

**Coutumes de Bretagne [Brittany Customary]
In Latin and French, decorated manuscript on parchment
France, Brittany (likely Rennes), c. 1460 (after 1456)**

[III] + 188 ff., followed by 2 modern leaves and 6 ruled parchment leaves left blank, missing a number of leaves [i.e. ff. 1, 32-34, ff. 16, 38, 72, 73, 86, 87, 101 and 102 are mutilated] (collation: i4, ii7 (8-1, wanting i), iii6, iv8 (with ii partially torn), v8, vi5 (of 6, wanting ii and with v partially torn), vii-xi8 (with ii and iii partially torn), xii8 (with viii partially torn), xiii8 (with i partially torn), xiv8 (with vii and viii partially torn), xv-xxiv8, xxv6 (of 8, with viii and viii cancelled and replaced by 2 modern paper leaves, xxvi6), written in a small and very regular bâtarde script, on up to 30 lines (justification 108 x 67 mm), catchwords, ruled in red ink, prickings still visible, rubrics in pale red, some capitals stroked in pale yellow, numerous initials in burnished gold on dark pink and blue grounds highlighted in white tracery, traces of offset of decorated or illuminated leaves (now wanting). Bound in a restored binding preserving original blind-stamped dark brown goatskin over wooden boards, covers tooled with concentric frames traced in multiple filets, a floral roll-tool border in outer frame, inner infill with 4 vertical rows of roll-tooled fleur-de-lys, hermine (Brittany), griffon, and stag (on upper cover] and rows of roll-tooled dog, bird, fox (?) [lower cover], spine sewn on 4 raised bands (rebacked), with gilt lettering "Coustumes de Bretagne" and "MS du XV^e siècle" at foot of spine. Dimensions 160 x 110 mm.

This codex compiles the Customary of Brittany and supplementary legal texts such as ducal ordinances and statutes. Written in an accomplished formal script, it may once have been illuminated (some opening leaves are excised). Known to Planiol in his monumental edition and study (1896), the manuscript is one of the few codices of the Coutumes de Bretagne still in private hands. Its provenance can be traced from the sixteenth century through a long line of Breton notaries and lawyers. Manuscripts of customary law are scarce.

PROVENANCE

1. Manuscript written and decorated in France, likely Brittany (Rennes?). Brittany, a region that occupies the peninsula on France's northwest coast, came under French rule when Anne, duchess of Brittany, married Charles VIII of France and then his successor, Louis XII. The duchy of Brittany was only formally incorporated into France in 1532: the Dukes benefited from a strong independent legislative power. The present manuscript has unfortunately been mutilated with a number of leaves excised which must have contained quite deluxe ornamentation. In comparison to other known copies, this manuscript is particularly lavish, and it must have been commissioned by a notable practitioner. This manuscript was known to Marcel Planiol and is published in his study on *La très ancienne coutume de Bretagne* (Rennes, 1896), p. 30, likely signaled to the historian by its owner and fellow "breton" Arthur de la Borderie of Vitré (Brittany). See Planiol, 1896, p. 30. The manuscript was already mutilated in 1896.
2. Jacques Pinochet, his inscription on f. 188: "Jacques Pinochet a qui je suis..." There are inscriptions found on f. 195v and f. 196, which are "livre de raison" type inscriptions providing the births of two of Jacques Pinochet's daughters: "Le vingtiesme jour d'apvril l'an mill cinq centz quatre vingt fut baptizé Jean Pinochet fils Jacques et de Marguerite Guyomar sa mere..."; "Le ouytiesme jour de mars l'an mil cinq centz quatre vingt et dix,

fut baptsé Margueritte Pinochet fille de Jacques Pinochet et Margaritte Guyomar et fut compere Allain Gaultier..." This last inscription establishes the tie between the Gaultier and Pinochet families in 1580 and 1590.

3. Robert Gaultier of "Medrignac" [current modern-day Merdrignac, Brittany, Cotes-d'Armor], his inscription on f. 4: "Je suys pour sevir a mon maistre...par son droit mon[seigneur] Robert Gaultier demeurant en la ville de Medrignac. Cieulx ou celles qui se present livre voudroit il prira le vin a la mesure de Medrignac. Robert. Robert Gaultier."
4. Julien Gaultier de Medrignac (Merdrignac), his inscription on f. 188.
5. Guillaume Peschart, royal notary in Ploermel, his inscription on f. 2: "Les presante costumes sont a Maistre Guillaume Peschart sieur de la Haulterais, notaire royal et greffier civil a Ploermel [signed] Peschart." Ploermel is a town located in southern Brittany, department of Morbihan, situated fifty kilometers from Rennes (south-west). The famous "Etats de Bretagne" were held often in Ploermel from the 13th to the 16th centuries.
6. Charpentier, sieur du Tertre, with an inscription on f. 188v that reads: "Le present livre costumier es[t] et appartien[t] au sieur du Tertre Charpentier advocat en la cour et a esté par luy acheté a la vente des meubles de deffunt Me Guillaume Peschart."
7. Arthur de La Borderie (1827-1901), graduate from the Ecole des chartes (Paris), politician, historian of Brittany, and bibliophile, his ex-libris pasted on the upper pastedown, with a motto using a pun on his surname: "Qui l'aborde rie." His ownership is confirmed again on verso of first flyleaf: "Ex libris Arthuir de la Borderis. Anno domini MDCCLXXVI," confirming he acquired the codex in 1876. La Borderie was educated at the Ecole des chartes where he earned his degree as an Archiviste-paléographe. Part of his collection centered on Brittany was donated to the Bibliothèque municipale in Rennes. An inscription copied by Arthur de la Borderie on two modern leaves bound immediately after f. 188 reads: "Possesseurs du manuscrit" and list the owners of the manuscript.

TEXT

ff. I-IIIv, flyleaves, some with ownership inscriptions (see Provenance above);

f. 1, wanting;

f. 2, Coustumes de Bretagne (wanting beginning), Preface, incipit, "[...] o les sages qui approuvés estoient en la duché generalement et par les opinions qui monstrent..."; explicit, "[...] que l'en puisse plus plainement trouver de ceulx dont nous devison [sic]" [published in Planiol, 1984, pp. 52-53];

ff. 2-10v, Table of contents listing all 332 [334] chapters [published in Planiol, 1984, pp. 53-71];

ff. 11-146, Coustumes de Bretagne, rubric [chapter 1], *De ceulx qui veulent vivre honnestement*; incipit, "Qui veult vivre honnestement et que justice soit faicte..."; last rubric (f. 142) [chapter 334], *Pourquoy justice fust establee*; explicit, "[...] que il leur doit tenir ferme justice et mettre paix en pais. Amen. Explicit deo gratias" [published in Planiol, 1984, pp. 73-311]; followed by ff. 144-146,

Nota; incipit, "Que ou livre cy davant escript est troict² et fait mencion es chapitres..."; rubric, *Les poins de l'assise*, incipit, "L'advocat jurera garder a son pouvoir...";

ff. 146-155, Supplementary legal texts, including *Assise au comte Geffroi*, rubric, in Latin (f. 146), *Sequitur assisia Gauffredi comitis*; rubric, French translation (f. 147v) *L'assise du conte geoffroy*; incipit, "Notum sit omnibus tam presentibus quam futuris quod cum in britannia..." [published in Planiol, 1888, pp. 4-7]; *Assise des rachaz*: rubric (f. 149), *Lettre de la mutacion du baill en rachact*; Pseudo-ordinance of Jean II (ff. 150-155), incipit, "A tous ceulx qui ces presentes lettres verront et orront..."

The scribes of the Coutumes de Bretagne often added to the text of the Coutumes supplementary texts such as the "Assises, Ordonnances ducales et Constitutions du Parlement." The custom of adding these ancillary texts (some of them actually older than the core Customs) began as early as the fourteenth century in, for instance, Codex T (London, BL, Add. MS 23968; see Planiol, 1896, p. 38). The complementary body of legislative material was added to the existing core of texts as they were issued by the Dukes: this often allows one to date the manuscript, with a *terminus post quem* date corresponding to the last date of the added legislative piece (in the present case, the last ordinance copied is dated 1456 (fol. 188). Blank ruled leaves were usually left on purpose at the end of the codex to allow the practitioner to add any ordinance or constitution that would be issued after one had purchased or had copied the Customs.

Geoffrey II (1158-1186) was Duke of Brittany and the fourth son of King Henry II of England and Eleanor, Duchess of Aquitaine. He passed a legal text in 1185 called *Assise au comte Geffroy* that sought to limit the division and dispersal of large fiefdoms during successions and inheritances, for which he gained the favor and appreciation of the Breton barons. The text was published and discussed by M. Planiol, *L'assise au comte Geffroi. Etude sur les successions féodales en Bretagne*, Paris, 1888. The original document of the *Assise au comte Geffroi*, still in existence in the Château de Vitré in the sixteenth century and bearing the seals of Constance and Geoffrey II, is currently untraceable.

ff. 155v-156v, ruled blanks;

ff. 157-188, Ducal Ordinances and Constitutions for the years 1405, 1420, 1424, 1451 (25 May), 1451 (27 May), 1456 (11 Oct), incipit, "S'ensuivent les corrections faictes au parlement general de bretagne tenu a ploearmel en l'an mil mil (sic) .iiii. c. et cinq [1405]"; heading, "Ensuivent les establissementz edictz constitucions statuz et ordonnances faiz et baillez par oy generale par Pierre par la grace de dieu duc de bretagne..." (f. 176); last rubric, *Lettre de correction du port des contreditz sur la constitution de l'an mil .iii. c. .li. [1451] et auxi ordonnance des appellacions de davant l'aloue de Rennes faictes es pletz*; incipit, "Pierre par la grace de dieu duc de bretagne..."; explicit, "[...] de Rennes le .xiiii. e jour de janvier l'an dessusdit mil .iiii. c. lvi fust le mandement cy dessus lu publié et fait savoir en jugement et commande y obbeir."

This codex contains a copy of the Coutumes de Bretagne [Customs of the duchy of Brittany]. It is recorded by M. Planiol, editor of the *Très ancienne coutume de Bretagne* (1984, reprint of 1896 edition), who gives a brief description of the codex in his census of identified manuscripts of the Coutumes de Bretagne (see Planiol, 1896, p. 30). In this census, there are some 31 manuscripts listed and described, all in public institutions, with the exception of the codex once at Cheltenham (Collection Thomas Phillips) (Paniol, Codex V), that of Paris, Bibliothèque de M. X (Paniol, Codex P2) and the present manuscript (Paniol, codex G: Vitré, bibliothèque de M. A.

de la Borderie). There are only four codices that are datable to the fourteenth century, of which the two better codices are Rennes, BM, MS 72 (Codex A) and Paris, BnF MS fr. 11541 (Codex H) (see Planiol, 1984, reprint of 1896, pp. 48-49).

Custom in law is the established pattern of behavior that can be objectively verified within a particular social setting. A claim can be carried out in defense of "what has always been done and accepted by law." Customary law (also, consuetudinary or unofficial law) exists where a certain legal practice is observed and the relevant actors consider it to be law (*opinio juris*). "Coutumes" are the legal customs of France. During the Middle Ages and early modern period the French kings and their vassals constantly asserted the importance and, in effect, primacy of customary law, especially in the lands north and west of Paris. The area where the French customary law (*droit coutumier*) was in force was known as the "pays de coutume." In the south of France Roman law was paramount (*pays de droit écrit*). The line separating the two areas was generally the river Loire, from Geneva to the mouth of the Charente River. A number of regional customaries were compiled in the thirteenth and fourteenth centuries. The *Coutumes de Beauvaisis*, compiled by Phillipe de Remy, had a long-lasting influence on French law. There were about 60 such regional customaries. There were also more than 300 local "coutumes" in specific towns and villages. Voltaire said that in France a traveler changed laws as often as he changed horses. By the sixteenth century the "Coutumes of Paris" (first published in 1510) had been adopted in all areas except Normandy, Burgundy and Brittany.

The Coutume de Bretagne was probably first written down circa 1315-1325 (and not circa 1450 as suggested by Bertrand d'Argentré): at the beginning customary laws were largely oral and were only progressively set in writing. The first edition of the Coutumes de Bretagne was printed in Paris in 1480 by Guillaume Le Fèvre: *Coutumes et établissements de Bretagne...* (Gouron and Terrin, 1975, no. 681; see also Planiol, 1984, reprint of 1896, p. 19; pp. 41-48). This was followed closely by an edition printed in Rennes in 1485 (Gouron and Terrin, 1975, no. 682). The incunable editions of the Coutumes de Bretagne are equally quite scarce. On the successive editions of the Coutumes de Bretagne, see Gouron and Terrin, 1975, pp. 87-105. As mentioned above, the text was published along with the many ancillary texts, statutes and ordinances that accompany and complete (often anti-dating) the Coutumes, by M. Planiol (1896). Although the Planiol edition (1896) and study is a good one, a closer look at the materiality and variety of the different codices and a renewed edition would certainly be worthwhile.

LITERATURE

[Customs of Brittany]. *Observations sommaires sur la Coutume de Bretagne...*, Laval, 1690.

Gouron, André and Terrin, Odile. *Bibliographie des coutumes de France : éditions antérieures à la Révolution...*, Geneva, Droz, 1975.

Gouron, André. *Droit et coutume en France au XIIe et XIIIe siècles*, Adershot, Variorum, 1993.

Planiol, Marcel. *La Très ancienne coutume de Bretagne: avec les assises, constitutions de parlement et ordonnances ducales, suivies d'un recueil de textes divers antérieurs à 1494*, Paris, Champion and Geneva, 1984 [reprint 1896].

Planiol, Marcel. *L'assise au comte Geffroi. Etude sur les successions féodales en Bretagne*, Paris, 1888.

Planiol, Marcel. *La Bretagne ducale: le gouvernement, l'Église, finances, justice* [Histoire des institutions de

la Bretagne, 3], Mayenne, 1981.

Planiol, Marcel. *XVIe siècle: souveraineté et administration générale, finances, institutions militaires, les villes, les réformations de la coutume, la justice, la noblesse et les fiefs, les campagnes, droit privé*, Histoire des institutions de la Bretagne, 5, Mayenne, 1984.

ONLINE RESOURCES

Planiol, 1896:

<http://gallica.bnf.fr/ark:/12148/bpt6k113550h.r=planiol+tres+ancienne+bretagne.langFR>

Planiol, 1888:

<http://gallica.bnf.fr/ark:/12148/bpt6k56882477.r=planiol+tres+ancienne+bretagne.langFR>

George Washington University, Jacob Burns Law Library:

Sources of French Law in the Middle Ages

http://www.law.gwu.edu/Library/Special_Collections/French_Collection/Pages/sources.aspx

TM 733