

Buried Treasure: some lesser-known items in the Institute of Advanced Legal Studies

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Working in a library where, for the most part, up to date information reigns king, I begin this article conscious that Wallace Bream, whose memory we honour in these pages, would have been far better qualified than I to write on much of my chosen topic. The historians, genealogists and writers of whose fascinating queries he often spoke rarely cross our threshold, but perhaps parts of this article will show why at least some of them should.

In contrast to the libraries of the Inns of Court, ancient repositories of not only law but several other historical subjects, the Institute of Advanced Legal Studies, founded in 1947, is a comparative newcomer. Any materials of historical interest must have been either given to the Library or actively purchased. I decided to investigate what hidden treasures we might have and how they had been acquired. Thinking it best to concentrate on one or two sections rather than the whole bookstock, I looked at Roman and Roman-Dutch law and English law, and in each case concentrated on items published before 1700.

Finding that most of the material had been purchased, I was left with the question “who were the major donors to the Institute, and what kind of materials arrived in this way”. This is considered at the end of the article.

PRE-1700 MATERIALS

Research showed that such materials were, with an exception noted under Roman Law, usually purchased rather than received as gifts. In the early years a number of private libraries were bought, notably in 1948 those of two Cambridge Professors, W.W. Buckland, Regius Professor of Civil Law 1914-1945, and H.D. Hazeltine, Downing Professor of the Law of England from 1919 to 1942.

ROMAN LAW

The Institute possesses approximately fifty works on Roman law dating from the sixteenth and seventeenth centuries. About half of these were from a collection of about 5,000 volumes, mainly on private international law and American law, bequeathed to the Institute in 1947 by Dr. Charles Huberich, an international lawyer who practised in Germany. In 1952 a collection of Roman law was purchased from Girton College, Cambridge, including an edition of the *Corpus Juris Civilis* published by Blaeu, Amsterdam in 1664. A notable addition to the collection was made in the session 1955-56 by the gift of the Roman law books from the Library of Professor J.F. Jolowicz, Regius Professor of Civil Law at Oxford and for thirty years editor of the *Journal of the Society of Public Teachers of Law*, who had been chairman of the Committee of Management's Library sub-committee from 1948 until his death. While consisting mainly of modern works, this included a 1563 edition, published in Basel, of the *Summa Codicis* of Azzo of Bologna (c.1150-1230). This is an index to the Justinian *Codex*.

Of the great *Corpus Juris Civilis* itself, the earliest edition we have was published by Chevallon in Paris between 1529 and 1535. These volumes came from the Hazeltine collection mentioned above,

but bear the bookplates of Charles Hope Vere, a member of a Scottish family which produced a number of judges, lawyers and one Lord Advocate. At least four other editions before 1600 are in the Library.

Among commentaries on the *Corpus Juris* one might mention two volumes by Alexander Tartagnus of Imola (1424-1477): *In Codicem Iustinianum commentariorum* and *In Digestum vetus lecturae*, both published in Leiden in 1562. They are from the Huberich collection.

A curiosity from the Buckland library consists of three small works bound together: *Modus legendi abbreviaturas passim in iure tam Civili quam Pontificio ...* ("How to read legal abbreviations in civil and canon law", i.e. truncated words rather than acronyms!), *Legum Flosculi* ("little flowers of the law") and *Brocardica iuris*, a collection of legal maxims. They were published between 1562 and 1566, by Desboys, Paris.

ROMAN-DUTCH LAW

Although relegated to history in the Netherlands by the introduction of the Napoleonic Codes, Roman Dutch law remains a strong influence in the former Dutch possessions, particularly South Africa. Since we have a special responsibility to collect South African law, it is consequently appropriate that the Institute should maintain a representative collection of the so-called "Old Authorities", namely legal literature published in the Netherlands from the seventeenth to the early nineteenth century.

The Institute's second annual report (1948-49) mentions that "through the good offices of Mr. A.A. Roberts, now South African High Commissioner in Canada, the Institute had the opportunity of acquiring an extensive library of Roman-Dutch and South African law". Examination of the records shows that this was a collection belonging to Benjamin Arthur Tindall Q.C., judge of the Appellate Division of the Supreme Court of South Africa from 1938 to 1949. We were further helped by Roberts presenting us with a copy of his classic *Bibliography of South African law* (Roberts, 1942). Pencil annotations in an unknown hand indicate the most important books, according to "Professor Lee's list". This may be a reference to a list of authorities in *An introduction to Roman-Dutch law* (Lee, 1953), which ran to five editions between 1915 and 1953. Lee was the first and only Rhodes Professor of Roman-Dutch Law at Oxford, incredibly from 1921 until his retirement in 1956 at the age of eighty-seven.

During my researches I made frequent reference to Wessels' *History of the Roman-Dutch law* (1908). From this it appears that the sources are usually grouped into four main branches: statutes, court decisions, opinions of jurists and treatises.

1. Statutes

The best known collection is the *Groot Placaatboek, vervattende de Placaten, Ordonnantien ende Edicten van de Staaten-Generael...* (1576-1795). 'sGraven-Hag, de Weduwe, 1658-1797. 10 vols, folio. IALS has the original edition, the source being noted as "Professor Price", presumably T.W. Price, who wrote on Roman-Dutch law.

2. Court decisions

Three important collections of court decisions are held by the Institute.

NIEUSTAD, Cornelis Mathiasz van (1549-1606): *Utriusque, Hollandiae, Zelandiae Frisiaeque curiae decisiones, novissima* [i.e. 4th] ed. Hagae-Comitis, Steucker, 1667. This is described by Roberts as the “last and most complete edition”.

SANDE, Johan van den: *Decisiones Frisicae sive rerum in Suprema Frisiorum Curia judicatarum libri V*. First published in 1634. The Institute has the 10th edition, Amsterdam, 1698. This collection of decisions of the Supreme Court of Friesland was also translated into Dutch as *Vijf boecken der gewysder saecken voor den Hove van Vriesland*. IALS has the second edition published in Leeuwarden in 1652.

Sententien en gewezen zaken van den Hoogen en Provincialen Raad in Holland, Zeeland en West Vriesland: eerste deel. Rotterdam. Naeranus, 1962. This is the oldest collection of the decisions of the Supreme Court and the Court of Holland traced by Wessels (1908:237). No other parts were published.

3. Opinions of jurists

Known collectively as *Consultatien en advysen*, these are “a very interesting and characteristic feature of the Roman-Dutch system of jurisprudence” (Lee, 1953:19)

The Institute has the following edition:

Consultatien advysen en advertenties, gegeven ende geschreven by verscheyden treffelijke rechtsgeleerden in Holland. Rotterdam. Naeranus, 1647-1689. Known as the *Hollandsche consultatien*, these “consist of opinions given in the sixteenth and during the first half of the seventeenth century, and have acquired by usage a foremost place in the legal literature of Holland” (Wessels, 1908:242). The Institute’s copy includes both Naeranus’ own third volume or *Rotterdamsche Derde Deel* and that of a rival publisher Colom, the *Amsterdamsche Deerde Deel*.

4. Treatises

A detailed survey would take up too much space, but the most notable items can be mentioned.

The towering figure among doctrinal writers is Hugo Grotius (or de Groot) (1583-1645), a jurist of enormous standing in legal history, but also a scholar in history, theology and classics. His fame outside Holland came as one of the founders of modern international law. On Dutch law, his *Inleiding tot de Hollandsche Rechtsgeleertheyd* (Introduction to Dutch jurisprudence) first appeared in 1631. The Institute has several editions, notably that edited by Willem Schorer and published at Middleburg in 1767, “the best old edition” (Lee, 1953:15), and three modern English translations (Grotius 1845: 1903; 1926-36). “The influence of the *Introduction* on the subsequent development of Roman-Dutch law may be compared with that of the *Institutes* of Justinian upon the spread of Roman law”. (Wessels, 1908:263)

Works by Arnoldus Vinnius (1588-1657) include *In IV libros Institutionum Imperialium commentarius*, (a commentary on the Institutes of Justinian), of which we have the first edition, Lugduni [i.e. Leiden], 1642 and the third, Amsterdam, 1659, as well as “the best edition, with notes by the Prussian jurist Heineccius” (Lee, p.15), Leiden, 1726. This work “remained for a long time the universal textbook of Justinian’s *Institutes* in European universities”, but is also a “valuable exposition of the Roman-Dutch law in relation to the law of the *Institutes* and the *Corpus Juris*”. (Wessels, 1908:295)

The *De criminibus ad lib. XLVII et XLVII Dig.* of Antonius Matthaeus II (1601-1654) was “one of the earliest treatises on the criminal law as administered in Holland, and is still frequently referred to in the South African courts” (Wessels, 1908:296). IALS has the first edition, Utrecht, 1644.

Simone à Groenewegen van der Made (1613-1652) in his *Tractatus de legibus abrogates et inusatis in Hollandia vicinisque regionibus* analysed the *Corpus Juris* by book and title, comparing them with the modern law of Holland. IALS has the third edition, Amsterdam, 1669.

Both the works of Ulrik Huber (1636-1694) mentioned by Professor Lee are in the Library: *Praelectionum juris civilis tomi III.* (Three volumes of lectures on the civil law) 2nd ed., Franeker, Strick, 1700-1701 and *Haedendaegse rechts-geleertheit, soo elders als in Frieslandt gebruikelijk.* (Modern jurisprudence in Friesland) 3rd ed., Amsterdam, 1726. An English translation by Percival Gane with the title *The jurisprudence of my time*, Durban, 1939 is also held.

There are several eighteenth century editions of the main works of Cornelis van Bijkershoek (1673-1743), as well as his *Observationes tumultuarium*, first published between 1926 and 1962. Among works by Johannes Voet are the Leiden first edition of the *Commentariu ad Pandectas*, 1698-1704 and the second edition, The Hague, 1707, both published during the author’s lifetime.

ENGLISH LAW

As Winfield put it, “five stars of the first magnitude have shone in the firmament of legal literature” (Winfield, 1925:254). Each of these: Glanvill, Bracton, Littleton, Coke and Blackstone, as well as Fitzherbert, Hale and Hawkins, are represented in the Institute’s collections, often in both older and modern editions. In the English legal history section I traced 47 items published before 1700, only five of which were presented to the Institute.

In considering medieval writers, it is advisable to look first at the fruits of modern scholarship, since early printed editions can be suspect, but I mention some items as a matter of interest.

Of Glanvill’s *Tractatus de legibus et consuetudinibus Angliae*, written in the twelfth century and first printed about 1554, we have an edition of 1604.

Bracton’s *De legibus et consuetudinibus* was written between 1250 and 1258. We have the 1640 reprint of an edition by an unidentified “T.N.” first printed in 1569. According to Winfield this “contained a good deal more than Bracton ever wrote” (Winfield, 1925:261). An epitome of Bracton known as *Fleta*, written about 1290, was printed in 1647. The Institute has the 2nd edition, 1685.

I shall pass over Littleton’s *Tenures* since, apart from Coke’s *Commentary* (which see below), we have only modern editions.

Turning to contemporary publications, we have several editions of Blackstone’s *Commentaries on the laws of England*, beginning with an incomplete first edition 1766-1769, lacking volume 1 of 1765. Fortunately we also have the complete facsimile of this edition, published in 1979. There is an almost unbroken run from the 11th to 19th editions, and an American edition of 1893.

Sir Edward Coke’s *Institutes of the laws of England* are divided into four parts, of which only the first, the *Commentary upon Littleton*, was published during his lifetime. IALS has the fourth edition, 1639. Part 2: *The exposition of many ancient and other statutes* is a first edition of 1642. The third and fourth parts, on Pleas of the Crown and Jurisdiction of the courts respectively, were first published in

1644. Our oldest copies are both of the second edition, 1648. All these early copies were presented by Harold Laski in 1948. There are several later editions of each part in the Library.

The five gift items I mentioned include a copy of John Selden's *History of tithes* dated 1618. The entry in Sweet & Maxwell's *Legal bibliography* (Maxwell, 1955:194) presents a surprisingly complicated bibliographical history of the work, several printings apparently appearing in the same year. Our copy was given by Sir William Gibson, sometime president of the Law Society.

Of primary sources, we have no early statutes of note, our copy of the *Statutes of the Realm* being on microfilm. There is a comprehensive collection of law reports, including the originals of the series reprinted in the *English reports*. As to the Year Books, of so-called quarto editions we have those listed in Sweet & Maxwell's *Legal bibliography* under Yetsweirt, Wight and the Stationers' Company (from the library of Professor Sir Percy Winfield); and Maynard's edition of 1678-80, purchased from the Wolverhampton Law Society (Maxwell, 1955:312-3).

As a final note in this section, I should add that it has always been library policy to collect and retain older editions of treatises, both English and foreign, and although their arrangement does not permit browsing, they form a useful resource for historical research.

MAJOR SOURCES OF GIFTS

Gifts to the Institute may be divided into grants or gifts of money, often for several purposes apart from book purchasing, and gifts of books or collections of books.

Over the years the Institute has benefited from much generous financial assistance, most notably that of £650,000 from Sir Charles Clore which largely financed the building of our current premises. Funding for the Library has come from many sources. From many years Commonwealth law was received free by arrangement with the Colonial Office. The Nuffield Foundation provided a grant of £10,000 in 1947 for the establishment of a *Nuffield Library of Commonwealth Law*, formally opened in June 1950, and in the 1960s the sum of £12,500 for the purchase of west European law. The Ford Foundation gave us \$192,000 in 1964-1970 under four heads, including the purchase of American law books, and a further grant of \$80,000 in 1971, of which \$16,000 was earmarked for library acquisitions. More recently funding over a three-year period for Commonwealth law reports came from the British Library, and the most recent assistance from government sources was the transfer in the last few weeks of a substantial collection of Commonwealth legislation from the Library of the Foreign and Commonwealth Office. This is held under a trust deed agreed between the FCO and the University of London.

Collections donated by other corporate bodies include much material from the House of Commons Library, the Canada Law Library of the Canadian Government and the Latin American law collection from Canning House Library (The Hispanic and Luso-Brazilian Council).

Personal donors of books and other library materials were named at length in the early annual reports, but this practice ceased about 1963. Mention has already been made of the collection bequeathed by Charles Huberich in 1947. More recently, a collection of works on comparative law, foreign law and private international law which had formed part of the library of the late Sir Otto Kahn-Freund were generously presented to the Institute by his widow and daughter in 1980. Among *inter vivos* gifts was a collection of Roman law and continental law belonging to Mr Alexander Bischoff, including a fine copy of the Mommsen edition of the *Corpus Juris Civilis*. Even modern technology, in the form of the

LEXIS database, is funded from a bequest to the University by Dr. W.G. Hart, who was awarded the LL.D. degree in 1905.

NON-BOOK MATERIALS

1. Judicial proceedings

Much to the surprise of some enquirers, the Institute does not regularly receive transcripts of court proceedings, the exception being the records of appeals to the Judicial Committee of the Privy Council, which are sent from the Privy Council office on a continuing basis. For most cases, the documents held are the Judgment, Case for the appellant, Case for the respondent, and Pleadings. A large proportion are nineteenth century Canadian appeals.

Three special collections may be mentioned under this heading. The first is a set of documents relating to the Nuremberg trials of war criminals belonging to Norman Birkett, afterwards Lord Birkett, which was presented by his widow in the 1961/62 session. Birkett acted as alternate to the British judge on the Tribunal, Lord Justice Lawrence. A list of documents is kept with the collection, but it is not otherwise recorded in the Library catalogue.

Secondly we have a transcript of proceedings in the case of *United States of America v. David T. Dellinger, et al* (the so-called "Chicago riot trial"), decided in the United States District Court, Northern District of Illinois, Eastern Division. 1969=1970. Typescript documents in 35 boxes.

Finally there is the record of proceedings, minutes of evidence, final submissions of counsel in the Scarman Tribunal (Tribunal of inquiry into the acts of violence and civil disorders in Northern Ireland). This is the only mainland copy outside the British Library.

The Institute was one of many libraries to receive the minutes of evidence to the Benson Commission (Royal Commission on Legal Services, 1976-1979), and has a similar collection from the Donovan Commission (Royal Commission on trade unions and employers' associations, 1965-1968).

2. Manuscripts

As early as 1951 it was decided "that the Institute would not normally set out to collect legal manuscripts, that it is a teaching and research and not an exhibiting institution and that manuscripts should only be acquired if they could be utilised for teaching or were required for research purposes" (*Annual Report 5 1951-52*, 10). There are consequently only three items of note. These are A.V. Dicey's lecture notes for his course on contract, 1890-91. These are typescript, with manuscript notes by H.C. Dowdall, a County Court judge and Chancellor of the Dioceses of Liverpool and Bristol. Two manuscripts by F.W. Maitland: *The body politic* and *The unincorporated body* were presented by his daughter in the session 1954. Finally we have Roscoe Pound's Lectures on jurisprudence at Harvard Law School: a typescript set of notes taken by Sir Douglas Logan, afterwards Principal of the University of London, during his Henry Fellowship, 1935-1936.

This has been a rather superficial review of some of the more unusual resources of IALS. While the English law collections are by no means extraordinary, we can perhaps claim that our Roman-Dutch material would be useful to scholars working in this field.

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