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Legal Genres

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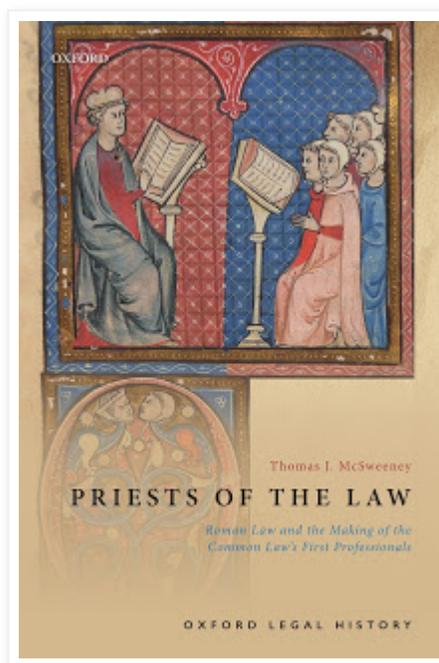
Legal History Blog

scholarship, news and new ideas in legal history

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Legal Genres

As I noted in a previous post, the authors of *Bracton* tried to reconcile the substantive rules of the English royal courts with the rules of Roman law, to demonstrate that the kind of work they were doing in the courts of the common law was actually part of the broader civilian culture of the Latin West. But they probably did not think of Roman law as only, or even primarily, a body of substantive rules. When they thought about Roman law, they probably also thought of a particular set of legal practices. We can be fairly certain from *Bracton* itself that its authors had had some formal training in Roman law. That training would have encouraged them to think of Roman law as a textual practice. The cover image for *Priests of the Law* actually illustrates this point very well. It comes from a 13th-century manuscript of Justinian's *Digest*. A doctor of law sits with a text of the *Digest* in front of him while his students all follow along in another copy of the *Digest*. Learning exercises in the universities revolved around authoritative texts and jurists were defined by the types of texts they produced. The authors of *Bracton*, working in England, were probably particularly inclined to associate jurists with the types of texts they produced, as they encountered the great jurists of Bologna not through their teaching, but through texts that had made their way to England. They would have known Azo, Tancred, and Raymond of Peñafort primary as producers of texts.



The authors of *Bracton* sought to emulate the textual practices of the jurists of Roman law. The most obvious example of this is the *Bracton* treatise itself, which is written in the style of a civilian *summa*. But they also recast the texts the king's courts were already producing. The royal courts of the thirteenth century ran on parchment. Writs initiated litigation in the king's courts. Records of what had happened in that litigation were kept on plea rolls. In *Bracton* we see these justices identifying the types of texts the royal courts had been producing for decades with genres of texts produced by jurists. They cite to plea rolls just as they do to the opinions of the Roman jurists collected in Justinian's *Digest*, sometimes even citing them together. Just as they sought to reconcile the law they were applying in the royal courts to Roman law, they sought to reconcile the texts they were producing in those courts to genres of texts produced by jurists. This was a way of re-imagining the work they were doing in the royal courts. When a justice's clerk recorded

a decision of William of Raleigh on a plea roll, he was not simply making a record of what had happened in a case; he was recording the opinion of a jurist, which might be cited alongside the opinions of Ulpian and Papinian.

-Tom McSweeney

Posted by Thomas J. McSweeney at 12:30 AM

