step was that of finding typographical devices which could render explicit the inner logic of the whole.

This is, surely, only a very schematic and provisional description of almost 200 years of legal printing. Different regional legal cultures present different profiles of evolution. Also the domain of law and the nature of sources does matter.

10. Sylva librorum

If we read some of the common criticism on learned law and learned lawyers,[58] the principal themes are labyrinthic complexity, hermeticism, opacity of law to a *populariter intellegere*. Legal libraries are described as a *sylva*, where laymen could not enter, unless with the aid of a rapacious lawyer. On the other hand, lawyers were deemed to be incapable of providing reasons for their decisions.

56 Ong, Ramus' Method and Decay of Dialogue, 249.

57 Ong, Ramus' Method and Decay of Dialogue, 249.

58 There is an imposing bibliography on criticism about lawyers in 16th century – to use a contemporary source, see De Luca, Theatrum veritatis et justitiae, for a modern reference, see Rovito, Respublica dei togati.

Let us listen to the Portuguese lawyer and diplomat António de Sousa Macedo, who, in 1643, published a book on a trendy subject – the perfect doctor (of law).[59] Arriving at the topic *libri doctoris*, Macedo has to deal with the problem of legal books, as a crucial one, at least in practical terms. A lawyer – he writes – must have many books. If possible, he should own all the books, in order to choose the best. Amongst them, all the volumes of *tractati*, so that diligence can compensate for lack of intelligence.[60]

Unfortunately, it was difficult to abide by this ideal. Therefore jurists had to make choices. Macedo traces a guideline based on a poem of Alciato:

> In jure primus comparatus caeteris
> Partes habebit Bartolus.
> Decisiones ob frequenteis, actio
> Baldum forensis sustinet.
> Non negligenda maxime est tironibus
> Castrensis explicatio.
> Opinionum tutius Sepligadas
> Superabis Alexandro duce.
> Ordinis Jason, atque lucis nomine
> Videndus est properantibus.

Macedo adds some advice of his own: John of Imola would be often irrefutable; as counsellors: Petrus (1330–1416); Ancharanus (Loduvicus? 1409–1439); Romanus, Alexander of Imola (1424–1477); Phillipusus (1454–1535), Decius, and so forth, and, finally, Azo (?–1220) was still a canon for practical lawyers (*chi non a la Summa de Azo non entra en palazzo*), as well as Oldrado da Ponte (late 13th – early 14th century) (*Quien tiene por si Oldrado tiene el pleyto acabado*). Amidst the moderns, Jacobus (1532–1607); Menochius (Johannes Petrus, second half of the 16th century); Surdus (Josephus, died 1588); Mascardus, and the Cardinal Tuscum (Dominicus Tuscius/Tuscus/Tuschus, 1534–1620).[61]

Summing up, a jurist should have quite a lot of books, so that he who did not have the proper books could not acquire the legal privileges of the doctors.[62] In older golden times, lawyers only read the sources, but because in these days they were extremely erudite.[63] However, in Macedo's time – he muses in a both nostalgic and critical mood – books were so many and of so little value.[64]

Therefore, one should be cautious and wisely restrictive: the best practice would be to imitate Alciato, who, during seven long

59 Macedo, Perfectus doctor in quacumque scientia maxime iurisprudentia.

60 Macedo's concern about the integrity of the literary *corpus* was not only a practical question. Actually, the lack of information gave rise to also moral and religious issues, as it was a sin for a jurist to be ignorant or to diverge frivolously from the most common opinion.

61 He quotes Gribaldi, Methodus ac de ratione stvdendi in jvre libri III, cap. 13.

62 Macedo, Perfectus doctor, 57.

63 Macedo, Perfectus doctor, 59.

64 On the theme of abundance of books, Bouza, Para que imprimir?; Blair, Reading strategies for coping with overload information ca. 1550–1700, (this article was originally given as a paper to the Vancouver's Congress (2000) of the History of Science Society, within a section devoted to the theme »Coping with Information Overload in Early Modern Natural Philosophy«, where other relevant contributions were presented (cf. Yeo, A solution to the multitude of books).

years, did not read anything but the *Glosa* and *Bartolus*. In fact, ›to have too many books and to read many authors and all kind of volumes denotes a vague and unstable character; because there is nowhere for him who tries to be everywhere‹.[65]

The issue can be put in a more general perspective. During the 16th and 17th centuries, legal books had developed into a huge forest, impossible to master in one man's time.[66] However, ideally, a lawyer had to read every book, as jurisprudence was considered an argumentative knowledge, where certainty grew along with the collection and confrontation of opinions. As it is expressed by several contemporary lawyers, having lots of books is not enough; one has to read them all and, further, to ›ruminate‹ on them.[67] This ideal was, however, difficult to follow in reality. Legal art had therefore to put into action a wide set of intellectual and textual devices to overcome the disproportion between what should be read and what could actually be read in reality.

Macedo expresses the problem quite well, although leaning towards a traditionalist solution: limitation by selection of the corpus rather than by organising its content (method).

Other lawyers too felt the same sensation of being lost in the middle of a forest of books, legal *loca* and opinions. But they indicate another way out: method and order. By the end of the 16th century, Nikolaus Vigel (1529–1600) published a book whose title stressed both the idea of *methodus* and the global (*absolutissima*) and the marvellous order (*miro ordine*) he was able to give to such a huge subject like civil law.[68] Some years later, he published another *Methodus iuris controuersi, in sex libros distincta, nunc denuo ab autore recognita, & vigintiquatuor authorum accessione aucta, cum ratione iuris controuersi cum iudicio legendi, & in iudicando sequendi, operi praefixa: accessit rerum ac verborum praecipue memorabilium index*.[69] A whole program! New authors, controversial matters with the opposing reasons, practical goals, a dictionary of concepts to be memorised newly added.

A fast overview of the titles of contemporary legal books will confirm the idea that order and efficiency (along with completeness, integrity) became their most appreciated quality. Authors and editors – in the title or in the preface – seldom forget to stress the work put into collecting, digesting and indexing texts. The use of expressions like: *copiosissimum, utile, utilissimus, perutil, amplum ac utile, summa diligentia and fide recognitum, diligenter visa*

65 Macedo, Perfectus doctor in quamcumque scientia maxime iurisprudentia, 59.
66 Ornato, Pour une histoire du livre manuscrit du Moyen Âge, 305 ss.
67 Alessio, Conservazione e modelli di sapere nel Medioevo, 111 s.
68 Vigel, Methodus iuris civilis Nicolai Vigelii iurisconsultus.
69 Vigel, Methodus iuris controuersi.

curiose masticata salubriterq[ue] digesta …, studio and *industria [D. Simonis Vaz Barbosae …] digestum,* and *in pluribus copiosae additum, ex diversis optimorum authorum … et aliorum voluminibus excerptum ut legentibus dubietas aliqua non restiterit* becomes common in describing the aim and interest of the work. Titles are used as programs or, better, as advertising; henceforth, they convey the presumed expectations of readers.[70]

However, the collected textual elements, now deprived of an explicit reference to the underlying ›canonical‹ discussion, have to be explicit in their meaning. Not merely enigmatic hints, but passages of reasoned arguments, which could be confronted or implanted in a new text. This is why simple indices evolved into large detailed dictionaries and legal encyclopaedias, example of which are books like those of Gil de Castejón (1678), António Cardoso do Amaral and Ferraris (1770). Amaral's book, for example, was an enlargement of a previous *promptuarium*, that of Benedictus Pereira, a Portuguese dictionarist of the late 16th century (1535–1610). This encyclopaedic vertigo embraced also other kinds of works: collections of treaties of several authors,[71] the full edition of a certain author's works (*opera omnia*); or a learned potpourri of the literary essentials of a learned jurist (*bibliothecae iuridicae optimae*)[72] in every case, the edition being completed by exhaustive indices.

Cardoso do Amaral's title, *Liber utilissimus judicibus, et advocatis*, gives us an idea of the wide interest seen in this kind of legal encyclopedia. On the one hand, it facilitates (*in promptu* → *promptuarium*) searching for a topic. Along with this, it digests the mare magnum of opinions, retaining those most followed (*loca communia*, *communioria*) and condemning the rest to a painless oblivion.[73] Finally, it disseminates basic legal learned knowledge in peripheral regions, a fact of outstanding importance in the colonial world, where the legal library of a learned European lawyer could hardly be found.[74]

The renewal of the idea of a new kind of *Digestum* was also connected with the huge flourishing of legal literature. This new *Digestum* should also comprise the results of the legal praxis expressed in the decisions of courts (*Decisiones*, *Sententiae*, *Allegationes*). Using both a medical and legal metaphor, some jurists considered judicial praxis as *digestiva practica*, a key to an understanding of the legal sources (*legum intellectrix*), and therefore the

70 One early but loquacious example from the 15th century is Gambiglioni, Angelus super Instituta; similarly for particular law: Lufften, Repertorium juris saxonici copiosissimum.

71 Colli, Per una bibliografia dei trattati giuridici pubblicati nel XVI secolo. Indici dei Tractatvs vniversi ivris.

72 Either as a simple list of advised books or as a collection of dicta of learned jurists on theme; an example of the last case is Barbosa, Remissiones doctorum de officiis publicis, jurisdictione, & ordine judiciario.

73 The collection of *loca communia* was, actually, a general intellectual technique listed in every early modern treatise on rhetorics, cf. Goyet, Le sublime du ›lieu commun‹; Moss, Printed Commonplace-Books and the Structuring of Renaissance Thought (I owe these references to Roger Chartier); see also Sherman, Renaissance commonplace books from the British Library; Havens, Commonplace Books (catalogue of an exhibition inspired by Ann Moss' book).

74 Grandón, La cultura jurídica en el reino de Chile; Grandón, La cultura jurídica en la Nueva España; Aspell/Page, La biblioteca jesuítica de la Universidad Nacional de Córdoba; Planas, Historia de la literatura iurídica y escritura en la cultura iurídica de la España liberal.

very *digestum* for this new era. The *usus modernus pandectarum* and the Italian and Iberian *praxistica* adopted this point of view, producing compilations of decisions as a way of digesting the huge textual body of legal literature.

At this point, we return to legal printing and legally efficient books. Ordering books, if it is not according to the inner logic of the content, has to be based on external typographical features. In this sense, where the above techniques persist in legal printing, this is a major sign of the inability to find out a system for the law, even if the title contains such tantalising words as *systema*, *tractatus*, *syntagma* or the like. They can be methodical, in the poorest sense of the word, allowing the discovery of a solution or an argument. They can be efficient (*promptus*), in the sense of giving a fast answer to a topic. They can contain some *ad hoc* solutions to orient the user in the labyrinth of the law, providing him with mnemonics to find the path (*theatrum*). What they cannot do, for the moment, is to be ›harmonic‹, ›compendiary‹, ›rational‹.[75]

I will now list some of the most common features to make legal books efficient. One form of ordering was outlining core words or pieces of text by typographical devices, like colour, style or font). Others were: dividing texts;[76] creating *alineas*;[77] marking *rubricae*, with red ink or with special fonts or sizes (*Institutiones Iustiniani* 1664); outlining capital letters and functional ornaments; organising a system of cross-references; developing abbreviations; economising on superfluous legal verbiage; including (to a limited extent) images and tables.[78]

However, for most of the books the inner, substantive, rational, order remained substantially none, as in Luhmann's famous text.[79] Every piece of text appeared as an isolated and self-contained argument, kept out of the original context, although this context could be rebuilt by an accurate (albeit somewhat hermetic) system of references.

For a culture dominated by the art of dialogue – such as that described, *inter alia*, by Ong[80] and Hespanha[81] – this did not seem to offer a substantial difficulty. On the contrary, it gave the basis for the established topical legal reasoning. Under the form of several brief dictionaries, Agostinho Barbosa gave all the elements, formal and substantial, a jurist would need to solve a legal question according to common law (*ius commune*).[82]

75 I.e. methodic in the richer sense of the word, which is that used by Descartes in his Discours de la méthode, 1637.

76 Alessio, Conservazione e modelli di sapere nel Medioevo, 120.

77 The *alinea* (*ad lineam*) was defined as ›*la trouée qui permet à l'œil d'embrasser d'un seul regard la forme globale du contenu*‹, Lauer, Les espaces du livre, 135; therefore, it was a device of a visual rhetoric, which appeared precisely in legal texts, later in natural philosophy, and which is associated to the progress both of royal power and scientific thought, 137. On the evolution of the *mise en page* and on the appearance of the typographical marks which help to give an order to the text, synthesis, see Martin, Livre, pouvoir, société à Paris au 17e et 18e siècle, 295 ss.

78 On typographical techniques of highlighting, cf. Davis/Carter, Moxon, Mechanic exercises on the whole art of printing (1683–4). Alessio, Conservazione e modelli di sapere nel Medioevo, 120, distinguishes between a scholastic and an editorial division; we are dealing with the second one. On the role of theologians and lawyers in bringing forth indexation, cf. Rousses, La naissance de l'index, 77–86. It is worthy to stress – as Laufer, Les espaces du livre, 137, did – that the need of cross-references is the very mark of the splitting of an order of knowledge, as in structured programming the clause »go to« denotes a limitation of structuring. If the display of knowledge obeys to a plan, one does not need arrows indicating the place of further developments of a topic.

79 Luhmann, Kommunikation mit Zettelkästen.

80 Ong, Ramus' Method and the Decay of Dialogue; see also Alessio, Conservazione e modelli di sapere nel Medioevo, 113.

81 Hespanha, Introduzione alla storia del diritto europeo.

82 Barbosa, Variae tractationes iuris.

11. The ›theatrical template‹

Other kind of ordering was more sophisticated. Although giving up the *ordo legalis*, the ordering would not rely on a mere formal criteria, such as that of the alphabet, but would be based on material criteria. The guiding idea was that of a theatre, as a ›dispositive‹ (M. Foucault) where things were shown in an orderly fashion, according to a determined script. The idea of a theatre as amnemonic device was cloesely connected to Jesuitic techniques for building and strengthening memory, by way of imagining a building, where an entrance hall leads on to several corridors, each one having a number of rooms, which in turn were furnished by objects (ideas, concepts).[83] The *Theatrum* – whose most famous example was Gianbattista de Luca's *Theatrum veritatis et iustitia*[84] – already leaned towards some rational scheme. However, this scheme was not much more than a very superficial rational resource: the reference to an architecture oriented mnemonic. We must stress, in any case, that architecture (like music) evoked ordered arts, guided by a special kind of mathematical calculus (*mathesis*) which excluded the arbitrary.[85]

The next step was to evolve from this allegoric technique to a systemic one, which would suppose another kind of intellectuality regarding legal knowledge, but would also lead to a completely new kind of legal books (*compendia*).

Lawyers have, assuredly, methods of deciding and also methods for justifying decisions. According to the legal regions in 16th century Europe and according to the legal domains, these methods went from invoking authorities (*maxime*, *opinio communis*), to the use of court precedents or royal legislation. However, these methods suppose that *rationes decidendi* were handy and, more than this, at hand, easy to find and to employ. This explains the proud title of a book of Matteo Gribaldi [Mopha], *Methodus ac de ratione stvdendi in ivre libri tres: praeterea capita novorum iuris intellectuum nonnulla, atque eiusdem declarationum*[86] or the attention-grabbing title of Gregoire.[87] Later, Struve (Struvius)[88] – as we shall see – will combine *methodus* with visual devices, according to the model Ong refers to.[89]

83 Spence, The Memory Palace of Matteo Ricci.

84 De Luca, Theatrum veritatis & justitiae; see also Carmen, Theatrum immunitatis et libertatis ecclesiasticae; Reigers, Theatrum juridicum theoretico-practicum. The title was also applied in legal-medical matters, where the word could have sound more usual (cf. theatrum anatomicum): Erlsfeld, Theatrum medico-juridicum.

85 Blair, The Theater of Nature.

86 Gribaldi, Methodus ac de ratione stvdendi in ivre libri tres. Other *methodus*: Bronkhorst, Methodus feudorum; Tarino, Syntagmatis commvnivm opinionvm, sive receptarvm vtrivsqve ivris sententiarvm. Tomi quatuor: qvibvs vniversae prope modvm quaestiones ex selectioribus omnium in iure scribentium responsis, auctoritatibus, & consiliis, faciliori multo quam antea methodo discutiuntur, enucleantur, & singulae sub congruis suis locis, veluti materiarum sedibus, ac titutlis subijiciuntur; Schotanus, Processus judicialis, sive, Method. procedendi judicialiter, opusculum, omnibus, qui forensia negotia … volent, utilissimum exceptum ex ore; Oughton, Ordo judiciorum, sive, Methodus procedendi in negotiis et litibus in foro ecclesiastico-civili Britannico et Hibernico.

87 Gregoire, Syntagma ivris vniversi atque legvm pene omnivm gentivm.

88 Struve, Syntagma iurisprudentiae secundum ordinam Pandectarum concinnatum.

89 Ong, Ramus' Method and the Decay of Dialogue.

12. The trivialising of legal books

The fact that authoritative ›canonical‹ works were henceforth published as separate books, but also the multiplication of legal printed materials, trivialised legal books as objects and stressed their mere instrumental importance in the transmission of legal knowledge. The stress put on *methodus* further reinforced this idea. Eventually, the most important feature of legal books turned out to be efficiency, which eliminated the complexity of their prior use both as *documenta* and *monumenta*;[90] serving as information providers, but not as containers of deeper meanings or as meaningful objects in themselves.

Compactness, readability, user friendliness, order: these now become the qualities of a good legal book, qualities which are stressed in the very titles (*Liber utilissimus*, *liber in quo facile explanatur*, *manuale*,[91] *Institutiones*[92]). Monumentality, almost holiness, dignity (and the correlative material features: from the quality of the writing support, to the style and colour of the binding, the inner decoration, etc.) lost their functionality in this new wave of legal books. Functional, useful and economic – compact in text, austere in decoration and highlighting the text, provided with carefully organised indices, this is the new legal book.[93] As so often, functional and symbolic factors here establish a synergetic relationship. On the one hand, the loss of the sacral nature of the book promotes trivial editions. But casual presentation of the edition reinforces the loss of the symbolic value of the book, which became solely an object of reading, of getting information.

13. The books of the authorities: the ›imperial template‹

The attributes of power continued to characterise those legal books which the authorities wanted to promote as eminent sources of law.[94] They were, in this sense, books as objects – large and luxurious editions – aiming at something other than scholarly utility. They aimed to stress the authority of their content and to promote the power of its author. This is the case of editions of legal sources ordered by sovereigns – e. g. regiments, statutes, *artes notariales* and *formularia*, politically opportune legal commentaries,[95] often comprising two different editions (minor and major),

90 The opposition refers to the fact that documents contain information; monuments are meaningful in themselves.

91 I. e., which can be easily carried in the hands; which is at hand; handy. *Manuale* was a title common to guides of confessors (v. g. Nider, Manuale co[n]fessor[um].

92 The title stresses the pedagogical intentions of the text.

93 Alessio, Conservazione e modelli di sapere nel Medioevo, 105.

94 Martin, Livre, pouvoir, société à Paris au 17e et 18e siècle.

95 Cavagna, Libri in Lombardia e alla corte sforzesca tra quattro e cinquecento, 98.

directed to different purposes (practical use and propaganda). The first printed edition of the Portuguese *Ordenações manuelinas* was printed on parchment, at least partially.[96] The *editio principis* of the *Ordenações filipinas* (1604) of Philippe II for his new Portuguese kingdom, was an *in folio* edition, with a splendidly engraved frontispiece, portability being sacrificed to the appearance. Later, the magnificence of the Portuguese King João V produced a new royal re-print, in a huge and quite cumbersome edition in several extra large format volumes, printed on heavy paper and with typographical refinements.[97] A further characteristic of these princely legal books was the fact that they were often written in the vernacular language and ordered from a reliable publisher.

This last point shows that the princely edition had goals different from the academic edition. For princes, legibility is a major value. Books have – if not majestic – to be handy for ordinary people. They must be written in the vernacular language, they must have straightforward text structure and page layout, corresponding to a popular understanding of reading and writing. They must be direct in the formulation of the subject. In a word, they will tend to convey a uni-dimensional meaning, corresponding to the will of the prince.

Uni-dimensional meaning was something that did not characterise traditional argumentative legal knowledge. However, on the other hand, it was the distinctive feature of new forms of knowledge triggered by the renaissance revolution and, namely, by the new logic of Pierre de la Ramée, someone also deeply interested – as pedagogue – in the ways of promoting the social impact of knowledge.

Therefore, the princely edition was probably the first realisation in the field of law of this ideal of printing as a means of democratising knowledge, which will in the late 18th century characterise the book revolution.[98] Because – as historical sources relentlessly repeat – traditional legal books were rather a world of mystery and secrecy, preserved by a clique of experts keen on exclusive technical knowledge.

On the other hand, the princely edition recovered some of the magic characteristics of old books. Published by a prince, a book should display his power and magnificence. The book should be a reverenced object in itself, which could turn out to be a shortcoming from the perspective of its popularisation. For this reason, some

96 The whole edition was only recently discovered and republished in *facsimile* by Dias, Ordenações manuelinas.

97 The so-called *editio maior Vicentina*, 1747. See also the 16th century editions of the Castilian *Siete partidas*, the *Constitutio Criminalis Carolina*, or some editions of German *Stadtordnungen*. An exception is the Belgian *Edit perpetuel* (1611), the small format and bilingual edition of which is probably best explained by the desire of making it accessible to popular strata.

98 Chartier, Culture écrite et société: l'ordre des livres.

princely editions are twofold, having a major and minor edition, each one oriented to cope with each of the above desiderata.

14. Rationalism and legal book printing: the ›compendiary template‹

It was Chartier who told of a project for a royal library to the King of France, where all knowledge would be gathered in a collection of small *in octavo*. If we make a collection of 18th century legal books, the results would not be so different. Probably, the *in quarto* would be the most common format. But the all-embracing aim, the cultivation of a plain style and the choice of handy formats, so that texts could be owned, used and understood by common people (even by a king) are surely landmarks of this new world of legal books – the compendia.

The word *compendium* was an ancient title for legal works.[99] From its origin, the word stressed articulation, the quality of »hanging together« from a common ascendant (*com* + *pendere*). During the humanist methodological phase, the word (such as others like *ars*, *clavis*, *doctrina*, *methodus*) was associated, within a title, with the idea of ›method‹, i. e. ›a series of steps gone through to produce with certain efficacy a desired effect‹.[100] The effect being to educate efficient jurists, who could also render the law socially more efficient.

Writing near the eastern border of Christian Europe, the Hessian jurist Nikolaus Vigel (1529–1600) urged German princes to think about the reasons for Turkish resistance. For him, the reason was clearly the lack of justice in Christian principalities, this fact being the consequence of several deficiencies in the study and enforcement of law. Looking at the quotidian skirmishes and battles between Christian and Turks, Vigel compared them to the continuous disputes between lawyers and orators about the proficiency either of jurisprudence or of rhetoric for the establishment of good government.[101] These disputes arose because of the pretensions of rhetoric to convert jurisprudence to a matter of formal discussion. Legal education was infected with this vice: ›There is another vice in the institution of the scholar, where laws are taught without order. Wherefrom, in such a great confusion of laws, nobody can know which are the exceptions to which law, which are the replies or the answers to these replies‹. As the plague

99 Ravennatis, [Prima-]secunda [-tertia] pars Compendii Juris ca[n]onici; Gemmel, Compendium iuris feudalis; Rebuffi, Compendium alienationum rerum Ecclesiae.

100 Ong, Ramus' Method and the Decay of Dialogue.

101 ›Mihi quidem bella turcarum cum Christianis videri solent certamina esse Jurisprudentiae cum Eloquentia utra ex iis Rebuspublicis gubernandis magis sit idonea‹, Vigel, Praefatio, fol. 3.

progressed from schools to courts, the need arose of searching and rummaging incessantly through indexes and *repertoria* in order to find arguments for the causes which could prevail over those of the opponent. A legal education oriented towards a fair judgement was replaced by an apprenticeship of giving speeches and of disputing. As what is learned in schools is the basis for practice, justice became chaotic (therefore, non-existent): ›Everybody in your courts complain about the profusion of lawsuits; in all the Empires, royal councils are consulted about the way of preventing and removing it. However, councils are attended by those who are more learned in rhetoric than in jurisprudence, so that the councils cannot oppose the rhetorical trend‹. Since without daily judgements, there is no Republic which can survive, it became meaningless that there were judgements and constituted courts, or if the lawsuits took ten or twenty years. Because, in the end, all those mechanisms of justice provide no justice at all. The results for public peace were devastating:

»Lawsuits multiply in the Republic; the people hate courts, which should otherwise be the shelter of their fortunes. The evil people is supported in their malice, public discipline gets destroyed. Which would not be the case if in your schools the students were educated in jurisprudence more than in eloquence and in shallow discussion. However, the opposite is the reality. The students are trained to give speeches and in the delicacies of discussion, so that they tend to move sentiments through the discourse, to make everything problematic, to create knots which they themselves cannot untie … Jurisprudence consists more in judging than in arguing, being more divine to judge wisely than to find things in an easy and subtle way. Therefore you would have excellent ammunition against the Turkish power, if in your Schools of Law [*ad imitationem Turcarum*?], once given up the study of eloquence, distressed jurisprudence could be assisted. Actually, when the study of eloquence starts, what follows is the killing of prudence and justice, the dissolution of every discipline and the corruption of Republics; in fact, the better is the eloquence which springs from the knowledge of the very things than that which is got from the precepts of orators. If you, Princes and remaining Lords of the Empire, want to exclude from your republics the Mahometan Jurisprudence, you need to support Roman Jurisprudence, from which you can recognize [justify] your feuds.«

Therefore, a work on method, like that of Vigel, could be considered as the contribution of that *militia inermis* (as jurists liked to be portrayed) to the war effort of the Empire, as Vigel remembers in his closing phrase: ›I show you, Princes and other Lords of the Empire, the way and method of expelling the Muslim Jurisprudence from your republics, which is the recovering of the

Roman Jurisprudence. This can be highly useful as ammunition against the power of the Turks‹.

In Vigel's manifesto, one can surely uncover the reaction of Jurists against the eloquence centred humanist program.[102] However, what is interesting for our current purposes is the way he himself emphasises the need for an ordered discourse, where true rules of law can be distinguished from false ones; rules from exceptions; exceptions from *replicae*; and *replicae* from *treplicae*.

Which was, however, the practical way to restore Roman Jurisprudence? Not, surely, the return to the original Roman Law, but the adoption of something that, although described as new, was, in fact, as old as ancient Jurisprudence: to keep law guided and organised by firm principles and carefully verify the connection between legal propositions:

»One cannot expect a sure and finished jurisprudence, at least taken as such by all those jurists who dispute on law in a deeper and more subtle way … However, I think that there is an assured reason (*certam rationem*), which we can extract even from a controversial law …, through which those who want to use it, easily can get out of the labyrinth of disputations … Once fixed general rules, and then their exceptions, along with replies, answers to replies, etc., I submitted the whole to an order appropriated to the special subject I handle. This method of teaching law, although it seems new, was not unknown to the old jurists, being also accommodated to forensic disputations, since in acting in court, prosecuting or defending, one is used to replicate, treplicate and quadruplicate, the same being used in judging … By both reasons, this method (ratio, reason) of handling law can be of great relief, both for lawyers and judges.«

It is not surprising that the rigour and rationality of modern warfare now became an example of order for these other keepers of peace: the lawyers.

Many titles from the 16th to the 18th centuries convey this very idea of ›organized discourse‹ and, hence, of a practical book, suitable for the non-initiated, in line with the humanist new pedagogy.[103] The best jurists try the new method. Cujacius writes a *Paratitla in quinquaginta libri digestorum seu pandectarum. Item in novem libros Codicis Imperatoris Iustiniani*, in the form of a small libretto in octavo of c. 400 pages. Struve's *Syntagma*, quoted below, adopted the model, becoming the famous ›kleine Struve‹, central to the legal education of generations of German lawyers.

The underlying rationalist philosophy helps the project, as it made available internal methods for ordering the subjects. As

102 MacLean, Interpretation and meaning in the Renaissance.
103 Voet, Compendium iuris iuxta seriem Pandectarum.

Leibniz expresses it in a famous title (*Nova methodus docendae discendaeque iurisprudentiae*),[104] it is a new method that is being put forward; a new method belonging to the second generation of rationalism, already foreseen in the late 16th century: based on a rational skeleton, which could be easily presented with the powerful and economic means of typography and the improvements of engraving. Large dichotomous diagrams and engravings of trees – often distributed over several pages, as books should also be small – comprehending all the legal branches and their inter-connections, are the main contribution of typography to this new wave of efficient legal books.

The epigrammatic example could be Georg-Adam Struve's famous book *Syntagma jurisprudentiae secundum ordinam Pandectarum concinnatum, quo solida juris fundamenta traduntur, digestorum, & affines Codices, Novellarum, ac Juris Canonici Tituli methosi explicantur, controversiae nervosa resolvuntur […] Tabulis synopticis, indice ac Sectionem commode subdivisione instructior* (1672). The title provides us with several hints about Struve's program. On the one hand, he wants to digest the whole of Roman law into an abstract core of rules. Although he declares he would follow the order of the Digestum, the fact is that the decisive ordering device, which firmly (*nervose*) binds the matters are the synoptic tables which precede the text. Those magnificently detailed tables, which introduce every large chapter, are a logical scaffolding which guides the reader in finding and connecting the great variety of Roman law.

One other member of this German generation of lawyers, also involved in philosophical and mathematical questions, was Christian Wolff, whose works lean towards a mathematical description of law, also had an impact on the material organisation of the books.[105]

From now on, dictionaries, collections of opinions, extended and unordered comments seem old-fashioned. The underlying natural reason, even of local law (of realms or towns), has to be worked out and made visible, as Jean Domat explicitly did.[106] Even politics should be *methodice digesta*, as it appears in the title of Johannes Althusius.[107]

The syllabus of legal studies followed the trend. As all over continental European Academiae, the late 18th century reform of legal studies at the University of Coimbra (1772) describes the new

104 Leibniz, Nova methodus discendae docendaeque iurisprudentiae; Palaia, Per un lessico leibniziano. Cf. the similar title for a Leibniz work on mathematics: Nova methodus pro maximis et minimis, itemque tangentibus.

105 Wolff, Philosophia practica universalis; Wolff, De iurisprudentia civili in formam demonstrativam redigenda; Wolff; Jus gentium methodo scientifica pertractatum; Wolff, Institutiones juris naturae et gentium; Wolff, Oeconomica methodo scientifica pertractata; Wolff, Philosophia civilis sive politica methodo scientifica.

106 Domat, Les loix civiles dans leur ordre naturel.

107 Althusius, Politica methodice digesta.

mandatory method of organising handbooks as ›*synthetico ou compendiario*‹, by opposition to the older ›*methodo analitico*‹. With this replacement, the goal was to bring out a more connected (hence, practical) study of law.[108] Actually, if we look at the series of books then adopted, all of them have a common feature: they are compact, well organised, with a clear and simple layout, displaying telling titles like *Institutiones*, a title which stressed also the pedagogic aim of the work, authored by this new wave of rationalist jurists, who were, at the same time, devotees of method.

Even in a country where law is presented as casuistic and avoiding generalisation, like England, William Blackstone reduced his monumental *Commentaries to the laws of England* (1765–1769) to a tiny *Analysis of the laws of England* (Oxford, 1772), opened by a dichotomic graphical schema.

Some resistance occurs already in the 19th century. However, they are merely desperados' rearguard skirmishes, lost from the main trend of legal publishing, who insist on the traditional baroque forest of disparate and inorganic opinions. Manuel de Almeida e Sousa (Lobão), a country lawyer of central Portugal, went on publishing ›analytical books‹, serenely explaining that summarised books were only useful to the unlearned people, as learned jurists could not really profit from the vague and elemental information of the *compendia*. By contrast, books with a rich supply of casuistic information could replace rich libraries, which most jurists did not have (*Tractado histórico*, *encyclopedico*, *critico*, *pratico*, *sobre todos os direitos relativos a cazas*, *quanto às materias civis e criminais*, Lisboa, 1817, ›*Prefácio*‹). He was so sure of his position that he dared to publish ›annotations‹ to the elegant Compendium of the most famous Portuguese enlightened jurist, Pascoal de Melo Freire,[109] which he refurbished, by adding quotations from the traditional *praxistica*. And, it would seem, in some sense he was right, because his huge work became pervasive on the tables of lawyers and judges throughout the 19th century.

15. Conclusion

As an historian of law – and not of books – my main interest in writing this text was to go further in the criticism of the traditional conception jurists have that the developments in jurisprudence are the result of creative ideas, born from mere intellectual achieve-

108 Hespanha, Recomeçar a reforma pombalina.

109 Freire, Institutiones iuris civilis (criminalis) lusitani.

ments of a lineage of celebrated lawyers. Recent developments in the history of science, as a history of material artefacts, namely of these instruments of communication we call books, help me to illustrate my point that knowledge is also a result of a material social process of production, where the traditional personage we used to call »author« shares the creative process with the state of communicative technique, the interests of entrepreneurs, the constitution of the audience, the available intellectual devices, not to speak of factors more directly related to social interests and expectations about law. In such terms, the traditional author – if he still exists – appears in a marginalised position, sharing authorship with: technical processes, social arrangements, economic opportunities, intellectual styles or conditions, or the way readers receive the message and rebuild its meaning. By stressing the impact of form on content, I reinforce my thesis of the need to write legal history with less characters and more context.

The standpoint of the historians of books is different. For them, a great deal of my propositions is trivial. However, the legal domain – as a quite self-contained world of communication – could be a prolific field for further research and reflection.

Lawyers are a central group in early modern European society. Their profession is basically to read and to write. As Pierre Legendre put it, they are ›the children of the Text‹;[110] on the other hand, their activity is an industrial production of texts – from judicial pieces to dogmatic treatises.[111] In their communicative activity – besides the decisive world of orality (forensic and academic; later, also parliamentary) rhetoric – they share intensively the two universes of handwriting and of printing, both as writers and as readers. Around them and their communicative practice, a whole world of economic activities is set up: copyists, notaries and scribes, specialised publishers – with their graphic designers, typesetters and revisers – editors and booksellers.

This was not a harmonious world. Several tensions are perceptible. There are those who want to make law a handy and popular knowledge, printed in the vernacular language and accessible books; there are these who prefer the secrecy favoured by the exclusive use of Latin. Some blame the excess of books as a factor of disruption and of intellectual deception; others tend to consider that the more books a lawyer owns the better equipped he is. Collecting books is the passion of some jurists; others prefer to

110 Legendre, Les enfants du texte.
111 Legendre, L'empire de la vérité.

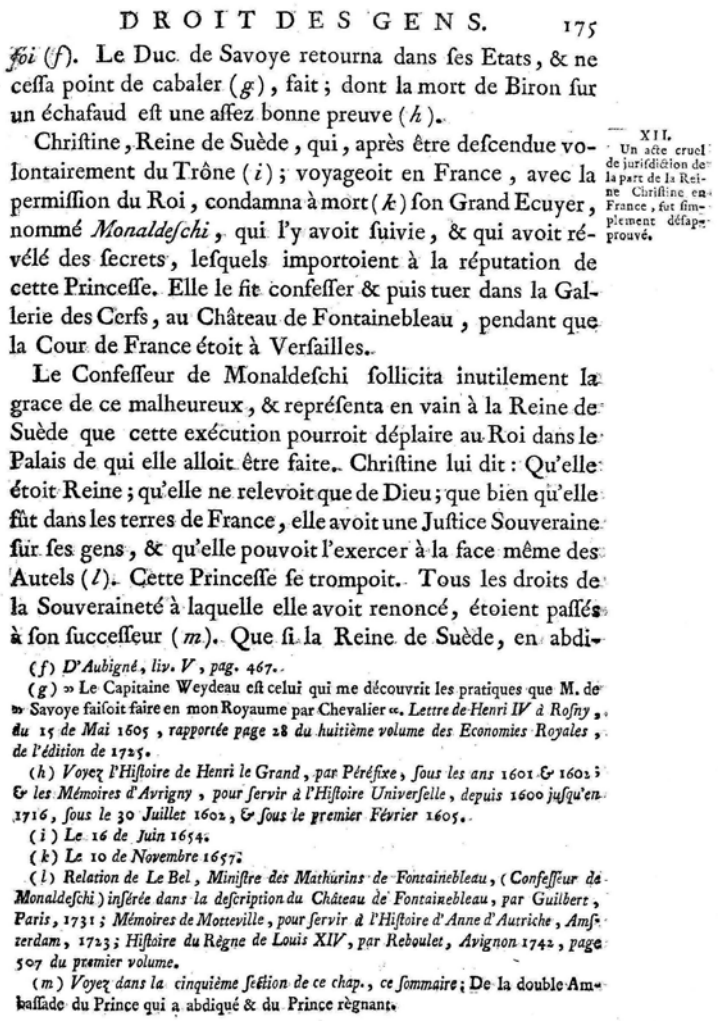
copy them selectively, as a sort of personal handicraft, of fixing in manuscript copies their own intellectual criteria, of refusing the mental standardisation fostered by printing. Readers would like to have every legal piece (namely, every court decision) available by means of the press; courts tend to consider this exposure as a violation of the *arcana iuris*; publishers swing according to profit expectations. Authors tend to choose modish titles, which will attract the attention of buyers; theoreticians criticise this opportunistic practice and the resultant loss of intellectual rigour. Authorities fear legal (and political) books, as insidious and silent preachers of dangerous (and directly practicable) doctrines; however, they also use books as powerful instruments of communication of their will (namely, of statutes or political standards).

Here is a bundle of issues, which are clearly at the centre of the history of written legal communication. The recent progress in the identification of European legal bibliography, when combined with promising lines of research on legal printing and the book market, can give a momentous impulse to the clarifying of problems which are of general interest for historians of the book and printing.

António Manuel Hespanha

Accursii Glossa in Digestum novum [vetus, infortiatum], Venice, Baptista de Tortis, 1497 [1498]. Robbins Collection, MS 37; Library of the Association of the Bar of the City of New York

The »footnotes« model



DROIT DES GENS. 175

foi (*f*). Le Duc de Savoye retourna dans ſes Etats, & ne ceſſa point de cabaler (*g*), fait; dont la mort de Biron ſur un échafaud eſt une aſſez bonne preuve (*h*).

XII. Un acte cruel de juriſdiction de la part de la Reine Chriſtine en France, fut ſimplement déſapprouvé.

Chriſtine, Reine de Suède, qui, après être deſcendue volontairement du Trône (*i*); voyageoit en France, avec la permiſſion du Roi, condamna à mort (*k*) ſon Grand Ecuyer, nommé *Monaldeſchi*, qui l'y avoit ſuivie, & qui avoit révélé des ſecrets, leſquels importoient à la réputation de cette Princeſſe. Elle le fit confeſſer & puis tuer dans la Gallerie des Cerfs, au Château de Fontainebleau, pendant que la Cour de France étoit à Verſailles.

Le Confeſſeur de Monaldeſchi ſollicita inutilement la grace de ce malheureux, & repréſenta en vain à la Reine de Suède que cette exécution pourroit déplaire au Roi dans le Palais de qui elle alloit être faite. Chriſtine lui dit: Qu'elle étoit Reine; qu'elle ne relevoit que de Dieu; que bien qu'elle fût dans les terres de France, elle avoit une Juſtice Souveraine ſur ſes gens, & qu'elle pouvoit l'exercer à la face même des Autels (*l*). Cette Princeſſe ſe trompoit. Tous les droits de la Souveraineté à laquelle elle avoit renoncé, étoient paſſés à ſon ſucceſſeur (*m*). Que ſi la Reine de Suède, en abdi-

(*f*) *D'Aubigné, liv. V, pag. 467.*

(*g*) » Le Capitaine Weydeau eſt celui qui me découvrit les pratiques que M. de » Savoye faiſoit faire en mon Royaume par Chevalier «. *Lettre de Henri IV à Roſny, du 15 de Mai 1605, rapportée page 28 du huitième volume des Economies Royales, de l'édition de 1725.*

(*h*) *Voyez l'Hiſtoire de Henri le Grand, par Péréfixe, ſous les ans 1601 & 1602; & les Mémoires d'Avrigny, pour ſervir à l'Hiſtoire Univerſelle, depuis 1600 juſqu'en 1716, ſous le 30 Juillet 1602, & ſous le premier Février 1605.*

(*i*) *Le 16 de Juin 1654.*

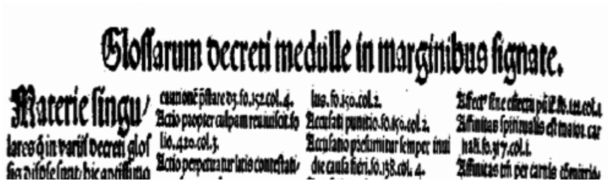
(*k*) *Le 10 de Novembre 1657.*

(*l*) *Relation de Le Bel, Miniſtre des Mathurins de Fontainebleau, (Confeſſeur de Monaldeſchi) inſérée dans la deſcription du Château de Fontainebleau, par Guilbert, Paris, 1731; Mémoires de Motteville, pour ſervir à l'Hiſtoire d'Anne d'Autriche, Amſterdam, 1723; Hiſtoire du Règne de Louis XIV, par Reboulet, Avignon 1742, page 507 du premier volume.*

(*m*) *Voyez dans la cinquième ſection de ce chap., ce ſommaire; De la double Ambaſſade du Prince qui a abdiqué & du Prince règnant.*

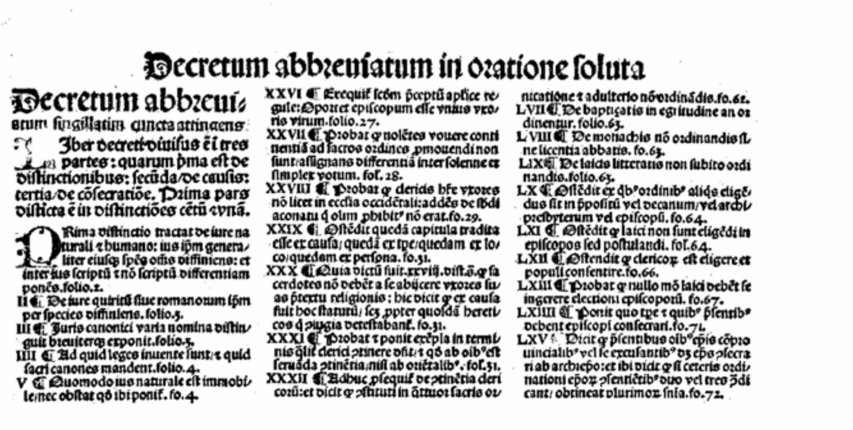
Gaspard de Réal de Curban, La science du gouvernement, tome cinquieme, contenant le droit des gens, Paris: Libraires Associés 1764

Decretum Gratiani emendatvm et notationibvs illvstratvm, vna cum glossis, Venetiis: apud Magnam Societatem vna cum G. Ferrario H. Franzino, 1584
Robbins Rare, BQV158 1584



Glossarum decreti medulle in marginibus signate.

Repertorium verborum que in margarita decreti continentur.



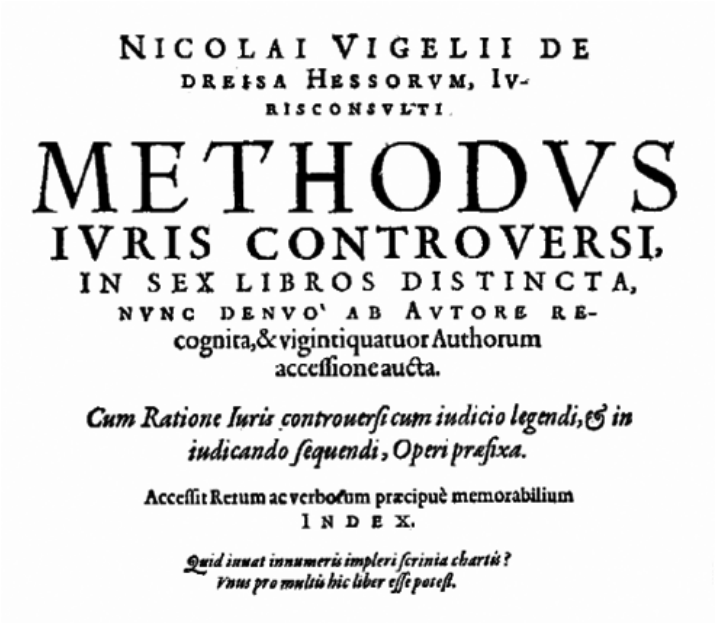
Decretum abbreuiatum in oratione soluta

Decretum Gratiani emendatvm et notationibvs illvstratvm, vna cum glossis, Venetiis: apud Magnam Societatem vna cum G. Ferrario H. Franzino, 1584
Robbins Rare, BQV158 1584

REPERTORIVM
SENTENTIARVM
ET REGVLARVM, ITEM-
QVE DEFINITIONVM, DIVISIO-
NVM, DIFFERENTIARVM, FORMVLARVM, SIN-
gularum locutionum, collationum verborum, synonymorum, omonymo-
rum, epithetorum, dictionum deniq; omnino omnium ex vniuerso Iuris
Ciuilis corpore, & glossis tam veteribus, quàm recentio-
ribus collectarum: tributum in
Tomos Duos,
*QVORVM PRIOR PR … VARII ET LOCO-
rum Communium, alter Lexici vicem sustinere potest.*
VTERQVE QVIDEM … A PETRO CORNELIO BREDE-
rodio I.C. Hagocomitano summo studio & iudicio collectus, & Thesauri titulo editus:
sed nunc hac iterata editione recognitus, emendatus, interpolatus, & sub-
inde locupletatus à FRANCISCO MODIO I.C. Brug.
*OPVS CVM AD GERMANAM FRANCOFVRTENSEM INPRIMIS
Corporis Gothofrediani editionem conformatum; tum ad omnes & quascunq; omnium gentium nationumq;
editiones alias accommodatum. Ideoq; cuiuscunque ordinis aut loci iuris tam peritis, quàm stu-
diosis; tam practicis, quàm theoricis omnibus non vtile tantùm summè,
verùm etiam quam maxime necessarium:*
CVM PRÆTER CÆTERA, NIHIL IN QVÆSTIONEM ET FACTVM,
aut vsum cadere possit, quod non sua serie & ordine litterarum egregia methodo & succinctissima
breuitate digestum in eo ita inueniatur, vt simul & Epitomes Iuris Ciuilis vni-
uersi, & Paratitlorum loco esse queat.
*ADIECTVS EST INDEX OMNIVM TITVLORVM IN VNIVER-
so Iuris Corpore comprehensorum, collectus quidem ab eodem P. C. B. I.C. H. sed & ipse quoque nunc recen-
ter emendatus, restitutis passim numerorum notis, quæ se plurimum exerrabant,
per eundem Franciscum Modium I.C. Brug.*
Francofurti ad Mœnum, impens. Sigis. Feyrabend,
Henrici Thack, & Petri Vischeri sociorum.
M. D. LXXXVII.

Repertorium Sententiarum Et Regularum: Itemque Definitionum, Diuisionum, Differentiarum, Formularum / vterque Quidem Nuper A Petro Cornelio Brederodio … Collectus, & Thesauri Titulo Editus; Sed Nunc Brederode, Pieter Cornelis van Francofurti ad Moenum: Impens. Sigis. Feyrabend, Henrici Thack, & Petri Vischeri sociorum, 1587. Robbins Rare, KJA1066.5.B74 1587 Folio

Ramus (1515–1572) *methodus* (a fake)



NICOLAI VIGELII DE
DREISA HESSORVM, IV-
RISCONSVLTI
METHODVS
IVRIS CONTROVERSI,
IN SEX LIBROS DISTINCTA,
NVNC DENVO' AB AVTORE RE-
cognita,& vigintiquatuor Authorum
acceſſione aucta.
Cum Ratione Iuris controuerſi cum iudicio legendi,& in iudicando ſequendi, Operi præfixa.
Acceſſit Rerum ac verborum præcipuè memorabilium
INDEX.
Quid iuuat innumeris impleri ſcrinia chartis?
Vnus pro multis hic liber eſſe poteſt.

Cum Cæſ. Maieſt. & Regis Galliarum gratia
& priuilegio ad annos X.
BASILEÆ,
PER HIERONYMVM GEMVSÆVM.
clɔ lɔ XCIX.

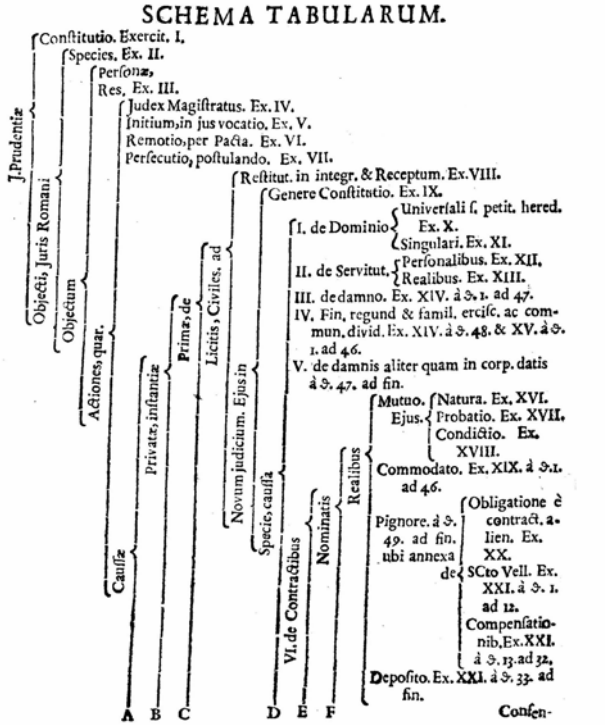
Nicolai Vigelii de Dreisa Hessorum iurisconsulti Methodus iuris controuersi, in sex libros distincta, nunc denuò ab autore recognita, & vigintiquatuor authorum accessione aucta: cum ratione iuris controuersi cum iudicio legendi, & in iudicando sequendi, operi praefixa: accessit rerum ac verborum praecipuè memorabilium index Basileae: Per Hieronymum Gemusaeum, 1599. Robbins Rare KBD70.V53 1599 Folio

GEORGII ADAMI STRUVII,
Hereditarii in Pblstedt & Wenigen Jehna/
JCTI,

Syntagma JURISPRUDENTIÆ

Secundùm ordinem Pandectarum concinnatum.

SCHEMA TABULARUM.



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