The story behind a stray medieval manuscript leaf

The Harvard community has made this article openly available. Please share how this access benefits you. Your story matters.

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Citable link</td>
<td><a href="http://nrs.harvard.edu/urn-3:HUL.InstRepos:42674980">http://nrs.harvard.edu/urn-3:HUL.InstRepos:42674980</a></td>
</tr>
<tr>
<td>Terms of Use</td>
<td>This article was downloaded from Harvard University’s DASH repository, and is made available under the terms and conditions applicable to Other Posted Material, as set forth at <a href="http://nrs.harvard.edu/urn-3:HUL.InstRepos:dash.current.terms-of-use#LAA">http://nrs.harvard.edu/urn-3:HUL.InstRepos:dash.current.terms-of-use#LAA</a></td>
</tr>
</tbody>
</table>
The Story Behind a
Stray Medieval Manuscript Leaf

Jerome S. Arkenberg

While researching medieval English lawbooks and their owners, this writer happened upon a stray leaf stuck inside Harvard Law School MS 24. This leaf, rather than being a loose part of MS 24, instead once belonged to a separate legal manuscript. A comparison of the format and contents of this leaf with that of similar legal manuscripts produced in the same period reveals much not just about the contents and format of this once separate legal manuscript, but also of the type of owner such a manuscript originally had, and the manner in which such an owner originally employed this manuscript.

This folio leaf, now numbered Harvard Law School MS 24b, measuring 280 x 185mm (205 x 115mm written space), is ruled in brown ink in a simple frame style. Its running headlines and chapter titles are underlined in red, its paragraph marks alternate between red and blue paraphs, and further red underlining marks off significant textual passages. No marginal numbering of chapter sections exists. A red monochromic secondary initial, flourished in blue, measures four-lines in height and has one long line going down along the margin and then looping back up.

Written in one hand in thirty-four long lines, its script is regular and even. This is an Angliana script characteristic of the very end of the thirteenth century. Heavily shaded, it has forked ascenders; long descenders looping back up; high, closed, two-compartment “a”s; double approach strokes on “r” and long “c”s; joined double letters; ticked “i”s; split “i”s below the line, round “c”s after letter bows; figure-8 “g”s; a terminal and initial round “s”, with internal long “s”s; no feet or caps on the minims; no letter biting; crossed trionian “et”s; and a forked, non-looping “h.”

Its contents consist of parts of two legal treatises: on the recto, the end of Excepciones ad Cassandum Brevarium, and, on the verso, the beginning of the Tractatus de Bastardia. The provenance of this leaf is unknown, though presumably it has been stuck in MS 24 since at least the latter’s acquisition by Harvard Law School in 1913.

---

1 Seymour De Ricci and W. J. Wilson, Census of Medieval and Renaissance Manuscripts in the United States and Canada (New York, 1935-37), 1:1627.
3 Grieve, Example: plate I.
5 Unpublished, but found in many manuscripts, such as BL Add. 22,768, ff. 39v-40r.
Harvard Law School MS 24,6 of ninety-one folios, measures 285 x 205mm (230 x 145mm written space), ruled in lead, with double bounding lines on all four margins. Running headlines (partly cut off by rebinding), marginal numbering of chapter sections, and chapter titles appear, all accompanied by underlining in red. It has paragraph marks in the alternating red and blue paraph style. Like MS 24b, red underlining marks off significant textual passages. Its red-flourished, blue monochrome secondary initials measure three lines in height and have three long lines straight down.

MS 24 is written in one hand throughout, in forty long lines, in an Anglicana script characteristic of the end of the thirteenth- and beginning of the fourteenth-century.7 This script is regular and even: heavily shaded; forked ascenders; long descendents looping back up; high, closed, two-compartment “a”s; occasional double strokes on “f” and long “s”s; joined double letters; ticked “i”s; split “r”s below the line, round “r”s after letter bows; figure-8 “g”s; terminal and initial round “s” (with an occasional initial long “s”), and internal long “s”; no feet or caps on the minims; no letter biting; crossed tironian “et”s; and a forked, looping “H”.8

The contents of MS 24 comprise a collection of common law legal treatises typically found in lawbooks produced at the end of the thirteenth century. These include Brevia Placitata,9 a Registrum Brevium10 (beginning with a writ of right bearing a date of 22 Edw. 1), Hengham Magna,11 Judicium Essoniorum,12 Cadit Assisa,13 Hengham Parva,14 Cum Sit Necessarium,15 Execeptiones ad Cassandum Brevium,16 Tractatus de Bastardia,17 Tractatus de Corone,18 Placita Corone,19 Articuli qui narrando indigent observari,20 and the Execeptiones Contra Brevia.21 Both the Execeptiones ad Cassandum Brevium and the Tractatus de Bastardia exist in a complete and perfect state. Its original owner is unknown, but the name appearing on f. 89r, Edward Wallwyn, in a script characteristic of the late fifteenth- and early sixteenth-century, suggests a possible late medieval owner.

These two manuscripts, MS 24 and MS 24b, differ in several important respects. First, MS 24b is smaller than MS 24, measuring 255mm less in height, and 30mm less in width. Second, MS 24b is ruled in brown ink in a simple frame style, while MS 24 is ruled in lead with double bounding lines in all four margins. Third, in MS 24 all the secondary initials measure three lines in height, in a blue monochrome flourished in red with two to three long lines straight down. The one and only secondary initial on MS 24b, however,


7 See Grieve, Examples, plate II.

8 Grieve, Examples, plate II.

9 Turner and Plucknett, Brevia Placitata.

10 De Haas and Hall, Early Registers of Writs.


13 Unpublished, but appearing in many manuscripts, such as Philadelphia LC 14.19, at ff. 116v-124r. See also Woodbine, Four Thirteenth Century Law Tracts, 1:40.

14 Dunham, Hengham Summae, 51–71.

15 Woodbine, Four Thirteenth-Century Law Tracts, 143-62.

16 See n. 2 above.

17 See n. 3 above.


19 Ibid., 1-12.

20 Unpublished, but as per BL Harley 667 ff. 175v–183r.

21 Unpublished, but as per BL Add. 5761 ff. 112v-12v.
measures four lines in height, done in a red monochrome flourished in blue with one long looping line down.

Fourth, while the script of both MSS. 24 and 24b bear a certain similarity, stemming as they do from roughly the same period, a close comparison reveals that they are not the same hand. The scribe of MS 24 only occasionally employs a double approach stroke on the "t" and long "s," whereas the scribe of MS 24b does not. Further, the latter's scribe invariably employed the initial round "s," whereas MS 24's scribe employed a mixed usage of initial round "s" and initial long "s." Most tellingly, the form of the "h" that each employed is noticeably different. The scribe of MS 24 invariably employed a looping form, with the secondary minuscule of the "h" descending below the line and then looping back up to join the top of the stem, while the scribe of MS 24b did not. Fifth, and finally, MS 24 includes the end of the Excepciones ad Cassandum Brevium and the beginning of the Tractatus de Bastardia in a complete and perfect state, thus precluding the possibility that MS 24b is a loose part of MS 24.

The conclusion must be that MS 24b once formed part of an entirely separate legal manuscript. Having examined the legal manuscripts in the Harvard Law School Library, it cannot have formed part of one of these other volumes either. It must thus have formed part of another, possibly lost, medieval lawbook. While in itself not terribly significant, other than to report that part of yet another version is now known to exist of two of the most common medieval common law treatises—the Excepciones ad Cassandum Brevium, and the Tractatus de Bastardia (which should help to establishing definitive texts of these two treaties)—by comparing the format, contents, and ownership indicia of MS 24b with that of similar legal manuscripts produced in this era, new light appears upon the types of owners who commissioned such lawbooks and the ways that they employed them.

The format of this leaf proves typical of most common law manuscripts produced in this era, especially those produced towards the end of the thirteenth century and the beginning of the fourteenth century. Drawing upon a database of 211 such manuscripts produced in that period, MS 24b has a total size similar to 60% of these books, though its written size suggests it came from a much larger book, and thus is typical of only 21% of this period's legal manuscripts. In terms of its script, this leaf, like nearly all (92%) of the lawbooks of this era, employed a version of Anglica, the business and legal script of late medieval England.

In having running headlines, chapter titles, marginal numbering of chapter sections, and paragraph marks it also proves typical of the legal manuscripts written in this period: 70% of such manuscripts employed running headlines, 87% included marginal numbering of chapter sections, 91% incorporated chapter titles, and 88% had paragraph marks. But while MS 24b typically employed alternating red and blue paraph marks and red underlining (found in 62% and 48%, respectively, of the manuscripts produced in this period), few of the other legal

---

22 Woodbine's text of the Excepciones ad Cassandum Brevium was based on only three of the upwards of thirty known manuscripts of this text. See George E. Woodbine, "Four Thirteenth Century Law Tracts," (New Haven, 1910), 10. To my knowledge no text of the De Bastardia has yet appeared in print.

23 Jerome S. Arkesberg, "The Medieval Common Law: Sources, Books, Owners, Contents, and Formats, 1250-1350," Appendix 1.r, Table 1.r. [available from author]

24 Ibid., Appendix 2.r, Tables 2.r-2.4.

25 Ibid., Appendix 2.r, Table 2.r-7.

26 See M. B. Parkes, English Copper Book Hands: 1250-1300 (Berkeley, 1980), 120.
manuscripts dating from this period employed red underlining for marking off their running headlines, their marginal chapter numbering, or their chapter titles. Such red underlining only appears in 9% of this period’s lawbooks that include running headlines, in 6% of those with marginal chapter numbering, and in 12% of those with chapter titles.27

MS 24b contains no indication that it was once part of an illuminated manuscript. But, as only 10% of the legal manuscripts produced in this period contained such illumination (including historiated initials and miniatures), this

27 Arkenberg, Appendix 2.1., Tables 2.11-2.17.
should occasion no surprise. Its non-luxurious appearance demonstrates that it was not a stationary status symbol, but rather a more practical volume. Yet, with its flourished secondary initial it was not merely a plain, work-a-day book, but one both practical and attractive (80% of the manuscripts of this period included such flourished secondary initials).[*]

Looked at from another perspective, that of legal manuscripts produced with a written space similar to that of MS 24b, only 11% contained illumination, and

[* Ibid., Appendix 2.1, Tables 2.6, 2.18-2.19.
80% employed a version of *Anglicana* script, 77% of the time in a long-line format as in this leaf. With textual finding aids, 61% of the manuscripts of this size employed running headlines (but only 11% had accompanying red underlining), 78% included marginal chapter numbers (only 3% with red underlining), 87% had chapter titles (with 16% including red underlining), and 84% included paragraph marks (60% employing the alternating red and blue paraph scheme).29

The *Excepciones ad Cassandrum Brevium* appears in 13% of the legal manuscripts produced in this period, always in conjunction with various rural treatises, treatises such as the *Seneschaucy*,30 *Walter de Henley*,31 and the *Court Baron*.32 This treatise rarely occurs in illuminated lawbooks (6% only), in lawbooks written in a Gothic script (a mere 3%), in legal volumes containing various types of ecclesiastical matter—pleas, customals, cartularies, and so forth (4% alone), or in books bound with explanatory treatises such as *Bracton*33 or *Brutton*34 (again, only 4%). Further, the *Excepciones* appears in no lawbook containing some type of urban matter (such as customs of various merchant or town gilds, or statutes or items directly related to a specific town or city).35

The other treatise, the *Tractatus de Bastardia*, appears more frequently, in slightly more than a third (35%) of the legal manuscripts produced in this period. Within this period, in those lawbooks containing one or more of the rural treatises, it appears in 45%. It also occurs in 18% of the de luxe manuscripts produced in this period, in 22% of those containing explanatory treatises, in 14% of those written in a Gothic script, and in 19% of those containing urban matter. Unlike the *Excepciones*, however, no lawbook containing ecclesiastical matter also includes it.36

MS 24b, then, most likely came from a manuscript once containing rural treatises. It contains nothing to suggest that it once formed part of an illuminated legal manuscript, nor of one that employed a Gothic script—largely the hallmark of lawbooks owned by clerics or an ecclesiastical foundations37. As the *Excepciones ad Cassandrum Brevium* appears in no manuscripts of this period that incorporate urban matter, MS 24b most likely did also not belong to a volume containing such matter. And, since the *De Bastardia* occurs in no legal manuscripts containing any type of ecclesiastical matter, this leaf most likely did not once form a part of a lawbook with such contents either. In sum, the appearance of these two treatises in this same leaf suggests that MS 24b once belonged to a legal manuscript containing one or more of the rural treatises.

This conclusion suggests ownership by a steward, a bailiff, or perhaps a local landholder of the knightly class, the most numerous types of owners possessing lawbooks with such matter.38 As legal professionals made up only 6% of the known owners of lawbooks containing such matter, the typical lawyer or judge of this period most likely did not own MS 24b’s original volume.39 This original

---

29 Ibid., Appendix 2.1, Tables 2.41-2.44, 2.48-2.56.
31 Ibid., p. 112.
35 Arkenberg, Appendix 3.1, Tables 3.36, 3.75.
36 Arkenberg, Appendix 3.1, Tables 3.31, 3.70.
37 Arkenberg, Appendix 4.1, Tables 4.15-4.26. Note that as men-of-affairs often held more than one office during their lifetime, the total number of owners does not always equal 100%.
38 Arkenberg, Appendix 4.1, Tables 4.28-4.39.
39 Arkenberg, Appendix 4.1, Tables 4.31-4.32.
volume may, nonetheless, have once belonged to a religious foundation, as they are known to have constituted 26% of the known owners of lawbooks containing rural treatises.47 For not all ecclesiastical owners inserted various forms of "ecclesiastical" matter in their common law manuscripts. A number of volumes, particularly those acquired from laymen as either gifts or bequests, remain today in their original, purely legal matter, format.48

However, local men-of-affairs, those amateur administrators who received commissions of Oyer and Terminer, Gaol Delivery, and Inquest,49 are among the known owners possessing such volumes. Of these, 17% received commissions of Oyer and Terminer, 6% received commissions of Gaol Delivery, and 17% received commissions of Inquiry.50 Further, while no escheators appear among the known owners of manuscripts of this type, 1% of the known owners did serve as Keepers of the Peace, 6% as Coroners, 3% as Purveyors, 6% as Arrayers, 14% as Assessors, and another 14% as Sheriffs.51 Only 9% of the volumes have associations with known owners who once worked as bailiffs, and 6% with those once employed as stewards.52 A further 20% of these known owners served at least once as a knight of the shire.53

Few legal professionals, then, acquired lawbooks that included such material in this era. As most historiographers have hitherto assumed that legal professionals—lawyers and judges—formed the market for the legal manuscripts produced in this era, these figures prove surprising.54 Since the book trade of medieval England was almost entirely a bespoke one, these patterns must reflect the needs of these particular owners for these particular types of legal manuscripts.55 Since, therefore, the exponential growth in this period of the numbers of professional lawyers is not reflected in the numbers who own lawbooks,56 most legal professionals must not have needed such volumes. This suggests that most professional lawyers and justices had little need of these books for reference, for jogging the memory, or for studying the law. Equally, since it is mostly the knightly men-of-affairs who own most of the lawbooks produced in this era, these knightly men-of-affairs must have required these books either for reference, for jogging the memory, or for studying the law.

The reason so few legal professionals owned statute books must revolve around the pedagogical methods employed to teach the common law in this era.

---

47 Arkenberg, Appendix 4.1, Table 4.28.
48 Id., Eg, Cambridge University Library MS. Add. 3097, British Library MS. Add. 31, 829.
50 Arkenberg, Appendix 4.1, Table 4.33.
51 Ibid., Appendix 4.2, Tables 4.32-4.19.
52 Ibid., Appendix 4.2, Table 4.37.
53 Ibid., Appendix 4.2, Table 4.31.
It is known that those intending to follow the law professionally underwent a more or less "formal" legal training, involving a reading by some lecturer of a legal text followed by drills and quizzes on this text. Considering the lack of lawbooks owned by this group, this method must primarily or entirely have revolved around this type of oral instruction and drill, in ways similar to that employed in this same period in teaching university undergraduates in the faculties of arts. For few of these undergraduates either owned books or were required to own or have access to books for their studies.

Since the common law from its inception, unlike either canon or roman law, had no fundamental text, around which legal interpretation turned (except, perhaps, the Register of Writs the common law legal professional had therefore no incentive to obtain, possess, read or study a lawbook such as MS 24, especially when the interpretation of common law statutes turned upon not the precise wording but the overall legal intent. Thus, legal professionals and others who underwent such training would have drawn upon their memory, not their lawbooks, for their legal knowledge. Unless, therefore, one had a poor or ailing memory, the legal professional had little need to own a lawbook, whether one containing statutes, treatises, or both.

But the knightly men-of-affairs did own lawbooks in this period, and in far greater numbers than hitherto thought. This must be because they learned the common law in an entirely different manner. These men-of-affairs would have had little need to undertake a formal course of legal education, one requiring several years of study (probably three to four years), since, after all, they did not intend to follow the law or serve in administration in anything more than an avocational capacity.

Yet, as a knowledge of the current legal and administrative rules and regulations nonetheless proved essential for local governmental and estate administration, they would still have had to learn and know the technicalities of the common law and the statutes. This they could do most easily by studying the writs, statutes, and introductory legal treatises commonly found in lawbooks. These lawbooks, then, must have formed their primary educational tools for learning

55 "Leges autem Angliae licent non scriptas leges appellari non videantur absurdum...", (Glawell, Prolegomena, 2): "Cum autem fere in omnibus regionibus utarum legibus et iure scripto, sola Anglia usa est in suis finibus iure non scripto et consuetudine." (Bracton, Introduction, 19). See also R. W. Southern, "From Schools to University," in Early Oxford Schools, 16.
56 Plucknett, Statutes and Their Interpretation, 22, 49-50, 53-56, 82, 164-66.
and understanding the procedures and issues of the common law, as well as providing a manual for daily reference. It is, therefore, this dichotomy in legal education, between professionals who learned orally, and amateurs who learned textually, that accounts for the contents, format, and ownership patterns of the medieval common law manuscript.

Thus this single manuscript leaf, containing the two introductory legal treatises most often found in manuscripts containing rural treatises, in a format suggesting both portability and ownership by a man of some financial means, provides information not only about the manuscript from which it originally came, but also something about its likely owner. Therefore, the lost legal manuscript of which MS 24b once formed a part must have had as its original owner not a legal professional, but an administrator, either a knightly man-of-affairs, or an ecclesiastical steward or bailiff, men who needed legal collections both for ready reference and for self-study to read and learn the common law.