From Law in Blackletter to Blackletter Law

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FROM LAW IN **Blackletter** TO "**BLACKLETTER LAW**"

**Abstract:** What is the etymology of the phrase blackletter law? Chasing down its origins uncovers not only a surprising turnabout from blackletter law’s original meaning, but also prompts examination of a previously overlooked subject, the history of the law’s changing appearance on the page. This history ultimately proves a cautionary tale of how appearances have hindered access to the law.

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I. Introduction

It is a legal term of art so ingrained in the psyche that a lawyer uses it without thinking. Practically from the moment of crossing a law school’s threshold, new law students bump up against that peculiar turn of phrase, “blackletter law,” and quickly internalize its meaning of “basic principles of a subject in the law.”¹ Lawyers long out of law school depend upon it as a stock phrase in their practicing vocabulary, all the way up the ranks to U.S. Supreme Court justices.² But where does it come from? For its historic origins, Black’s Law Dictionary provides a succinct summation: “the law printed in books set in Gothic type, which is very bold and black.”³ From this definition, a conundrum emerges—“blackletter law” intimates Gothic-ness, but no lawyer uses Gothic today. What happened to the original blackletter law? Investigating this disappearing act uncovers not only a surprising turnabout from blackletter law’s original meaning, but also prompts examination of a previously overlooked subject, the history of the law’s changing appearance on the page.

Consider the obvious: a literate person today can read and write without conscious effort, no matter the subject and no matter the level of understanding. While even the literati may dismiss Finnegans Wake as “unreadable,” they would not mean such a declaration literally—the letters on the page are still decipherable. And while we modern types produce chicken scratch signatures or

¹ THE WOLTERS KLUWER BOUVIER LAW DICTIONARY 1547 (Desk ed. 2012).
² See, e.g., Davenport v. Washington Educ. Ass’n, 551 U.S. 177, 189 (2007) (“And it is also black-letter law that, when the government permits speech on government property that is a nonpublic forum, it can exclude speakers on the basis of their subject matter. . . .”).
³ BLACK’S LAW DICTIONARY 192 (9th ed. 2009).
find ourselves all thumbs when texting with a smartphone, in the main, handwriting is a basic skill acquired in one’s tender years, with typing not too far behind.

Can literate people today read and write this? The change in appearance jars the eyes. Writing in this style by hand would be all but impossible. If reading meant wading through, never mind writing, pages upon pages of densely packed letter shapes like this, they would quit post haste. The look of letter shapes—whether of handwritten, print, or digital origin—either facilitates or impedes a reader’s progress and the production of texts.⁴

When it comes to choosing letter shapes, lawyers today have no shortage of options. No longer constrained by typewriters, lawyers, along with office workers everywhere, have their pick of a multitude of “fonts” that come part and parcel with writing software, or can even design their own. But instead of every lawyer his own font developer, lawyers by and large have stuck to the familiar.⁵ In the face of this conservatism, a small but steady stream of practical writing on the

law’s visual side, down to the level of letter shapes, has been percolating over the past decade or so. Even courts are having their say via court rules.

Whatever the exact recommendations, all of these writings and rules take it as a given that a lawyer’s work should be legible, clear enough for a reader’s easy continuous reading. Even lawyers who do not know a monospace from a serif would endorse the aim of legibility if they gave it any thought. While there is always room for improvement then, the principle that the law is and should be legible is shared by lawyers and laypeople alike.

“Legibility of the law” carries an axiomatic ring to it, but it was not always so. Quite the opposite, in fact. The law’s illegibility to vast swaths of otherwise literate people proved a recurring stumbling block over the ages. It so happens that the letter shapes that proved problematic to read and write sprang from a well of blackletter, variously spelled “black letter” or “black-letter” and what we today

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8 See MILES A. TINKER, LEGIBILITY OF PRINT (1963), for a classic work on legibility. Tinker defines legibility as “concerned with perceiving letters and words, and with the reading of continuous textual material.” Id. at 7.
call Gothic. Investigating the disappearance of Gothic letter shapes necessarily hinges on understanding the history behind the law's visual appearance.

The inconceivability of Gothic forms today for everyday use—save for the occasional diploma or Washington Post masthead—is the product of a signal turn of events centuries ago. During the Middle Ages, Gothic reigned as the dominant letter shape in Europe, including England, birthplace of the common law. The circumstances were the reverse of the present, with the literate reading Gothic without a moment's thought. During the Renaissance, Roman letters supplanted Gothic in England. Why? One style of letter form is not intrinsically better than another. Rather, shapes that "we recognize as letterforms, and are able to read"

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9 John Carter & Nicolas Barker, ABC for Book Collectors 115-16 (8th ed. 2004). See also Alexander Lawson, Anatomy of a Typeface 16 (1990) (cautioning that there has not "been agreement concerning the numerous appellations given to the letter form: in addition to black letter, it has been called gothic, text letter, textur, textura, English, and Old English.") How any given hand or type fits within the larger Gothic category is usually open to multiple interpretations. "[T]he recognition and proper identification of black-letter types has always been a subject of great confusion among printers and even typographers. . . . [E]ven paleographers and bibliophiles have always found themselves at odds on the matter." Id.


12 Zachary Lesser, Typographic Nostalgia, Play-Reading, Popularity, and the Meanings of Black Letter, in The Book of the Play: Playwrights, Stationers, and Readers in Early Modern England 103 (Marta Straznicky ed., 2006). However, it has been argued that Roman capital or upper case letters were superior to Gothic's; Gothic capital letters did not have a standardized appearance and were not considered to lend themselves to making words. Harry Carter, A View of Early Typography: Up to about 1600, at 29, 46, 53 (1969). See also Stanley Morison, 'Black-letter' Text 30 (1942) (asserting that Gothic was "handicapped with capitals with only one function: combination with miniscule"); Lawson, supra note 9, at 15 (noting that the practice of embellished capitals in Gothic letter forms "made them difficult to distinguish"). Similarly, the literary scholar Harold Love has asserted that reading the Gothic-derived secretary hand "requires a constant attentiveness" arising "from the greater complexity of these forms—especially the capitals—and the fact that the same scribe may use several versions of a single letter." Harold Love, The Culture and Commerce of Texts: Scribal Publication in Seventeenth-Century
are “largely a matter of culture and experience.” 13 In brief, English culture changed, the look of English texts changed along with it, and society’s common experience went from reading Gothit to reading Roman letter shapes. 14

This course of events is not surprising, even to someone unacquainted with the particulars of paleography and the history of typography. What is surprising is that Gothit persisted in spite of its causing difficulties for people reading the law. Lay people and ultimately lawyers themselves shied away from Gothit legal texts, finding them fraught with “terrors” that reduced them to tears of frustration. 15

The persistence of Gothit’s increasingly unintelligible letter shapes hampered access to the law in striking ways. Legal documents sowed confusion both inside and outside the courtroom. With case reports and legal standard-bearers such as Coke upon Littleton appearing in Gothit, aspiring lawyers “were drawn off from the task, and failed in attaining the profession.” 16 Statutes proved inscrutable to England’s subjects gazing upon the law that governed them. Legislation that they themselves had drafted confounded lawmakers.

England 110 (1998). It has also been argued that Roman was relatively more legible in smaller sizes. Thomas Middleton and Early Modern Textual Culture: A Companion to the Collected Works 202 (Gary Taylor & John Lavagnino eds., 2007) [hereinafter Thomas Middleton and Early Modern Textual Culture].


14 More specifically, the change occurred due to the availability of different kinds of type, in combination with a better economy and a move toward Italianate fashion. Bland, supra note 10, at 94. Similarly in modern times, there are indications that future generations will no longer be able to read cursive handwriting. Valerie Hotchkiss, Cursive Is an Endangered Species, THE CHRONICLE OF HIGHER EDUCATION (June 27, 2014), http://chronicle.com/blogs/conversation/2014/06/27/ive-seen-the-writing-on-the-wall-and-it-is-in-cursive/.

15 3 William Blackstone, Commentaries *318.
16 Hugh H. Brackenridge, Law Miscellanies xvii (1814).
Why did English law retain ȝothic letter shapes after all other subjects had moved on to Roman letters? ȝothic’s trajectory parallels to some extent with that of law French, a learned language of lawyers, but that is a false lead. ȝothic did not march in lockstep with the more limited scope of law French (used mainly in case reports after it ceased as a spoken language), and ȝothic in fact outlasted the use of law French.\(^{17}\) Instead, ȝothic’s resilience lay in the fact that it had come to symbolize the law of England itself. Decoupling the law from its accustomed appearance proved a hard bond to break. Moreover, a range of members in the legal community carried a vested interest in using letter shapes the writing and reading of which they monopolized. When in the mid-nineteenth century ȝothic finally conceded the field to Roman, its end licensed not a mere change in fashions but a leveling of the playing field in accessing law. We take it for granted today, but we are all the beneficiaries of the unspoken consensus that emerged: anyone who can read and write can read and write the law.

Part II of this article is descriptive: after introducing concepts from the field of bibliography, it lays out what the law looked like in handwritten and printed form, and offers a short history of each.\(^{18}\) Part III surveys the historical record and gathers the evidence that both lawyers and laity found ȝothic, in both manuscript and print, literally off-putting to read.\(^{19}\) Part IV explores how ȝothic’s associations with English national identity, combined with the vested interests of clerg-


\(^{18}\) See infra pp. 7-14.

\(^{19}\) See infra pp. 15-25.
printers, and lawyers in Gothic letter shapes led Gothic to last longest in the legal arena.\textsuperscript{20} Part V then traces the rise of the modern meaning of blackletter law.\textsuperscript{21}

II. What the Law Looked Like: The Lay of the Land

In considering what the law looked like over time, it is illuminating to approach works of yesteryear from the perspective of bibliography—“the systematic description and history” of books or, more broadly, texts.\textsuperscript{22} The physical aspects of any given text play a role in its overall import, acting as “semiotic codings.”\textsuperscript{23} As one literary scholar notes, the choices made by a text’s producers and readers put on permanent display that era’s “economic, social, political and cultural contexts and conventions.”\textsuperscript{24} Historic texts that have survived the ravages of time are a windfall by which to gauge an earlier age and a guidepost for understanding the way our own has taken shape.

Turning to legal texts in particular, we discover that they have their own role to play in revealing an era’s culture, both in the law and at large. Although the look of letter shapes is only one factor in a text’s physicality, their appearance also affects a text’s “reception, history and interpretation.”\textsuperscript{25} Letter shapes assume even greater importance in the law as legal texts, whether of primary or secondary

\textsuperscript{20} See infra pp. 25-57.
\textsuperscript{21} See infra pp. 57-62.
\textsuperscript{23} Lesser, supra note 12, at 100.
\textsuperscript{25} Bland, supra note 10, at 91.
authority, are in general devoid of anything but words.26 Taken together, letter shapes in legal texts have played an outsized role in the history of the law that merits separate consideration.

A. Handwriting

As the law developed in the Middle Ages, so too did handwriting in the law became increasingly distinct and specialized. Gotthit was the order of the day, hence Gotthit forms governed the different strands of legal handwriting that arose. The initial impetus for distinct legal hands was practical in that it distinguished one center of medieval government administration from another.27 Three main bodies existed: the law courts, Chancery, and the Exchequer. The law courts were the common law courts of Common Pleas and King’s (or Queen’s) Bench. Chancery produced charters and writs, while the Exchequer dealt with revenues. Each body developed its own “departmental set hand.”28 Given these departments’ narrow goals and the medieval reality that only a small number within society could read and write, these set hands did not concern themselves with legibility other than to an insular group. They were all “the products of a more or less self-conscious search for distinctiveness” whose “highly mannered style was completely divorced from the

26 Cristina S. Martinez, Blackstone as Draughtsman, in Re-Interpreting Blackstone’s Commentaries 48 (Wilfrid Priest ed., 2014) [hereinafter Martinez, Blackstone as Draughtsman] (explaining that “[l]egal texts were often illustrated in the medieval period, but it became the modern practice to exclude images and ornamental details.”). See also John Brownlee, The Harvard Law Review Gets Updated for the Age of #Longreads, FAST COMPANY, June 24, 2014, http://www.fastcodesign.com/3032261/how-the-harvard-law-review-updated-itself-for-the-age-of-longreads (noting that the Harvard Law Review took a “typography-based approach” to update its design as it “has not published a single image or photograph in 127 years” of existence).


28 Id. at 64.
circumstances of everyday life." 29 The end result was a group of hands nevertheless united by a shared administrative quality to which the literate became accustomed. 30

Court and chancery hands proved the most pervasive of the three. Court hand matured into a separate hand, along with the other departmental set hands in the 15th century, with the emergence of a class of professional clerks for court business. 31 Despite court hand’s inward-looking origins, its use then spread outside the courts for legal documents generally such as deeds, memoranda, and commonplace books. 32 Using court hand became one of the “immutable requirements of the common law,” and as far back as 1588 a sheriff was fined for producing a writ in a more ordinary hand. 33 For its part, chancery hand was used for “all instruments under the Great Seal, such as the engrossments of royal letters patent and original writs” and in Chancery enrollments. 34

Another type of Grotesque that played a limited but key role in the look of the law down through the ages were the hands used in Parliament for engrossing and enrolling legislation. 35 The exact names for these hands vary over time and from

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29 Id. at 66.
31 HECTOR, supra note 27, at 12.
33 JOHN BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 86 (2002) [hereinafter BAKER, INTRODUCTION].
34 HECTOR, supra note 27, at 64.
35 “Engrossed” and “enrolled” are terms that have survived down to the present in the United States, albeit divorced from their original functional meaning, to signify respectively the
source to source, but a Gothic quality remained indelible. Clerks used an engrossing hand to draw up a copy of a bill after it passed one chamber of Parliament before being sent on its way to another. An “engrossing hand,” refers to the action of creating a fresh, clean copy of a document. The Gothic style of handwriting combined with the action of engrossing created an “engrossed bill.” After an act passed both houses of Parliament, clerks would then produce an “enrolled” version, again in Gothic style.

As creatures of the modern age who take pride in our own distinctive scrawl and would have trouble forging anyone else’s, it is natural for us to assume anachronistically that legal hands looked the way they did because that was the only style that a person knew how to write. Yet just as modern writers mix in penultimate and final stages in a bill’s passage through Congress, STEVEN BARKAN ET AL., FUNDAMENTALS OF LEGAL RESEARCH 129 nn.5-6 (9th ed. 2009).

36 For example, an 1836 Parliamentary report that considered ending these hands referred to them as black letter or an ingrossing hand. SELECT COMMITTEE APPOINTED TO CONSIDER THE RESOLUTIONS COMMUNICATED BY THE HOUSE OF COMMONS AT CONFERENCES ON THE 9TH AND 15TH OF FEBRUARY LAST, RELATIVE TO THE PROMULGATION OF THE STATUTES, AND TO THE EXPEDIENCY OF DISCONTINUING THE PRESENT MODE OF INGROSSING ACTS OF PARLIAMENT IN BLACK LETTER, AND OF SUBSTITUTE A PLAIN ROUND HAND INSTEAD THEREOF, REPORT, 1836, H.L. 313. The scholar L.C. Hector, writing from the vantage point of the twentieth century, considered the hand used for engrossing legislation a form of secretary hand and that for enrolling a form of chancery hand. HECTOR, supra note 27, at 67. Secretary hand was a more informal Gothic style of hand, sometimes described as a general business hand. (Clerks could write it more quickly than other Gothic hands as it was in cursive.) STEVEN ROGER FISCHER, HISTORY OF WRITING 252 (2001). See also LOVE, supra note 12, at 109 (asserting that secretary hand could “be written much more rapidly than italic.”) This hand prevalent during early modern England presumably presented itself as an attractive option during the haste of deviseing legislation.


38 SELECT COMMITTEE ON PRINTING, FIRST REPORT, 1847-8, H.C. 657, at 8.


40 See, e.g., PHILIP HENSHER, THE MISSING INK 17 (2012) (expounds view commonly accepted today that “[h]andwriting is what registers our individuality”). It was not until the early eighteenth
**bold, italic, or ALL CAPITALS** within a text to convey various gradations in meaning, people of past eras wrote in different styles depending on the context. The foremost consideration in writing was for a person to write in the hand appropriate to the context, not in the only hand he could manage. The choice of a law hand enabled a creator to signal a text's legal nature. Legal hands, and hence demand for writers skilled in such hands, continued even after the invention of printing. While the exact form of the law's hands evolved over the centuries, a Gothic quality remained constant and served as a unifying thread over the ages for legal matters.

B. Print

One word that is notably absent thus far is “blackletter.” Although blackletter's meaning would later broaden to mean any form of Gothic, print or handwritten, it is the invention of printing, coinciding with the changing tastes of the Renaissance, that first gave rise to the word. When Johannes Gutenberg invented movable type around 1450 in the German city of Mainz, he opted to make the final product of

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41 See, e.g., Love, supra note 12, at 99 (noting that a “secretary” in the historic sense “should be able to write a passable imitation of his master’s (probably italic) script as well as possessing a well-formed ‘secretary’ hand.”). See generally id. 108-16 (describing the various hands that flourished in the seventeenth century).

42 Ewan Clayton, A History of Learning to Write, in Handwriting: Everyone's Art 11 (Timothy Wilcox & Ewan Clayton eds., 1999) (“Learning to write was a complex business requiring the mastery of several hands and the avoidance of other scripts as inappropriate for one’s social station, profession or gender.”). See, e.g., John Lord Campbell, The Lives of the Lords Chancellors and Keepers of the Great Seal of England 60 (1849-57) (relaying how one of the Chief Justices of England from the mid-seventeenth century “not only learned the running hand of the time, but court hand, black letter, and ingrossing, and made himself ‘an expert entering clerk.’”)

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his invention resemble manuscript—handwritten—texts. At that time, manuscripts of volume length appeared in a style of Gothic known as “book hand,” and Gutenberg designed his type accordingly. The final appearance of letter shapes on a printed page, although physically cast in a type foundry worlds away from a scribe’s pen, served as visible proof that print equaled, if it did not surpass, handwriting. Gutenberg’s decision enabled printed books to continue in Gothic form, a reassuring show of continuity for what was otherwise revolutionary technology.

Meanwhile, in Italy, humanists in the course of rediscovering the classical past “rediscovered” ancient Roman letter shapes. The humanists’ new takes on old styles became known, confusingly enough to us in the present, as littera antiqua, rendering Gothic littera moderna. As printing took off in the late fifteenth century, humanist works started to appear in littera antiqua, today known in English as Roman type.

The visual clash between Roman and Gothic sparked new phrases to articulate the differences. The particular Gothic type that became prevalent in England was

44 LAWSON, supra note 9, at 19.
46 Id. (“If one holds a late manuscript copy of a given text next to an early printed one, one is likely to doubt that any change at all has taken place, let alone an abrupt or revolutionary one.”) But see DAVID MCKITTERICK, PRINT, MANUSCRIPT AND THE SEARCH FOR ORDER 35-36 (2005) (arguing that although early printing types, along with other features of printed books, were based on manuscript, the early technology of printing imposed certain limitations that led to differences between the two).
47 CLAYTON, supra note 40, at 136. But see JAMES WARDROP, THE SCRIPT OF HUMANISM: SOME ASPECTS OF HUMANISTIC SCRIPT 1460-1560, at 4 (1963) (asserting that humanists adopted Roman letter forms because they were old, not because they found them beautiful).
48 MORISON, supra note 12, at 30.
formally known as textura. Yet from about 1600 onward the English commonly referred to Roman as “white letter” and Gothic as “blackletter” from the perception that more black than white appeared on a page and vice versa.

At last then, the turn of the seventeenth century brings us to the debut of the word blackletter. Unlike the straightforwardly named court hand and its cohorts, the origin of the word blackletter lies in its appearance, a tribute to the strong visual impression it makes. Individual letters are “upright, narrow, and angular, standing on crooked feet, and the ascenders are usually decorated with barbs or thorns.” We get some clue to the overall effect of Gothic type from that more technical term, textura, a word with Italian origins that refers to the tapestry-like or “woven” appearance of a page. The style of Gothic dominant in England was further straightened and squared for greater economy of space. With letters fused, joined, and compressed, Gothic’s space-saving measures constructed a picket-fence impression of blackness. “Crabbed” is the choice word that detractors would later use to condemn it. The common use of abbreviations in

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50 THEODORE LOW DE VINNE, PLAIN PRINTING TYPES 292-93 (Oswald Publ’g Co. 1914) (1899).
51 PHILIP GASKELL, A NEW INTRODUCTION TO BIBLIOGRAPHY 17 (1972).
52 LAWSON, supra note 9, at 16.
53 PAUL SHAW, BLACK LETTER PRIMER: AN INTRODUCTION TO GOTHIC ALPHABETS 26 (1981). See also MORISON, supra note 12, at 30 (“undeniable economy”). But see DANE, supra note 49, at 63 (disputing whether blackletter saves space).
54 SHAW, supra note 53, at 30. See also Sabrina Alcorn Baron, Red Ink and Black Letter: Reading Early Modern Authority, in THE READER REVEALED 23 (Sabrina Alcorn Baron ed., 2001) (“Black letter evolved to facilitate ligatures [letters joined together], long words, and diphthongs [union of two vowels].”)
55 See, e.g., JAMES GRANT, LAW AND LAWYERS, OR, SKETCHES AND ILLUSTRATIONS OF LEGAL HISTORY AND BIOGRAPHY 57 (1840).
the texts of this period, including the law, accelerated the visual compression even further.\textsuperscript{56}

England’s first printing press set up shop in 1476, and as early as 1509 English printers took up Roman.\textsuperscript{57} By the 1590s, Roman had become the dominant letter shape of England.\textsuperscript{58} “[T]he arrival of roman as the primary face of composition in English books, and the changes that it brought, are still with us and possess such authority that they are never likely to be entirely displaced.”\textsuperscript{59} By the 1700s, Roman was no longer “non-Gothic” as it had been initially, but “simply the ‘zero degree’ of typography; and in and of itself of no significance.”\textsuperscript{60}

Against these odds, \textit{Gothic} stood its ground in the law, in both handwritten and printed texts. Court hand survived, short of one forcible interruption, until its outlawing in 1731. Even then, “varieties of court hand continued in use among lawyers for wills, deeds and legal papers into the nineteenth century.”\textsuperscript{61} Case reports and treatises continued in \textit{Gothic} until at least 1744. Royal proclamations and statutes appeared in \textit{Gothic} until 1794.\textsuperscript{62} And in the letter form’s most impressive run, \textit{Gothic} hands in the Parliamentary legislative process lasted until 1849.

\textsuperscript{56} ROSEMARY SASSOON & ALBERTINE GAUR, SIGNS, SYMBOLS AND ICONS: PRE-HISTORY TO THE COMPUTER AGE 36 (1997). See also HUBERT HALL, STUDIES IN ENGLISH OFFICIAL HISTORICAL DOCUMENTS 388-89 (1908).
\textsuperscript{57} CARTER, supra note 12, at 92.
\textsuperscript{58} Steven K. Galbraith, “English” Black-Letter Type and Spenser’s Shepheardes Calendar, 21 SPENGER STUDIES 37 n.30 (2007).
\textsuperscript{59} Bland, supra note 10, at 92.
\textsuperscript{60} DANE, supra note 49, at 88.
\textsuperscript{61} DAVID IREDALE, DISCOVERING LOCAL HISTORY 46 (2003).
\textsuperscript{62} “Public general Acts were officially printed in Black Letter until the end of the 33rd year of George III in 1793.” EDWARD ROWE MORES, A DISSERTATION UPON ENGLISH TYPOGRAPHICAL FOUNDERS AND FOUNDERIES 76 n.2 (1961).
III. Difficulties in Reading the Law

To gain a sense of the state of affairs caused by Gotthic’s continued existence after Roman’s ascendance, consider this tale of thwarted reading set off by a poem printed in blackletter “to give it an air of antiquity”:

By some accident [a] copy was left in the lodgings of an Irish young gentleman . . . . On his seeing a paper in this character, which his erudition did not enable him to read, he concluded it was some process from [the courts at] Westminster-Hall, and confined himself for fear of an arrest . . . . His acquaintance, after many inquiries for his health, were determined to draw him forth; when at length he disclosed to an intimate the reason of his retirement, and begged him to read the paper. The discovery occasioned no small diversion.63

The average reader’s ability to read Gotthic had slipped away, but the power of Gotthic letter forms as a signal of the law remained and, in this instance, even trumped a text’s actual content.

A. Handwriting

While departmental hands may have started out innocently enough for functional purposes of government administration, these specialized hands became more and more stylized “until at last only those who had to write it could read it,” namely clerks. Court hand in particular drew fire for its illegibility to others, flummoxing even judges at times. Historic case reports spanning the reigns from James I to George II reveal scattered but telling references of judges conferring on how to decipher court hand.

Court hand’s illegibility appears also to have caused problems with the then common practice of transcribing lawyers’ handwritten court reports for wider circulation in print. The general phenomenon of errors in transcription troubled lawyers at the time, and it continues to be a vein mined by contemporary legal historians. Strangely though, court hand’s illegibility as a possible contributing factor never seems to make it onto anyone’s list. One lawyer from the mid-seventeenth century bears witness, however, from which we can extrapolate. Sir Harbottle Grimston readied the reports of Sir George Croke for publication, and

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65 Procter v. Clifton, (1611) 80 Eng. Rep. 821 (K.B.) 823; 1 Bulst. 126, 128 (“[T]he clerks here never do write their court-hand with a dash . . .”); Robinson, (1648) 82 Eng. Rep. 537 (K.B.); Sty. 69 (“But this exception was over-ruled by the Court, because in the writing of Court-hand, in which hand declarations are written, there are no diphthongs used, and so the word aeris might as well signifie brass as ayre.”); Dobson v. Dobson, (1734) 94 Eng. Rep. 1028 (K.B.) 1030; Cun. 8, 11 (“But at last the Court ruled it good, by taking the word ipse (as there are no diphthongs in Court hand) in the plural number, and supposing it to agree with the word personae understood.”)
67 See, e.g., JOHN WILLIAM WALLACE, THE REPORTERS ARRANGED AND CHARACTERIZED WITH INCIDENTAL REMARKS 7-12, 20-22 (4th ed. 1882) (attributing errors to a combination of variables: inevitable human error, commercial pressures that dictated haste in production, lack of editing or proof-reading characteristic of the contemporary print industry, transcribers misunderstanding abbreviations and lacking knowledge of law French, and unskilled clerks or conversely clerks who improved upon the original when thinking they understood a text better than they in fact did.)
then unburdened himself in a candid preface. Among other things, Grimston relates his trials and tribulations caused by court hand. Indeed, the very problem of reading court hand was what in part prompted Grimston’s effort to convert manuscript to print—“fearing also least after my decease, [the reports] should be obtruded to the publique by an incurious Law-hand.”68 The obstacles such a careless court hand posed Grimston knew all too well from his own encounters: “I have taken upon me the resolution and task of extracting and extricating these Reports (by the help of better eyes than my own) out of their dark Originals; they being written in so small and close a hand, that I may truly say, they are folia Sybillina . . . .”69 Grimston’s comments provide a glimpse into how the transcription of a lawyer’s handwritten notes for print editions played out in reality. Here is a lawyer who found it hard to understand the writing of someone merely a generation removed from himself, and his own father-in-law at that. One can only imagine the increased potential for error when a transcriber readied court reports for printing over a hundred years later, as sometimes occurred.70

Hostility toward court hand reached high tide during the turmoil of the mid-seventeenth century. Following the English Civil War of the 1640s, the republican suzerainty of the Commonwealth seized the opportunity to institute law reforms. After “several petitions” from “soldiers and country farmers,”71 court hand (along with the use of law French) was abolished outright by an act in 1650 that the radical Rump Parliament unanimously carried.72 The statute spells out the goal of

69 Id. at A3.
70 WALLACE, supra note 67, at 10.
71 ISAAC KIMBER, 3 THE HISTORY OF ENGLAND, FROM THE EARLIEST ACCOUNTS OF TIME, TO THE DEATH OF THE LATE QUEEN ANNE 324 (1722).
72 BULSTRODE WHITLOCKE, MEMORIALS OF THE ENGLISH AFFAIRS 460 (1682).
legibility for legal texts, that they “shall be written in an ordinary, usual and legible Hand and Character, and not in any Hand commonly called Court-hand.” 73 One law reformer of the day expressed his assent by remarking that court hand “did nothing differ from exorcisticall Characters, save that the former was truly mischievous . . . the latter for the most part but imaginary.” 74 This populist victory did not last long. With the return of the monarchy in the person of Charles II in 1660, the about-face of the Restoration ensured court hand’s reinstatement. 75

The urge to be free of court hand nonetheless remained and a move to the New World provided an opening. The politically progressive William Penn outlawed court hand when devising his colony. His 1682 Frame of Government for Pennsylvania abolished court hand from the moment of that state’s conception: “That all pleadings, processes and records in courts, shall be short, and in English, and in an ordinary and plain character, that they may be understood, and justice speedily administered.” 76 As one legal historian evocatively characterizes it, the “grievance” of court hand was “strangled in its birth” in America. 77

Court hand continued to stymie those left in England, however. The extent of court hand’s obscurantism is illustrated by the prosecution of a presbyterian minister, Thomas Rosewell, on trumped up charges of high treason in 1684—a

73 An Act for Turning the Books of the Law, and all Proces and Proceedings in Courts of Justice, into English, (1650) I ACTS & ORDS. INTERREGNUM 455 (Eng.).
74 HENRY ROBINSON, CERTAIN CONSIDERATIONS IN ORDER TO A MORE SPEEDY, CHEAP, AND EQUALL DISTRIBUTION OF JUSTICE THROUGHOUT THE NATION A2 (1650).
75 BAKER, INTRODUCTION, supra note 33, at 87 n.84.
77 WALLACE, supra note 67, at 21.
“sensational” trial of the day.\textsuperscript{78} During the course of Rosewell’s testimony, the Oxford educated minister showcased his erudition, at one point replying to questions from the lord chief justice of the King’s Bench in Latin. “[T]o the judge’s sneering suggestion that he could not utter another word in that language, he responded in Greek.”\textsuperscript{79} All his learning served him naught, however, when confronted by court hand. A report of the trial relates that Rosewell was reduced to asking a clerk of the crown to read aloud for him a passage from a court document “that I cannot so well read, ’tis in Court Hand.”\textsuperscript{80}

And what of the clerk called upon to read? Clerks themselves were starting to feel some trepidation, as the rise of a practical work like \textit{Instructor Clericalis} indicates.\textsuperscript{81} First published in 1693, \textit{Instructor Clericalis’} opening passage explains its raison d’être thus—a “young clerk” must not only learn how to write, but “use himself to read Writs, Declarations, and Pleadings in Court Hand,” along with recognizing its customary abbreviations that he might be called upon to read aloud in court. There was enough demand for this particular title that it went through seven editions at least, until 1727.

\textsuperscript{79} \textit{Id.}
\textsuperscript{80} \textit{The Trial of Thomas Rosewell, a Dissenting Teacher, at the King’s Bench, for High-Treason, November 18, 1684, Mich. 36 Car. II, in 3 A Complete Collection of State Trials, and Proceedings for High-Treason, and Other Crimes and Misdemeanours} 909, 950 (2d ed. 1730).
\textsuperscript{81} Robert Gardiner, \textit{Instructor Clericalis} (1693). \textit{See also John Jarman, A System of the Court-Hands (1723); Thomas Ollyffe, Abbreviations As Used in the Courts of Kings Bench and Common Pleas: Containing More Than Six Hundred Words Properly Abbreviated in the Court Hand, with Their Significations in Words at Length in the Engrossing and Secretary Hands &c. (1715); William Greenwell, Young Clerks Remembrancer in Court Hand} (1728).
Outside case law and the courtroom, the situation was no better, and women—being neither lawyers nor clerks—suffered inordinately. Contemporary theatrical works hint at the difficulties women encountered. In a 1678 comic play, *The English Lawyer*, a lawyer attempts to woo a woman he admires. He runs into trouble when, in reply to poetry that he has thoughtlessly written in court hand, she replies, “What a strange Character is here?”82 Another comic play from 1699, *Love and a Bottle*, intimates at more serious consequences. The wife of a judge seeks help in understanding whether her husband has entailed property because “this Court-hand is so devilish crabbed, I can’t endure it.”83 The woman is forestalled from understanding her own husband’s financial situation.

Parliament eventually marshaled its forces to abolish court hand again, this time for good. One gets a sense of the situation on the ground from a remark made in the House of Lords that “in Scotland sheriffs knew nothing of the writs which they executed because they did not know the court hand.”84 In a 1731 law with a declared intent to remedy “many and great Mischiefs,” court hand (along with law French) was at last definitively abolished in court proceedings, going into effect in 1733.85

If only it were so simple. Despite the 1731 statute, 8octjct was not done yet outside the courtroom. Pre-existing documents in court hand still littered the legal landscape. William Blackstone’s *Commentaries on the Laws of England*, first published in the late 1760s, attests that “the reading of any record that is forty

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82 Edward Ravenscroft, *The English Lawyer* (1678).
83 George Farquhar, *Love and a Bottle* (1699).
85 1731, 4 Geo. 2, c. 26.
years old is now become the object of science, and calls for the help of an antiquarian.”86 A new work arose to fill the void, instructing people on how to read old documents in court hand that still affected their lives in the present: Court-hand Restored by Andrew Wright. In the original introduction, dated 1773, the author sets out his purpose. Given that “records written in those hands are daily produced in Evidence in the Court of Law,” gentlemen of large property should “not be reduced to the necessity of taking upon trust the declaration of some of the profession, who call every old Deed useless, because they do not understand it.”87 This lifeline to the past was reprinted regularly over the next one hundred years.

Gothic-infused law hands persisted in legal practice generally. By the nineteenth century, the distinctions between the original Gothic hands had generally broken down and people took to describing them altogether as law or legal hand.88 Charles Dickens provides a memorable example of Gothic’s continued presence in Bleak House, completed in 1853 but set roughly a quarter century earlier in the Court of Chancery.89 At one point, with his usual scorn for legal practices, Dickens describes a document as “an immense desert of law-hand . . . with here and there a resting-place of a few large letters, to break the awful monotony, and save the traveller from despair.”90

86 3 WILLIAM BLACKSTONE, COMMENTARIES *323.
87 ANDREW WRIGHT, COURT-HAND RESTORED iv (Henry G. Bohn ed. 1864) (1773).
88 Herbert C. Schulz, The Teaching of Handwriting in Tudor and Stuart Times, 6 HUNTINGTON LIBRARY QUARTERLY 381, 417 (1943).
90 CHARLES DICKENS, 1 BLEAK HOUSE 455 (1853).
One body that repeatedly despaired of ever seeing Gothic’s end was Parliament. It was in Parliament that handwritten Gothic letter forms made their last stand for everyday use, despite the difficulties they caused. In 1820, one legislator protested against the use of Gothic in bills “which sometimes rendered it extremely difficult to ascertain their precise contents.” 91 In 1836, when the perennial problem resurfaced in Parliamentary debates, England’s Attorney General is recorded as declaring that he was not alone in being unable to read the old system of writing: “He confessed he was himself sometimes puzzled with that sort of writing, although he had studied it. Indeed, it was known that it had puzzled the printers, themselves, and the printers’ devils.” 92 This claim would be especially troubling as printers played by that point the critical role of incorporating handwritten amendments into printed bill versions. 93 Nonetheless, it was not until 1849 that Parliament ended its practice of engrossing and enrolling bills in letters that its own legislators found illegible. 94

B. Print

Just as it had with handwritten documents, the continued use of Gothic in the law’s printed materials caused escalating problems once Roman became the norm. When it came to statutes, people encountered difficulties understanding the laws that governed them. A biography of John Howard, a prison reformer, relates one of his good works from about 1774. 95 To “obviate” the fact that the

91 2 PARL. DEB., H.C. (2d ser.) (1820) 290.
92 31 PARL. DEB., H.C. (3d ser.) (1836) 305.
93 SELECT COMMITTEE ON PRINTING, FIRST REPORT, 1847-8, H.C. 657, at 2.
95 THE LIFE OF JOHN HOWARD, ESQUIRE, LL.D. AND F.R.S. (1790).
Acts of Parliament were printed in Gothit, "which from the difficulty of the reading might counteract the humane intentions of the Legislature," Howard had certain laws relating to prisoners "printed in Roman characters, at his own expence, and sent to the keeper of every county gaol in England." Even though the printing of statutes and acts of parliament in Gothit ceased at the end of 1793, it possibly took some time for this change to go into effect. One legal reformer wrote in 1794: "It is said that our laws are so plain that any person may understand them. . . . How can those understand them who cannot read the black letter?"

Gothit also threw up roadblocks for those wishing to study the law. In a letter from 1740, the poet Thomas Gray wrote to a discouraged friend: "Had the Gothic character . . . no ill effect upon your eye? Are you sure, if Coke had been printed by [the famed publishers] Elezvir . . . you should never have taken him up for an hour . . . or drank your tea over him?" In the 1750s, one parodist could not resist a dig that when it came to studying the law "thousands . . . conceive an unconquerable aversion to the white leaves and the old black letter." The early nineteenth-century British politician George Canning chimed in over a generation later, bemoaning Gothit law books in a poem: "Oft condemn'd 'midst gothic tomes to pore . . . th' indignant mind, Bursts forth from the yoke and wanders unconfin'd." Public opinion had coalesced: Gothit was not simply illegible, but

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96 Id. at 15.
97 John Donaldson, Sketches of a Plan for an Effectual and General Reformation of Life and Manners 79 (1794). But see 44 The Parliamentary Register 824 n. * (1796) (asserting that statutes switched to Roman from black letter "for the sake of diminishing their bulk, which it does by about one third.").
98 John Milton et al., The Poetical Works of Milton, Young, Gray, Beattie, and Collins 23 (1831).
99 George Coleman, 2 The Connoisseur 799-800 (1755-56).
100 Grant, supra note 55, at 17. See also Edward Lillie Pierce, 1 Memoir and Letters of Charles Sumner 379 (1877-1893) (1838 letter from American lawyer and senator recalling how he "almost
also unsightly. From the eighteenth century onward, the word blackletter usually appeared paired with a pejorative like uncouth.\textsuperscript{101}

In response to such sentiments, the typeface publishers chose for a legal work became a selling point. For instance, an 1809 edition of \textit{Coke on Littleton} proclaimed itself the first edition to be in only Roman and \textit{italic} as “an agreeable and useful alteration in the printing; the \textbf{black} letter being generally deemed less pleasing, and more fatiguing to the sight.”\textsuperscript{102} One editor of a work from 1826 stated that “[r]eason and principles are independent of types and paper,” but nevertheless assured customers, “[d]on’t start, reader, at the sight of Littleton’s name; he is not here in the gothic black letter.”\textsuperscript{103} Although Roman had almost entirely supplanted \textit{Gothic}, even in the law, by the 1830s, \textit{Gothic} left in its wake a generational divide of embittered elders. One author finds the next crop of lawyers soft by comparison: “It was not then necessary that a law book, to be studied, should be wrought up with all the elegance of Scott’s novels. When children, our predecessors had been obliged to eat black broth, or to go hungry; and if they were afterwards too fastidious to read black letter, they must sink into contempt.”\textsuperscript{104}

\textsuperscript{101} felt my eyesight fail before [Coke’s] stern black-letter.”); \textsc{The Dublin University Magazine} 315 (1840) (“Black letter and law calf, in fact, present obstacles which not even the inquisitive [Benjamin] D’Israeli ventured to overcome.”).
\textsuperscript{102} See e.g., \textsc{Nathan Dane, A General Abridgment and Digest of American Law} 225 (1823-29).
\textsuperscript{103} \textsc{Edward Coke, The First Part of the Institutes of the Laws of England} (Francis Hargrave ed., 1809).
\textsuperscript{104} \textsc{James Hawshead, An Essay on the Operation in Wills of the Word Issue} (1826).
\textsuperscript{104} \textsc{George Bliss, An Address to the Members of the Bar of the Counties of Hampshire, Franklin and Hampden at their Annual Meeting at Northampton [Mass.], September, 1826} (1827).
In sum, whether dealing with handwriting or print, the ability to read the law up until roughly the mid-nineteenth century required more than mere literacy.\textsuperscript{105} To participate fully in every avenue of society, including the law, one had to be proficient in reading Roman types, as well as \textit{Gothic} type and legal hands. In fact, "there were so many kinds of written word, such a diversity of scripts [and] typefaces . . . that a simple contrast between ‘literacy’ and ‘illiteracy’ fails to register the complexity of the situation."\textsuperscript{106} Even if a person got as far as mastering the reading of \textit{Gothic} and Roman typefaces in print, that same person could be "quite incapable of deciphering a written document" in different styles of handwriting.\textsuperscript{107} These barriers to access excluded "a reader from direct participation in a realm of discourse."\textsuperscript{108}

IV. Why \textit{Gothic} Persisted Longest in the Law

Given all these troubles, why did English law retain \textit{Gothic} letter shapes at all, and for so long? Scholarship to date has not recognized this as a question to ask, let alone answer. The history of the law’s appearance on the page has generally fallen

\textsuperscript{105} As one author counseled on the topic of "black letters" in a 1785 work on teaching children how to read: "It is presumed, that parents would wish their children to be acquainted with every character, in which they may meet with their own language, and not close an English book, in a fit of disappointment, without recognizing their mother tongue." Mrs. Lovechild [Eleanor Fenn], \textsc{The Art of Teaching in Sport; Designed as a Prelude to a Set of Toys, for Enabling Ladies to Instill the Rudiments of Spelling Reading, Grammar, and Arithmetic, Under the Idea of Amusement 27} (1785).

\textsuperscript{106} Keith Thomas, \textit{The Meaning of Literacy in Early Modern England, in The Written Word: Literacy in Transition 99} (Gerd Bauman ed., 1986). \textit{See also Margaret W. Ferguson, Dido’s Daughters: Literacy, Gender, and Empire in Early Modern England and France 80} (2003) (commenting that "[d]espite the modern assumption that if one knows how to read, one can read any ‘basic’ text and can, moreover teach oneself to write, the journeys from one kind of reading to another, and from any reading to any writing, seem to have been full of complex stages and obstacles.").

\textsuperscript{107} Thomas, supra note 106, at 100.

into a no man’s land between legal and literary scholars. Legal historians naturally
concentrate their energies on the substance of historic works,\textsuperscript{109} rendering legal
bibliography “something of a pariah in the field of legal history” \textsuperscript{110} and
paleography a problem to be solved through grit and determination.\textsuperscript{111} The
language on the page—Latin, law French, and English—has instead garnered all
the attention as a hindrance to understanding.\textsuperscript{112} Similarly, literary scholars leave
legal texts largely untouched. \textsuperscript{113} In historical analyses of trends in textual
appearance, the law is typically only mentioned in passing as one of the certain
narrow avenues in which Gotthit survived past its expiration date.\textsuperscript{114}

Literary scholars, with their broader research into the means of production, do
raise practical causes for Gotthit’s persistence. Notably, England proved a relative
backwater in the technological development of printing. There simply was not a
lot of Roman type around for printers to use initially.\textsuperscript{115} For a printer to obtain


\textsuperscript{110} David Ibbetson, \textit{Legal Printing and Legal Doctrine}, 35 \textit{Irish Jurist} 345 (2000) (describing the field of legal bibliography as “all too commonly left to historians of printing or seen as the preserve of law librarians rather than ‘proper’ scholars.”).


\textsuperscript{113} But see Richard Helgerson, \textit{Forms of Nationhood: The Elizabethan Writing of England} (1994) (includes a discussion of Coke’s \textit{Institutes}).

\textsuperscript{114} See, e.g., Bland, supra note 10, at 93.

more than one font was expensive; while there are only twenty-six letters in the alphabet, it usually took over a hundred characters to make up a font.\textsuperscript{116} Even if a printer had different typefaces at his disposal, because of the sheer manpower involved “books rarely changed from black letter to roman (or vice versa) from one edition to the next.”\textsuperscript{117} England’s backwardness in typography was also to a certain extent self-inflicted. In 1637, the Star Chamber (England’s criminal court of equity) issued a decree imposing various limits on the domestic production of type, including capping the number of type founders to four.\textsuperscript{118} But beyond these practical limitations and state control, \textit{Gothic}’s persistence depended on other factors at play specific to the law.

A. \textit{Gothic}’s Symbolism

“[S]cripts and typefaces often had strong associations with particular genres and functions.”\textsuperscript{119} For the law, its script and typeface was \textit{Gothic}. One need look no

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\item[116] Daniel Berkeley Updike, 1 Printing Types, Their History, Forms, and Use: A Study in Survivals 17 (1922).
\item[117] Lesser, supra note 12, at 102.
\item[118] A Decree of Star Chamber Concerning Printing XXVII (Grolier Club 1884) (1637). The 1884 Appendix to section XXVII notes that “the attempt to keep type-founding still a mystery” meant that the four type founder monopolists lacked incentive, skill, and means to satisfy demand. This led in turn to steady imports of type from the Continent. \textit{Id. See also} W.S. Holdsworth, \textit{Press Control and Copyright in the 16th and 17th Centuries}, 29 Yale L.J. 841, 848 (1920). By limiting type’s production, “the producers of illicit books could be identified by comparing their typography to specimen sheets stored centrally.” Adrian Johns, \textit{The Nature of the Book: Print and Knowledge in the Making} 72 (1998) (describing conditions during the Restoration era).
\item[119] Hackel, supra note 108, at 61. A volume’s size also seems to have corresponded to different genres that in turn dictated the choice of type. Gothic tended to appear in folios, the largest size; Roman was used for smaller books such as quartos, octavos, and duodecimos. Law books were often printed in folio size. I.M. Green, \textit{Print and Protestantism in Early Modern England} 62 (2000). \textit{See, e.g., } “He was a well read lawyer, and a diligent student, fond of the black letter, and would sometimes remark that an authority read from a heavy folio was entitled to more weight than one from a modern duodecimo.” Lucius Q.C. Elmer, \textit{The Constitution and Government of the}
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further than *Tristram Shandy*, a visually inventive novel by Laurence Sterne published from 1759-67, in which a legal phrase such as "**To wit**" playfully appears in **Gotjit**.120 Even so, the usual categorization by literary scholars of the law as **Gotjit**, pure and simple, does not hold up under scrutiny. More practical legal works such as John Cowell's *The Interpreter* (1607), for a time the standard law dictionary, and Thomas Powell's procedural work, *The Attourneys Academy* (1623), used Roman and *italic* without any **Gotjit** at all. Michael Dalton's *Country Justice*, a work for non-lawyer justices of the peace (1618), similarly lacks any trace of **Gotjit**.

As for "Gothic" printed law books, they in fact tend to use **Gotjit** for the main text and Roman to offset paratextual features such as title pages, prefaces, dedications, running heads, tables of contents, marginal notes, and footnotes.121 Paratextual distinctions from the core text, achieved by mixing different letter shapes, "were meaningful and deliberate choices made in the print shop."122 Of these paratextual features, title pages were "the most important marketing tool at the publisher's disposal"; the habitual choice of typefaces other than **Gotjit** for that prime location presumably made a work more attractive to buyers.123

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121 See Bland, supra note 10, at 95 (describing how the paratext/main text division operated in late sixteenth century, early seventeenth century literary works). See also HACKEL, supra note 108, at 94 (providing an additional practical consideration: the "polyphony of the paratexts" arose because the printer "typically composed them after the rest of the text."); Lesser, supra note 12, at 103.
122 HACKEL, supra note 108, at 96.
123 Lesser, supra note 12, at 103. But see Ronald B. McKerrow, Notes on Bibliographical Evidence for Literary Students and Editors of English Works of the Sixteenth and Seventeenth Centuries 12
Keeping this in mind, a closer look at case reports—Year Books\textsuperscript{124} followed by nominate reporters\textsuperscript{125}—reveals that they are indeed printed in the iconic blackletter for which they are known, but that the standard front matter of an introductory essay by the publisher or reporter was usually in Roman or even italic.

Consider the late seventeenth century so-called Vulgate edition of the Year Books, which was “the most ambitious law-printing project even seen in England”\textsuperscript{126} and which served as the standard version of the Year Books until the twentieth century. Printed between 1679 and 1680, nearly a century after Roman had become England’s dominant letter shape, this multivolume work is so well known for being a Go\textit{thic} showpiece that it is occasionally referred to as the Black-Letter Vulgate edition.\textsuperscript{127} The title page of the first volume, primarily in law French and some English, is completely absent of Go\textit{thic}, as is the short preface written in English.\textsuperscript{128} But the main body of the actual reports is solid Go\textit{thic} in law French, with occasional use of Roman for headings and marginal notes. By the 1670s, printers could have easily had the whole set printed in Roman, but chose to adhere to Go\textit{thic}.

\textsuperscript{124} Anonymous reports of cases from roughly 1268 to 1535. The name derives from the mode of citation to the regnal year. BAKER, INTRODUCTION, supra note 33, at 179, n.14.
\textsuperscript{125} Case reports (also known as nominative reporters) private individuals published from roughly 1535 until 1865. The category of law reports derives from the later practice of identifying reports by the author’s name. Id. at 181.
\textsuperscript{126} Baker, English Law Books and Legal Publishing, supra note 109, at 497.
\textsuperscript{128} Both are mainly a mix of Roman and some italic for some proper names.
Instead of a pat history of Roman making wholesale inroads into the legal sphere, the story is more complicated. By and large, Gothit came to be reserved for the primary law itself of printed matter in case reports and statutes along with handwritten court and legal documents. This distinction between primary versus secondary authority succeeded because readers at the time were more attuned to visual nuance in reading material generally. "[T]he creation of typographical hierarchy by the use of a variety of typeface styles . . . 'coded' the lexical text."\textsuperscript{129} A reader read not only the words on the page, but also "the bibliographical encoding."\textsuperscript{130} Gothit cued readers to what texts or portions of texts were the law.

Gothit was not only a symbol of the law, but a symbol specifically of English law. Gothit's relationship with England operated on three levels. First, Gothit was used by the monarch and intervening governments, rendering it the letterform of state authority. Second, Gothit built upon already strong cultural associations of typeface with national identity. Third, the Englishness of Gothit complemented and reinforced English law as a homegrown strain of jurisprudence apart from Continental civil law. The law was English and, as England's most English texts appeared in Gothit, English law was Gothit.

i. State Authority

Gothit operated as the letterform of state authority in England in both handwriting and print, enabling state authority to set itself visually apart from the

\textsuperscript{129} Taylor & Lavagnino, supra note 12, at 201.
\textsuperscript{130} Id.
ruled.\textsuperscript{131} The scholar Hilary Jenkinson, in an apt turn of phrase, describes court hand and its brethren as "archaising hands," for in producing these hands, writers "used them as though they were not current."\textsuperscript{132} This aura of agedness put the weight of the state's history behind newly written documents. At the summit of court hand users was the king himself. The close affiliation between \textit{Gotljic} and royal authority was such that one defender of the monarchy during the Civil War argued that Charles I should not be reduced to "Carolus Rex written in Court hand, without flesh blood or bones."\textsuperscript{133}

Similarly, England's printed statutes and case reports appeared in \textit{Gotljic}. "As authority was increasingly conveyed via the printed proclamation, or statute" in early modern England, such a text's typography and form "became identified with authority" instead of "being merely the medium" of authority.\textsuperscript{134} The statutes' tie to state authority also resides in the provenance of their production. Since 1504, it was no less than the "King's Printer," appointed by the monarch "to provide official texts for administrators and for the citizenry at large" who printed statutes and proclamations.\textsuperscript{135} Even during the Interregnum, after Charles I's beheading,

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\textsuperscript{132} Jenkinson, \textit{supra} note 30, at 280.
\textsuperscript{133} JOHN BRAMHALL, \textit{THE SERPENT SALVE} 56 (1643).
\textsuperscript{135} Pantzer, \textit{supra} note 112, at 73; JOHN FEATHER, \textit{HISTORY OF BRITISH PUBLISHING} 14-15 (1998). From the time of Henry VIII in the early sixteenth century, England's monarchs used a system of royal patents as one of the means by which they asserted control over the press. From this, a distinction developed between the production of common law books versus statutes and proclamations. Whereas kings and queens were content to delegate common law books such as law reports to a series of private printers, statutes and proclamations remained the concern of the state. \textit{Id.} at 15.
\end{footnotes}
“Gothic type remained the norm for proclamations and ordinances.”\textsuperscript{136} Although the monarchy was in theory no more, each successive government that replaced it attempted to assert its authority through continued use of the same visuals of power, of which \textit{Gothic} was part and parcel.\textsuperscript{137} For instance, the much derided 1653 Barebones Parliament, the creature of Oliver Cromwell, sought cover under \textit{Gothic}’s convincing cast when announcing its existence to the world.\textsuperscript{138} While the Restoration restored many things including court hand, when it came to the state’s typeface there was no need; proclamations and statutes continued to flow along in \textit{Gothic} until 1794.\textsuperscript{139} \textit{Gothic} acted as a through-line of English state authority for centuries.

\begin{enumerate}
\item i. National Identity

English law’s association with \textit{Gothic} grew out of the larger circumstance of England’s unofficial identification with \textit{Gothic} forms. The association between \textit{Gothic} and England had practical origins. As humanist thought spread to England, a dichotomy emerged that operated for much of the sixteenth century: letter shapes signaled the language of a text.\textsuperscript{140} Texts written in Latin, the language of Ancient Rome, began to appear in Roman type, and English language texts

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\item \textsuperscript{136} SHARPE, supra note 134, at 51.
\item \textsuperscript{137} See Kevin Sharpe, “An Image Doting Rabble”: The Failure of Republican Culture in Seventeenth Century England, in REIGURING REVOLUTIONS: AESTHETICS AND POLITICS FROM THE ENGLISH REVOLUTION TO THE ROMANTIC REVOLUTION 42 (Kevin Sharpe & Steven N. Zwicker eds., 1998) (discussing Gothic’s continuance by various new regimes because of its association with authority).
\item \textsuperscript{138} SEAN KELSEY, INVENTING A REPUBLIC 172 (1997).
\item \textsuperscript{139} EDWARD ROWE MORES, A DISSERTATION UPON ENGLISH TYPOGRAPHICAL FOUNDERS AND FOUNDERIES 76 n.2 (1961).
\item \textsuperscript{140} \textit{id.} at 13.
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continued along in Готлиц. From this fact arose the printers’ practice of referring to Готлиц type as “English.” Thus, although Roman was in fact used for an English language publication as early as 1555, “English” denoted Готлиц type for over another century at least. The printer Joseph Moxon’s classic manual on printing from 1683-84, with its various references to “English” type, bears out this connection. It is hard to judge how far this technical printers’ term made inroads into the consciousness of society at large. Yet even today Microsoft Word’s Готлиц font option is labeled “Old English Text.”

The development of different typefaces signaled larger cultural associations. As the earlier anecdotes about Scottish sheriffs and Irish gentlemen indicate, if you were not English you may not have come across Готлиц much before at all. One demonstration of how synonymous Готлиц had become with English identity is shown by the Scottish reaction to the sight of it in 1637. In that year, Charles I’s infamously tone-deaf Archbishop Laud oversaw the printing of a “crypto-Anglican” prayer book for the Scottish church. The Archbishop, who had insisted that England’s 1611 version be in Готлиц, arranged for a printer “to repair to Scotland and ready the printing of the book, and to take with a suitable ‘blacke letter’”—a decision “of great metaphorical significance.” The Scottish opposed the efforts of Charles I to “Laudianize” Scotland, preferring their religious works in

141 See, e.g., JOHN FORTESCUE, A LEARNED COMMENDATION OF THE POLITIQUE LAWES OF ENGLANDE (1567) (uses Roman for Latin and black letter for English translation).
142 Bland, supra note 10, at 93.
143 See, e.g., JOSEPH MOXON, MECHANICK EXERCISES ON THE WHOLE ART OF PRINTING 123 (Herbert Davis & Harry Carter eds., Oxford University Press 1978) (1683-84).
145 Galbraith, supra note 58, at 21.
“Geneva print,”¹⁴⁷ Roman type so-called because of the influential bible printed in Geneva.¹⁴⁸ (Scotland’s great reformer, John Knox, had studied in Geneva.) When the order came to read Laud’s new prayer book, printed in telltale blackletter, a riot broke out in Edinburgh. This riot triggered a series of events culminating in the downfall of Charles’s government in Scotland during the Bishops’ War.¹⁴⁹ The printer who had been sent up from England “was forced to flee” back across the border.¹⁵⁰ Eventually though, even in the Church of England, Roman started to predominate over Gotthit. By the end of the seventeenth century, it fell to the law to carry on with Gotthit as the national typographical standard bearer.¹⁵¹

Gotthit’s association with England also resulted in part from its connotations with English tradition, in a kind of self-reinforcing loop.¹⁵² A category of literature that demonstrates the association between Gotthit and Englishness is the now defunct genre of blackletter broadside ballads. These ballads were popular works that reached their heyday in the seventeenth century. They consisted of “a single large sheet of paper printed on one side (hence ‘broad-side’) with multiple eye-catching illustrations, a popular tune title, and an alluring poem.”¹⁵³ Sung or recited by peddlers or itinerant booksellers on street corners and cheaply printed, these ballads served as light entertainment of the day.¹⁵⁴

¹⁴⁷ Bland, supra note 10, at 94.
¹⁴⁹ Lesser, supra note 12, at 107.
¹⁵⁰ MANN, supra note 146, at 39.
¹⁵¹ The Book of Common Prayer was last printed in blackletter in 1706. Barker, Morphology, supra note 11, at 250.
¹⁵² Lesser, supra note 12, at 99; Baron, supra note 54, at 25.
¹⁵³ KEVIN MURPHY & SALLY O’DRISCOLL, STUDIES IN EPHEMERA 56 (2013).
¹⁵⁴ FEATHER, supra note 135, at 58.
What to make of the ballads' 'Gothic' mien has been debated over the last century or so.\textsuperscript{155} Initially academics concluded from the ballads' cheap production that Gothic was the letter shape of the lower classes.\textsuperscript{156} This conclusion led in turn to the assertion that commoners would have found it easier to read Gothic than Roman.\textsuperscript{157} These two points, however, do not account for the fact that large portions of the law concurrently appeared in Gothic for a well-educated audience of lawyers and judges.\textsuperscript{158} More recently, some scholars have taken a more nuanced view that there were two audiences for such ballads:\textsuperscript{159} the "common people" and, "on the outskirts of the crowd . . . some fine gentleman who sardonically adventured his ears."\textsuperscript{160} According to this line of thought, a ballad's Gothic appearance was not dictated by the limited literacy of its audience but used to "evoke the traditional English community."\textsuperscript{161} This "typographic nostalgia" through an antiquated look fostered "an image of unity."\textsuperscript{162}

One "fine gentleman" fitting this profile is John Selden, the lawyer, politician, and legal historian. Selden collected ballads and remarked of them in \textit{Table Talk}:

"More solid things doe not shew the Complexion of the times so well as Ballads

\textsuperscript{155} See generally Lesser, supra note 12, at 102-03.
\textsuperscript{156} See G.B. Harrison, \textit{Books and Readers: 1591-4}, 8 \textit{THE LIBRARY} 273, 283 (1927); Charles C. Mish, \textit{Black Letter as a Social Discriminant in the Seventeenth Century}, 68 \textit{PMLA} 627 (1953).
\textsuperscript{157} Thomas, supra note 106, at 99.
\textsuperscript{158} Lesser, supra note 12, at 103.
\textsuperscript{159} \textit{id.} at 120.
\textsuperscript{161} Lesser, supra note 12, at 107.
\textsuperscript{162} \textit{id.}
and libels.” 163 Diarist Samuel Pepys purchased Selden’s collection after his death and continued to gather them. 164 It is thanks to Pepys, writing in the introduction to his five volume collection, that we can pinpoint when Gotlic disappeared from the ballads: “My collection of ballads . . . the whole continued to the year 1700, when the form till then peculiar thereto, vizt, of the black letter, with pictures, seems (for cheapness sake) wholly laid aside, for that of the white letters, without pictures.” 165 Roman had become so ubiquitous that printers could no longer afford the overhead of keeping Gotlic on hand as well. 166 As with ecclesiastical works, Gotlic disappeared sooner in ballads than in the law. If money indeed explains the typeface’s disappearance, then the law’s retaining of Gotlic presumably made law books all the more costly.

iii. The Englishness of English Law

Further fostering the connections between Gotlic and Englishness was the law of England’s origins apart from foreign influence. Just as England’s law was distinctly English, so was the look of English legal texts.

163 JOHN SELDEN, TABLE TALK 72 (Frederick Pollock ed., Quaritch 1927) (1689).
164 MURPHY & O’DRISCOLL, supra note 153, at 68.
165 2 CATALOGUE OF THE PEPS LIBRARY AT MAGDALENE COLLEGE, CAMBRIDGE XX (Robert Latham et al. eds., 1994). But see Angela Mc Shane, Political Cobbler and Broadside Ballads in Late Seventeenth-Century England, in BALLADS AND BROADSIDES IN BRITAIN, 1500-1800 (Patricia Fumerton & Anita Guerrini eds., 2010) (asserting political white letter ballads coexisted with general black letter ballads).
166 See THOMAS MIDDLETON AND EARLY MODERN TEXTUAL CULTURE, supra note 12, at 202 (noting the likely cost savings for printers of using Roman as it arguably required less ink, and was less susceptible to blotted). See also PHILIP LUCKOMBE, A CONCISE HISTORY OF THE ORIGIN AND PROGRESS OF PRINTING 238 (1770) (“Neither needs the extinction of Black Letter be much lamented by Printers, on account of the extraordinary quantity of Ink which it requires . . . .”).
Because Continental humanists initiated the shift of having their works published in Roman type, the sight of Roman letters inside a book originally signaled to a reader that its content espoused humanist thought.\textsuperscript{167} Readers across Europe rightfully came to expect a text in \textit{Got\textae}c to differ not only visually, but in content. When Roman typeface made its way to England, English printers faced a choice and, for their part, law printers chose to stick with \textit{Got\textae}c. The dictates of a domestic market made English printers generally inward-looking: “the Englishness of English publishing is one of its abiding characteristics.”\textsuperscript{168} English law printers felt even less need to consider outside influences: “[T]he uniqueness of the English common law meant that the Roman law books printed in great quantities on the continent were of little use in England.”\textsuperscript{169} English law printers could thus rest easy in their continued use of \textit{Got\textae}c given the common law’s limited appeal beyond an English audience.\textsuperscript{170}

A natural stopping point where \textit{Got\textae}c could have ended, but did not, was the demise of law French. The language of the law reports was law French. Nominally of Latin origin, law French was popularly understood to be the product of Norman French conquerors.\textsuperscript{171} How did the aforementioned printers’ language dichotomy of Roman for Latin and \textit{Got\textae}c for English play out when it came to works in law French? One might logically expect that materials in law French would adopt a

\textsuperscript{168} Feather, \textit{supra} note 135, at 10-11.
\textsuperscript{169} Id. at 9.
\textsuperscript{170} Id. at 10.
\textsuperscript{171} Baker, \textit{Three Languages, supra} note 17, at 16. Baker explains that, contrary to received understanding, law French was “not Norman French, but a hybrid dialect with strong Picard and Angevin influences.” Id. at 17.
Roman look on the grounds that French is a Romance language. But law French was a unique English creation, as was the common law, and the vast majority of printers adhered to Gothic forms for it. We arrive at the wonderful absurdity then that texts in law French were printed in English type.

It has been said that the “very Englishness of English law” derived from the use of law French. But when compared head to head over the centuries, English type proved to be even more English and entrenched than law French. For instance, the outlawing of law French during the Interregnum meant that case reports temporarily had to be in English, yet a majority of reports nonetheless continued to sport a Gothic appearance. This typographic loyalty becomes even more remarkable given the wider historical context: first the royal patent system for printing law books collapsed, followed by shoddily produced law reports flooding the market place. All bets were off, but even printers with no one looking over their shoulders upheld the convention of using Gothic. Printers did not want to print law that did not look like law.

Because it looked authoritative, Gothic hid a multitude of sins. Gothic type created a veneer of quality that provided cover for otherwise shoddy case law, both Year

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172 A notable exception is John Rastell’s oft reprinted 1523 law dictionary most commonly known as Termes de la ley, usually appearing in a double column of Gothic type for English set alongside Roman or italic for law French.
174 But see Henry Hobart, Reports (1641); John Godbolt, Reports (1652 & 1653). All contain English language in Roman type with scattered italic for headings and Latin phrases.
175 W.H. Bryson, Law Reports in England from 1603 to 1660, in Law Reporting in Britain 114 (Chantal Stebbings ed., 1995). For a general overview of the breakdown of the English crown’s authority controlling publishing during the Civil War, see Feather, supra note 135, at 41-47.
Books and nominate reports, to appear in print. These egregious reports did not go unnoticed during their own era. The lawyer Sir Harbottle Grimston, compiler of the reports of Sir George Croke from 1657, gave vent to his feelings in an oft-quoted preface: “A multitude of flying Reports (whose Authors are as uncertain as the times when taken, and the causes and reasons of the Judgements as obscure, as by whom judged) have of late surreptitiously crept forth . . . .”176 Yet Grimston is able to pinpoint why both he and the publishers of the “flying Reports” stuck with Gothic:

There be certain legal Formalities and Ceremonies peculiarly appropriated & anciantly continued amongst us; so as they seem now to be essentials of the Law itself . . . And such I conceive are the writing of the Orders and Records of Courts, in such peculiar hands, the printing of Law Reports in their proper letter . . . .177

With rare insight, Grimston brings to the fore what was largely an unspoken association between Gothic letters, whether handwritten or printed, and the law.

When law French was definitively outlawed (along with court hand) by statute in 1731, law reports appear to have continued to use Gothic typeface for at least a decade afterward.178 It was not until the 1740s that reporters finally started using Roman unreservedly. As late as 1742, when one author accused another of

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176 The Reports of Sir George Croke A2 (Harbottle Grimston ed., 1657).
177 Id. (emphasis added).
178 See e.g., Chancery (Gilbert, 1742); King’s Bench (Fortescue, 1748); Common Pleas (Practical Register, 1743); Reports (Holt, 1738).
printing a legal treatise in Gothit “in Order to make it appear more authentick,” a work in Gothit signaled authoritativeness.179

The combination of state authority, Gothit’s ties to England’s native language and its national identity, and English law’s insular history worked in concert to ensure Gothit’s record-setting persistence in the law. Although counterintuitive, the safeguarding of Gothit for primary law ensured that Gothit endured longer in the legal arena than anywhere else. The literary scholar Sabrina Alcorn Baron discerns a common thread in the majority of texts that held fast in using Gothit—these were “texts issued in the voice of authority, whether divine or civil; text which instilled obedience, singularity of opinion, and uniformity of action.”180 She posits that Gothit “presented familiar patterns and provoked familiar responses . . . guiding readers to responses desirable to church and state.”181 The meanings communicated by Gothit proved to carry the most weight in the legal arena. The law took Gothit’s authority to a new level to outlast law French and all other Gothit genres.

B. Gothit’s Vested Interests

Besides these cultural reasons for Gothit’s persistence on the surface of legal texts, forces behind the scenes played a part as well. There were three groups who benefitted from the increasing difficulty of reading Gothit and at times sought Gothit’s continuance: printers, clerks, and lawyers. For printers fortunate enough

179 The Independant Briton 15 (1742).
180 Baron, supra note 54, at 25.
181 Id. at 28.
to have a patent to print law books, the specialized skills required for printing legal works in Gothic supported their arguments for monopolizing the means of production. For law clerks, the motivation was self-preservation, with their livelihoods depending on being able to write what no one else could. For lawyers, the benefit was professional self-interest as a way to exclude others from reading the law.

i. Printers

Printers were the ones inventive enough to coin the term blackletter for Gothic letter forms that clerks had been writing for centuries, and had their own stake in Gothic’s continuance. Nevertheless, printers were the first to dispense Gothic letter forms for everyday use when it no longer suited their interests.

Historically, printing was controlled by the state, largely to prevent the distribution of materials deemed against state interests. One of the state’s means of control was to limit the number of printers by requiring a patent to print. As one literary historian explains: “Patentees were wealthy printers or booksellers—or even gentlemen from outside the trade altogether—to whom the crown granted exclusive rights to key titles, or indeed to whole classes of publication.” The theory underlying the system was that the patentees “would be securely trustworthy by virtue of their gentility and their dependence on royal

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182 FEATHER, supra note 135, at 14.
183 JOHN, supra note 118, at 39.
favor.”\textsuperscript{184} Reality differed, in particular when it came to the law patent, “perhaps the most consequential of all patents.”\textsuperscript{185}

Given the profitability of law books for patent holders, others sought to secure the right to print them; who had the right to do so was often the subject of protracted litigation. Printers with a patent to print law books tried to fend off competitors with various arguments, among them being claims that printing law books in ḡaḥṣit required special skills. There was some truth to this assertion. The printing of law books “was of a highly specialized nature and not suitable for the average printer,”\textsuperscript{186} and “many printers studiously avoided” legal printing because of its added headaches.\textsuperscript{187} To begin with there was the matter of language: a printer had to take on the additional expense of owning fonts of type in Latin and law French, along with employing a staff able to handle both languages.\textsuperscript{188} Printing a law book also involved special type sorts that had to be cut for lawyers’ customary abbreviations, giving rise to “endless possibilities for compositors’ errors,” compositors being the workers who physically arranged the type for printing a text.\textsuperscript{189} Among the most abbreviated of texts in the field of publishing were law abridgments, or digests, which thus required even greater care in printing.\textsuperscript{190} Then

\textsuperscript{184} Id.
\textsuperscript{185} Id. at 258.
\textsuperscript{187} Id. at 78.
\textsuperscript{188} Id. at 18.
\textsuperscript{189} Bennett, \textit{supra} note 186, at 77. \textit{See also} Carter, \textit{supra} note 12, at 61. For a discussion and table of common abbreviations and contractions, \textit{see} Baker, \textit{Manual of Law French}, \textit{supra} note 111, at 18-23.
\textsuperscript{190} Eade, \textit{supra} note 186, at 78-80. Eade explains: “There was no standardized form or method for shortening words, and consequently the degree of compression varied. Each author or
there was the question of how to handle the substantive complexity of the legal material being printed. One literary scholar has hypothesized that printers developed a close working relationship with lawyers to ensure the quality of their works, from selection to editing to proofreading copies hot off the presses, a relationship facilitated by the close physical proximity of their customary working enclaves in London.191

Gothic type figured among the printers’ protectionist arguments. For example, there was litigation in the 1660s over who had the right to print Rolle’s Abridgment, one of the early case law digests.192 Law printers claimed that “the printing of law books required special skill, on account of . . . the use of black-letter characters.”193 Taking this line of thinking to its logical conclusion, law patentees asserted that “[e]rrors in printing the law . . . might endanger men’s lives and properties.”194

Unfortunately, the patent system led to unintended consequences, as without competition printers with a patent had little incentive to exert more than the bare minimum of effort. “Opponents of patents asserted that patentees produced books of bad quality and charged exorbitant prices for them.”195 Regarding law books specifically, the complaint became that law printers “could ‘Print the books with bad Impressions, and yet make the Subject pay as dear for them, as for the

compil[er] of a legal work, and especially of an abridgement, devised his own contractions . . . .” Id. at 78.
191 Id. at 20, 49.
193 Id.
194 Id.
195 JOHN, supra note 118, at 258.
best.”\textsuperscript{196} The law patentees found their own arguments turned against them: 
“[H]ow could the laws themselves be trusted?”\textsuperscript{197} With the growing breakdown of 
the patent system and the launch of modern copyright law after the Statute of 
Anne in 1710, law printing opened up to outsiders. As Gothic type failed to 
forestall competitors, patentee printers lost any protectionist reason for sticking 
with Gothic forms. This divergence between Gothic forms and printers’ interests 
in the early eighteenth century contributed to the fact that printed texts shifted 
away from Gothic letter forms sooner than did handwritten texts.

ii. Clerks

Clerks, working for the government or lawyers, dominated the writing of law 
hands and, to a lesser extent, instruction in them. Unlike today, writing of any kind 
was considered a different skill set and taught separately from reading.\textsuperscript{198} Writing 
“was learned by older children and from a different teacher. It was a delicate task 
involving the making of quill-pens and the mixing of ink; and it required initiation 
to one of the many different scripts in vogue.”\textsuperscript{199} Clerks took on instruction of 
others in court hand as that particular style of handwriting “was more or less the 
exclusive property of the legal profession.”\textsuperscript{200} Although lawyers also learned how 
to write law hands, the “[f]act that the practice of law was centred on the 
handwritten record” in early modern England ensured that being a clerk flourished

\textsuperscript{196} Id.
\textsuperscript{197} Id.
\textsuperscript{198} Thomas, supra note 106, at 100.
\textsuperscript{199} Id.
\textsuperscript{200} Schulz, supra note 88, at 417.
as a full-time occupation and separate profession.\textsuperscript{201} Clerks also prospered in society more generally as, during this period, “much everyday writing was of a technical kind, involving legal documents” necessitating the hiring of someone skilled in writing law hands.\textsuperscript{202}

It took time and dedication to master the arcane intricacies of the different legal hands. For instance, Arthur Wilson, a playwright and former clerk, took half a year to learn court and chancery hands in 1611.\textsuperscript{203} A Parliamentary clerk in the nineteenth century claimed that it took the full seven years of a clerk’s apprenticeship to master an engrossing hand.\textsuperscript{204} An episode in Samuel Pepys’ diary demonstrates how the clerks’ writing monopoly worked in practice. In the summer of 1660, not long after Charles II arrived in London to claim his throne, Pepys recorded the trouble he had to take to get a patent engrossed for his new position in the navy’s administration. Unable to find a writer for hire with “time to get it done in Chancery-hand, I was forced to run all up and down Chancery-lane, and the Six Clerk’s Office [within Chancery] but could find none that could write

\textsuperscript{201} Love, supra note 12, at 225. See also id. at 94 (describing the training required for professional law writers and offering a further distinction between legal clerks and scriveners, legal copyists “whose professional function was one of drawing up contracts, negotiating loans and performing some simpler legal formalities.”)

\textsuperscript{202} Thomas, supra note 106, at 106. A minor plot point in Charles Dickens’ David Copperfield relates an atypical workaround to a lawyer hiring a clerk—a lawyer’s wife trains herself in law hand to serve as his clerk. Copperfield compliments the results by exclaiming “[b]ricks and mortar are more like a lady’s hand!” Charles Dickens, 2 David Copperfield 420 (G.P. Putnam 1850) (1850).

\textsuperscript{203} Schulz, supra note 88, at 418.

\textsuperscript{204} Select Committee Appointed to Consider the Resolutions Communicated by the House of Commons at Conferences on the 9th and 15th of February Last, Relative to the Promulgation of the Statutes, and to the Expediency of Discontinuing the Present Mode of Ingrossing Acts of Parliament in Black Letter, and of Substituting a Plain Round Hand Instead Thereof, Report, 1836, H.L. 313, at 8.
the hand, that were at leisure."\textsuperscript{205} This man who was able to write one of the longest diaries in history was at the clerks’ mercy for writing in the style required for a document to have legal effect. The timing of this incident is telling; the Commonwealth’s reforming spirit that had outlawed the related court hand in an effort to prevent such mischiefs was indeed at an end.

We can infer the strength of the clerks’ stranglehold on the production of legal information in part from how much antipathy they evoked as a body. One of William Shakespeare’s most celebrated lines reveals how long-standing this resentment was. “The first thing we do, let’s kill all the lawyers” appears in a scene in \textit{Henry VI, Part I} involving court hand. Set during the mid-fifteenth century and written roughly a hundred years later, “let’s kill all the lawyers” has been oft-quoted as an indictment of lawyers and nearly as often explicated as taken out of context and a defense of the rule of law.\textsuperscript{206} The larger context of the scene is what is relevant here for understanding the perception of clerks in society.

The scene opens with troublemakers agitating to overthrow the powers that be. After exclaiming against lawyers, they seize upon the closest object at hand for their vitriol—a man suspected of being a clerk. After accusing him of being able to write court hand, the crowd’s actions take on the hallmarks of a kangaroo court. The gang leader cross-examines the suspect and gets the witless “defendant” to admit that he can indeed write court hand. This exchange is endowed with a double meaning for the audience to enjoy: it is an inversion of the historic


courtroom procedure of establishing that an accused criminal is entitled to benefit of clergy. Benefit of clergy was a legal fiction that had arisen originally because of the separate jurisdiction between church and secular courts (i.e., someone who could write presumably belonged to church court jurisdiction). Courts extended “benefit of clergy” to more laypeople over the centuries as a mechanism for increased leniency toward defendants. Here in *Henry VI*, Shakespeare comically reverses the usual operation of benefit of clergy. Instead of a person reading to get off the hook, the ability to read is exactly what does in our hapless clerk, with all his clerkly accoutrements of pen and ink-horn. That clerks would ordinarily be the ones scribbling over parchment to “undo a man,” and the ones able to bank on the benefit of clergy provokes this topsy-turvy settling of accounts by the illiterate. The honor of being killed first after the “let’s kill all the lawyers” call to arms goes not to a not a lawyer but a clerk, the true symbol of the law.

While *Henry VI* takes place in the fifteenth century, Shakespeare was drawing upon unbroken antagonism toward clerks and lawyers for their use of court hand. The early seventeenth-century poet Sir Thomas Overbury echoes Shakespeare with satirical definitions of a clerk and lawyer. Of a “puny-clarke,” Overbury had this to say: “Though you be neuer so much delaid, you must not call his master knaue; that makes him goe beyond hiselfe and write a challenge in Court hand; for it may be his owne another day.” Court hand had become an attribute of the bad characteristics of clerks and lawyers generally.

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207 Daniel Kornstein, *Kill All the Lawyers?: Shakespeare’s Legal Appeal* 30 (1994).
209 Thomas Overbury, *His Wife, with New Elegies* (1 signature) (London, Edward Griffin 1616). Similarly, Overbury wrote of a “meere Petifogger”: “Only with this, I will pitch him o’re the Barre, and leaue him; That his fingers itch after a Bribe, euer since his first practising of Court-hand.” *Id.*
Even after court hand’s abolishment by statute in 1731, lawyers were open to ridicule for not understanding their own profession’s remaining distinctive law hands. Advice to an Attorney’s Clerk from 1796 counsels:

[You will find a constant source of amusement in making love to the daughter of the attorney with whom you live. As a symbol of your constancy, you may write the first letter on parchment in a strong engrossing hand. If she has been much used to her father’s clerks, you may indulge in the Saxon character, or black letter, as you need not then be in any fear of a discovery from the mother or servants—or perhaps, good man! even from the father himself.]

The hostility directed toward clerks as roadblocks in a legal system continued into the nineteenth century. Charles Dickens, a former lawyer’s clerk himself, paints a pretty picture of the profession in The Pickwick Papers. While a client is waiting to see a barrister, the barrister’s clerk is busy at work copying his master’s hand as “nobody alive except myself can read” it, confiding with relish that clients “are obliged to wait for his opinions, when he has given them, till I have copied ‘em, ha-ha-ha!” Clerks garnered resentment for their role as middleman, whatever the exact style of handwriting at issue.

Every time law hands came under threat, clerks turned to a ready-made stock of arguments to defend their role. Among their most popular justifications: law

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210 Advice to an Attorney’s Clerk, Freemason’s Magazine, Mar. 1796, at 182, 183.
211 Charles Dickens, The Pickwick Papers 366 (Grosset & Dunlap 1930) (1837).
hands better withstood the ravages of time and maintaining law hands ensured perpetual access to the content of written documents. Lawyers, judges, and lawmakers found themselves persuaded by these arguments for a considerable period. For instance, a court in the reign of Elizabeth I rejected a writ for being in secretary hand as that more commonplace \textit{Gothic} hand “would be so worn in a dozen yeares that no man can read it.”\textsuperscript{212} A clerk may have indeed used a relatively more forceful method of writing court hand than secretary hand, but which hand lasts longer becomes a moot point once there is no one left who can read the hand. In any case, it was a myth that the law hands were consistent enough to guarantee their legibility over time. Despite an abiding \textit{Gothic} strain over the centuries, their appearance inevitably altered and older writings became difficult for later generations to decipher.\textsuperscript{213}

Why so much content for legal practice still continued to be written by hand when printed forms would have been more expeditious prompted wonder on the part of the early twentieth-century archivist Hilary Jenkinson. His conclusion? “I think the only reason for this can be the vested interest” of clerks in forestalling print.\textsuperscript{214} The competition between clerks and printers for business emerged early in the history of print. As far back as 1618, this competition played out in one notable instance over access to statutory law.\textsuperscript{215} The legal writer Ferdinando Pulton proposed a subject compilation of statutes, for which project he needed access to records kept in the Tower of London. To get them, he had to get past two high

\textsuperscript{212} Baker, Introduction, supra note 33, at 86 (citing Goulds. 111; 75 Eng. Rep. 1030 (K.B.)).


\textsuperscript{214} Jenkinson, supra note 30, at 290.

ranking government clerks, the clerk of the Parliaments and the Keeper of Records, who were “upset by an amateur poaching on their preserves.” They offered various reasons for not cooperating with the printer, including that he lacked “the technical skill to read old records without their assistance.” Depending on the circumstances then, clerks conceded the illegibility of older Gothic handwriting. A Collection of Sundrie Statutes did eventually see the light of day, but only after even higher authorities intervened.

The contest between legibility and the sole surviving Gothic hands in everyday use came to a head for clerks in the mid-nineteenth century. Gothic styles of engrossing and enrolling hands continued to be used to write up legislation, but legislators no longer found those hands legible. As early as 1705 and regularly from the 1740s, printed copies of bills in Roman were made for legislators to refer to during debates. So why did it take until 1849 to produce engrossed and enrolled bills in Roman?

Parliament first seems to have seriously considered ending Gothic hands for engrossing in the 1820s, nearly one hundred years after they had banished court hand from the courts. In 1823, a committee of the House of Commons “was appointed to inquire” into the method of engrossing bills, including “whether the common round hand might not be employed” instead of court hand. But despite the pointlessness of clerks engrossing from a printed text a writing that no

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216 Id. at 494.
217 Id.
218 Id.
219 Bond, supra note 213, at 66.
one would look at, arguments for court hand still prevailed as faster to write and
irrationally more legible than the “wretched” mercantile hand that had taken over
in the courts.\textsuperscript{221}

In 1836, a Resolution of the House of Commons prompted a committee of the
House of Lords to return to the issue on the “expediency of discontinuing the
present mode of ingrossing Acts of Parliament in black letter, and of substituting
a plain round hand instead.”\textsuperscript{222} The committee admitted that a modern hand
“would afford greater facility for reading quickly the Acts so written.” However,
the committee nevertheless feared that a modern hand “would afford a greater
facility of falsifying an Act of Parliament.”\textsuperscript{223} The hands’ difficulty in production
and their illegible effect upon a reader were turned on their heads to become a
strength—\textbf{Gallic} letters bordering on encryption. But modern precepts are
nevertheless creeping into the discussion. One clerk testifies that “the first merit,
of writing, is to be easily read by all” and candidly concedes that “ingrossing hand
does not fulfill this condition, inasmuch as some of its characters are obscure and
uncertain, even to an experienced eye, as not being distinguishable from each
other.”\textsuperscript{224} That the House of Lords was more reluctant than the House of
Commons to endorse change reflects a tension between the elite and the
commoners that underlay the issue of access to the law.

\textsuperscript{221} \textit{Id.} at 68.

\textsuperscript{222} \textit{Select Committee Appointed to Consider the Resolutions Communicated by the House of Commons
at Conferences on the 9th and 15th of February Last, Relative to the Promulgation of the Statutes,
and to the Expediency of Discontinuing the Present Mode of Ingrossing Acts of Parliament in Black

\textsuperscript{223} \textit{Id.} at 4.

\textsuperscript{224} \textit{Id.} at 10.
The first two rounds in this contest went to the clerks, bringing the matter to a standstill for over a decade. Parliament took up the gauntlet again in 1848. A House of Commons report explicitly attributes the failure of the earlier 1836 effort to the clerks’ vested interests from the fees received, and the tide has clearly turned by 1848, with scattered comments on Gothic’s illegibility creating a drumroll for change. The House of Commons finally prevailed on this matter, and statutes thereafter were only printed in Roman. Did previously employed clerks thereafter wind up in the poor house? One can only wonder. With the banishment of engrossing hand, the last vestige of Gothic disappeared from everyday use. Legal texts have been legible and the principle of the law’s legibility has remained unquestioned ever since.

iii. Lawyers

In general, lawyers have two avenues for maintaining a monopoly over the law: restricting access to information necessary to practice law or setting up legal prerequisites to prohibit others from the unauthorized practice of law, such as undertaking an apprenticeship, passing a bar exam, or attending a law school. Initially, the prevalence of illiteracy mounted a natural barrier for limiting legal information to lawyers. As more people learned to read through the centuries, however, the literate encroached on lawyers’ previously distinguishing skills. Still,

\[225\] SELECT COMMITTEE ON PRINTING, FIRST REPORT, 1847-8, H.C. 657, at 8.
\[226\] On top of everything else, the copying introduced errors: “[I]t was no uncommon accident for errors to occur in copying the engrossment from the printed bill.” Public Legislation, 27 THE LEGAL OBSERVER (1844) (recounting exchange in House of Commons).
\[227\] Lawrence Duncan MacLachlan, Gandy Dancers on the Web: How the Internet Has Raised the Bar on Lawyers’ Professional Responsibility to Research and Know the Law, 13 GEO. J. L. ETHICS 607, 610 (2000).
as the literate began to favor Roman over Gothic, an unlooked for opportunity presented itself for reasserting exclusivity, and lawyers accordingly became proponents of Gothic letter forms. Loyalty to Gothic not only limited access to legal information, it turned the task of reading and writing these increasingly unfamiliar letter forms into an initiation process akin to taking the bar today.

Lawyers’ adherence to Gothic dovetailed with broader efforts by lawyers to maintain control over access to legal knowledge. During the early days of printing, contrary to what one might expect of lawyers clamoring for law in print, some lawyers expressed reluctance to print the law. They feared that laypeople’s increased access to the law would sow confusion—a position which not coincidentally reinforced lawyers’ own self-interest. According to one legal historian, “[t]he solution was found in language: elementary books were

228 See, e.g., JAMES BURROW, REPORTS iv (1765). One of the fathers of modern law reporting, Burrow complains in a 1765 preface to his reports of the 1731 law that had outlawed court hand as altering “the strong solid compact hand (calculated to last for ages) wherein [common-law pleadings] were used to be written, into a species of handwriting so weak, flimsy, and diffuse that . . . many a modern record will hardly outlive its writer.” Id.

229 See, e.g., Charles Sumner, The Scholar, The Jurist, The Artist, The Philanthropist, in 1 THE WORKS OF CHARLES SUMNER 260 (1870-83) (describing future U.S. Supreme Court Justice Joseph Story’s tears upon first reading blackletter law as his baptism in the law). Curiously, there may have been a period in the transition from Gothic to Roman wherein the difficulty in reading Gothic aided prospective lawyers. A modern study on the effect of different typefaces paradoxically concluded that works that are difficult to read (“disfluent”) forces a reader to slow down, improving memory performance later. Connor Diemand-Yauman et al., Fortune Favors the Bold (and the Italicized): Effects of Disfluency on Educational Outcomes, 118 COGNITION 114 (2011).

230 At times the arguments in favor of Gothic takes on an honor among thieves quality. See, e.g., WILLIAM ATWOOD, ARGUMENTUM ANTI-NORMANNICUM cix (1682) (“[S]ome clerks and officers might have a cunning, for their private honour and profit . . . to have as much as they could of our Laws, to be in a kind of mystery to the vulgar, to be the less understood by them . . . but perhaps it would be found, that the Law, being . . . generally more understood, yet not sufficiently, would occasion the more suits. . . . [Y]et if the more common hands were used in our law writings, they would be the more subject to change . . .”).

published in English, whereas purely professional works such as law reports or entries were preserved from vulgar eyes in their original language (law French or Latin). 232 This argument overlooks another point in its favor, of how letter shapes coincided in this purpose to serve an exclusionary function. 233

Thus on the one hand, lawyers wanted Gotthic to continue for their own self-interest; on the other they were also like any other readers who found Gotthic off-putting. Something would have to give. The appearance of William Blackstone’s Commentaries on the Laws of England finally drove these two competing impulses out into open conflict. Blackstone originally intended his Commentaries, first published in the 1760s, for “country gentlemen and clergymen who needed an outline knowledge of the legal system.” 234 Given this intended audience of laypeople, the work was naturally published in Roman. But as the Commentaries’ quickly became the primary text for aspiring lawyers seeking to master the law, its non-Gothic look exerted an outsized impact on the law’s appearance on the page. Blackstone’s Commentaries is what finally separated lawyers from Gotthic, as it removed the need for lawyers themselves to read Gotthic.

The historical record does not reveal an explicit decision by William Blackstone to choose Roman over Gotthic for his Commentaries. Blackstone’s background in

233 At least one literary scholar picks up in part on the impact of letter forms’ appearance when noting that there was a welcome sense on the part of lawyers that handwritten texts, mystifyingly Gotthic ones in particular, allowed them greater control over legal information relative to the general populace. See Love, supra note 12, at 108-09 (proposing that part of Gothic secretary hand’s appeal was that it “did not quite so readily yield its meaning to a casual glance” as italic); 163; 226.
printing, however, makes it reasonable to conclude that he would have considered the matter of typeface and exerted influence over his famous work’s final appearance on the page.\textsuperscript{235} Although Blackstone is renowned in legal circles down to the present, thanks to his lasting legacy as author of the \textit{Commentaries}, he is known to literary scholars for his key role in the history of print. By the time Blackstone authored his \textit{Commentaries}, he was well versed in the mechanics of printing and the book trade, as it was he who had instituted reforms that saved Oxford University’s press.\textsuperscript{236} Thus over the course of his professional life, both as an administrator at Oxford and as an author, Blackstone concerned himself with typography.\textsuperscript{237} For instance, he “expressed justified pride in the graceful typography” of one of his earlier works, describing it in Latin as “typorum Elegantia.”\textsuperscript{238} By the time it came to publishing his \textit{Commentaries}, Blackstone’s days as a printing reformer were over. However, his connection to Oxford’s press ensured that a specially purchased Roman type then available was used for the \textit{Commentaries’} first four editions.\textsuperscript{239}

That \textit{Got\l{}ic} drove away prospective lawyers is noted by Blackstone in his \textit{Commentaries}—the “barbarous dialect” of law French, “joined to the additional terrors of a \textit{Got\l{}ic} black letter, has occasioned many a student to throw away his Plowden and Littleton, without venturing to attack a page of them.”\textsuperscript{240} By

\begin{footnotesize}
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\item \textsuperscript{235} Ian Doolittle, \textit{William Blackstone: A Biography} 40 (2001). \textit{See also} Martinez, \textit{Blackstone as Draughtsman}, supra note 26, at 57 (arguing that Blackstone’s interest in architectural drawing influenced his groundbreaking visual approach to laying out the law in his \textit{Commentaries}).
\item \textsuperscript{237} \textit{id.} at 143, 165 (discussing two of his earlier works noted for their attractive typography).
\item \textsuperscript{238} Wilfrid Prest, \textit{Blackstone and Bibliography: In Memoriam Morris Cohen}, 104 LAW LIBRARY J. 99, 107 (2012).
\item \textsuperscript{239} \textit{id.} at 108.
\item \textsuperscript{240} 3 \textit{William Blackstone, Commentaries} \textsuperscript{*}318.
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contrast, law students willingly attacked a page of Blackstone in Roman, and battle lines were drawn within the profession. One camp decried the *Commentaries* “as intelligible” and Blackstone as an enemy to the profession.\(^{241}\) In the other camp were those who shared the sentiments of the lawyer who remarked that “Blackstone's *Commentaries* would have saved him seven years labour poring over and delving in black letter.”\(^{242}\)

Efficiency ultimately carried the day and Blackstone’s *Commentaries* became a staple of the profession. \(^{243}\) In so doing, Blackstone’s work uncoupled the authoritativeness of a legal source from its *Gothic* typeface, even for lawyers. From this point onward, *Gothic* books fell solely into the preserve of

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\(^{241}\) Grant, *supra* note 55, at 58. See also Letter from Thomas Jefferson to James Madison (Feb. 17, 1826), in *Thomas Jefferson, Memoir, Correspondence, and Miscellanies* 426 (Thomas Jefferson Randolph ed., 1829): “[W]hen [Coke’s] black-letter text, and uncouth but cunning learning got out of fashion, and the honeyed Mansfieldism of Blackstone became the students’ hornbook, from that moment, that profession (the nursery of our Congress) began to slide into toryism . . .” Trying to forestall criticism, one author of a treatise in Roman wrote in his preface that works such as his did not necessarily mean that a law student “will be so captivated with the blond beauties of a modern margin that he will never dive into the sombre regions of black letter, where, cob-web bound, the truths of law lie hid.” George Ross, *A Treatise on the Law of Vendors and Purchasers of Personal Property* viii (1811). But law students did stop diving into blackletter, prompting calls throughout the nineteenth century for a modern edition of the Year Books. See, e.g., Owen Davies Tudor, *A Selection of Leading Cases on Real Property, Conveyancing, and the Construction of Wills and Deeds* 562(a) (1856).

\(^{242}\) William Tudor, *Life of James Otis* 10 (1823). See also Grant, *supra* note 55, at 58 (citing another lawyer who quantified the impact of Blackstone’s *Commentaries* by a different measure—“it would have saved him the reading of twelve hours in the day.”); S.P. Lyman, *The Public and Private Life of Daniel Webster* 8 (1852) (after switching from Coke to Blackstone, Webster “thenceforth insisted that he lost much time in unravelling black-letter webs and deducing premises, which he found had been clearly unravelled and deduced by others.”)

\(^{243}\) Joseph Willard, *An Address to the Members of the Bar of Worcester County, Massachusetts, October 2, 1829*, at 108 (1830) (“In process of time, black letter, like every other barbarism, gave way to the spirit of change that began to spread, and the publication of Blackstone was considered the commencement of a new era in the study of the law.”)
bibliomaniacs—"black letter dogs." 244 By finally embracing Roman, lawyers lowered themselves irrevocably, to become no different from the general mass of readers.

V. Nineteenth-century Transformation of Blackletter Law's Meaning

Just as Gothic, literal blackletter, retreated from the scene in all its forms, "blackletter law" as a figurative phrase arose among lawyers. Given how well understood the phrase is today among lawyers, it is surprising to discover that the present meaning ("basic principles of a subject in the law"245) represents an about face from its origins. Lawyers originally employed the phrase "blackletter law" as a matter-of-fact description of law that was old enough to have been printed or written in Gothic form, sometimes to the point of being arcane. However, by the end of the nineteenth century an alternative meaning as the law's basic principles prevailed. That the phrase underwent semantic change has been acknowledged before,246 but never fully explained. Once the law is placed in the larger context of the history of print, however, the missing piece of the puzzle appears. The lawyers' original meaning of "blackletter law" as obscurely old law became conflated with the printers' practice of using literal blackletter as a display type, a precursor to

244 See, e.g., THOMAS FROGNALL DIBDIN, THE BIBLIOMANIA; OR, BOOK-MADNESS 56 n.45 (1809). Gothic's slide into obsomescence coincided with a rising nationalist chauvinistic trend for blackletter books and the emergence of self-proclaimed bibilomaniacs in the early nineteenth century, a term which could also be turned against them. See, e.g., JOSEPH PARKES, A HISTORY OF THE COURT OF CHANCERY 9 (1828) ("The principles therefore of Chancery reform are not to be sought in the black letter collections of Bibliomaniacs.").
245 THE WOLTERS KLUWER BOUVIER LAW DICTIONARY 1547 (Desk ed. 2012).
246 See, e.g., JAMES E. CLAPP ET AL., LAW TALK: THE UNKNOWN STORIES BEHIND FAMILIAR LEGAL EXPRESSIONS 31 (2011).
bold typeface. These two strands of meaning came together in West’s Hornbook series and emerged with the meaning with which we are familiar today.\textsuperscript{247}

As \textit{Gothic} disappeared from the scene, whether a lawyer voluntarily read legal texts in \textit{Gothic} came to serve a sorting function, setting apart those lawyers drilled in older legal precedents. For example, the thoroughness of Justice Story’s early training is conveyed with a remark that “he had explored all the black letter law on the subject.”\textsuperscript{248} A balance with more modern ideas had to be struck however, or else lawyers risked appearing pedantic. One American lawyer cautioned a law school’s graduating class not to make themselves “a walking edition of black-letter bound in calf.”\textsuperscript{249} Thus “blackletter lawyer” or “blackletter law” could be a compliment or an insult, depending on the context. “Advocates who pinned their hopes on ‘black letter law’ were apt to be met in equal measure with admiration for their scholarship and ridicule for bothering.”\textsuperscript{250} By the late nineteenth century, however, as precedents printed in blackletter receded in time, describing the law or a lawyer as “blackletter” tended more uniformly toward insult, and acquired a meaning freestanding from any textual reference.\textsuperscript{251} Perhaps most famously,

\textsuperscript{247} Depending on the context, the modern meaning of blackletter law can also be a pejorative of legal issues oversimplified or bluster to cover uncertainty. \textit{Id.}
\textsuperscript{248} \textsc{Joseph Story}, \textit{1 Life and Letters of Joseph Story, Associate Justice of the Supreme Court of the United States, and Dane Professor of Law at Harvard University} 117 (William W. Story ed., 1851).
\textsuperscript{249} \textsc{Richard Harrington}, \textit{Address... to the Graduating Class of the Law Department of the National University} 8 (1873).
\textsuperscript{250} \textsc{Clapp}, \textit{supra} note 246, at 34. \textit{See, e.g., Henry Cockburn}, \textit{1 Life of Lord Jeffrey} 212 (1852) (“A black letter judge agreed with the one; the world admired the other.”).
\textsuperscript{251} \textit{See, e.g., Joseph Story, 2 Life and Letters of Joseph Story, Associate Justice of the Supreme Court of the United States, and Dane Professor of Law at Harvard University} 582 (William W. Story ed., 1851) (Story’s son as editor expresses the commonly held opinion that one devoted to “the dark ages of Black-Letter learning is apt to engender a bigoted conservatism, excessive submission to precedent, and an unwillingness to extend the boundaries of the law.”); \textsc{Edward G. Parker}, \textit{Reminiscences of Rufus Choate: The Great American Advocate} 323 (1860) (“The disciple of the black-letter abhors the concrete as nature does a vacuum, and revels in the abstract.”).
Oliver Wendell Holmes disparaged blackletter lawyers in his influential lecture and 1897 essay, *The Path of the Law*: "For the black-letter man may be the man of the present, but the man of the future is the man of statistics and the master of economics. . . . It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV."\textsuperscript{252}

Concurrent with the rise of blackletter law as a phrase with a meaning apart from a text\textsuperscript{253} was the diminishment of literal blackletter to merely a display type. In typography, display type refers to type for limited use, largely for emphasis, like **bold** or italic, an innovation of print over manuscript.\textsuperscript{254} Prior to the emergence of **bold** type in the mid-nineteenth century, however, printers relied on blackletter or italic for this function.\textsuperscript{255} As a printer’s manual from 1755 explains: “Black Letter . . . is sometimes used with Roman and Italic together, to serve for matter which the Author would particularly enforce to the reader . . . .”\textsuperscript{256} Texts used blackletter as a display type in this fashion for well over a hundred years.\textsuperscript{257} Even after the

\textsuperscript{252} Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897).
\textsuperscript{253} See, e.g., WILLIAM FORSYTH, HORTENSUS, OR, THE ADVOCATE: AN HISTORICAL ESSAY 101 (1849) (anachronistically describing ancient Roman jurisconsults as having “plumed themselves not a little on their black-letter lore.”).
\textsuperscript{254} Barker, *Morphology*, supra note 11, at 250. Lyons, supra note 43, at 69. See also LEVENSTON, supra note 120, at 91-92.
\textsuperscript{255} Michael Twyman, *The Bold Idea: The Use of Bold-looking Types in the Nineteenth Century*, 22 JOURNAL OF THE PRINTING HISTORICAL SOCIETY 107 (1993) (noting however that “[l]ack-letter also had antiquarian associations, and it is sometimes difficult to separate the two functions.”). An example of how printers experimented with different display types before the introduction of bold in the legal arena is how the House of Commons handled its different bill versions: “When the House began to order bills to be reprinted to show the amendments made in committee, these were shown in red.” Because of the prohibitive expense, the House switched from the manuscript tradition of rubrication to italic or black letter although “this did not work perfectly either.” Sheila Lambert, *Introduction* to HOUSE OF COMMONS SESSIONAL PAPERS OF THE EIGHTEENTH CENTURY 19 (Sheila Lambert ed., 1975).
\textsuperscript{256} JOHN SMITH, THE PRINTER’S GRAMMAR 18-19 (1755).
\textsuperscript{257} LAWSON, supra note 9, at 315.
introduction of a truly **bold** typeface, it took some time for printers and society at large to settle on the word **bold**. This lack of consensus left the word blackletter to circulate with its **bold** meaning for roughly another half century, even when the letters in question in a given text were not Øftjít.258

It is at this crossroads in the history of publishing that West Publishing’s Hornbook series happened to appear. Begun in the 1890s and continuing to this day, West’s Hornbooks are study aids intended as compact introductions in a given area of law.259 In launching a series of introductory works to the law under the rubric of hornbooks, West repurposed the name of a dead genre for a new one.260 Historically, hornbooks were a tool for helping children learn how to read, in use until about 1800.261 Despite its name, a hornbook was not a book at all, but a small wooden paddle on which was laid out a sheet of paper printed with the alphabet, usually in Øftjít and then in Roman, along with a short prayer such as the Lord’s Prayer.262 A thin layer of horn, a forerunner to plastic, protectively covered the “book.” From this, a broader meaning of hornbook emerged as any primer for study.263

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258 “The use of the word bold . . . was rather slower to take root than the types themselves.” Twyman, *supra* note 256, at 140. “[B]lack, fat, heavy, or Clarendon remained the favoured terms throughout the nineteenth century.” *Id.* at 142.
260 It is for this reason that both legal dictionaries *Black’s* and *Bouvier’s* define blackletter law as synonymous with hornbook law.
261 GEORGE EMERY LITTLEFIELD, EARLY SCHOOLS AND SCHOOL-BOOKS OF NEW ENGLAND 112-13 (1904).
263 See, e.g., Thomas Dekker’s *The Gull’s Hornbook* (1609), a manual of behavior for London gallants.
At the time West launched a series of study aids for law students, two meanings of the word blackletter were current: blackletter as old law and blackletter as bold. For West, it appears to have been a happy coincidence that hornbooks originally used Gothic, allowing the company to revive Gothic anachronistically in them. The earliest entries in the Hornbook series draw a visual connection to the earlier physical appearance of hornbooks through typography. The study aids include the phrase “The Hornbook Series” in Gothic letters at the beginning of a volume. They also occasionally contained ads for further titles in the series with generous servings of Gothic. For instance, a series ad in 1896’s Handbook on the Law of Damages prints each title in the series in blackletter, and pitches the main selling points of the series overall in Gothic, including that they contained “A succinct statement of leading principles in black-letter type” in Gothic.\(^{264}\) In the main part of the text by contrast, a bold typeface was used for the actual laying out of principles, followed by commentary. Within ten years, however, even these small historical visual allusions vanished from the Hornbook series.

In using bold type within a study aid, West Publishing placed itself squarely within the mainstream trajectory of educational publishing. Of all the different genres that used bold, textbooks were the most influential in spreading its use, and bold became a characteristic of the genre.\(^{265}\) Textbooks used bold to such an extent that “typography influenced teaching methods.”\(^{266}\) The existence of the phrase “blackletter law” within the field of law seems to be a case in point. In a typographic sense then, the law was like any other field. Yet even though

\(^{265}\) Twyman, supra note 256, at 134-35.
\(^{266}\) Id. at 138.
publishers used bold in textbooks across the board, lawyers managed to make the phrase “blackletter law” their own, independent of any bibliographic meaning.\textsuperscript{267} Accordingly, the most proximate cause of the modern meaning of blackletter law as basic law is West Publishing’s Hornbook series.\textsuperscript{268}

Thus even though lawyers themselves had by this point discarded such lawyerly trappings as \textit{Gotthit} books and papers, the mystifying phrase they took up of “blackletter law” proved a worthy successor in distinguishing themselves from outsiders. In that regard, blackletter law maintained its long-held function of setting the law apart from the rest of society.

VI. Conclusion

From its literal origins in English history to its present day figurative meaning, “blackletter law” has traveled an unexpected course. \textit{Gotthit}, the original

\textsuperscript{267} The extent to which blackletter law became detached from its literal origins is illustrated by the failure of the phrase linotype law to catch on. “Linotype law,” a reference to the nineteenth century printing innovation, was an attempt to describe law as being modern, in contrast to aged blackletter law. See, for example, “The courts show an increasing tendency to prefer late cases to old ones, linotype law to black letter law, so to say.” Book Note, 31 AM. L. REV. 474, 478 (1897) (reviewing \textsc{The Lawyers’ Reports Annotated}). See also an ad from the Lawyers’ Co-operative Publishing Co. that their products gave a lawyer linotype law rather than black-letter law—“law that is law now, not obsolete legal history.” 7 CASE AND COMMENT n.p. (1900). These instances of the phrase reveal expectations that the intended audience would understand “linotype law” as wordplay in the bibliographic sense. Similarly, a 1924 work on legal research stated that it was organized with “black letter Roman headings.” \textsc{Donald J. Kiser, Principles and Practice of Legal Research} 6 (2d ed. 1924).

\textsuperscript{268} The use of the phrase in the legal profession appears to have been further solidified in the early twentieth century by the influential American Law Institute’s First Restatements’ “black letter statements” of common law. See, e.g., G. Edward White, \textit{From the Second Restatements to the Present}, 16 \textsc{Green Bag} 2d 305, 306 (2013) (noting that the creators of the Second Restatements criticized the authors of the First for printing the “black letter” of legal subjects without any commentary).
blackletter law, was once the hallmark of the legal profession. The case should not be overstated for the significance of Gothic letter forms in the law as there was some degree of “typographic inevitability” involved in its use. The law did not appear exclusively in Gothic, nor was Gothic used exclusively in the law. Nevertheless, blackletter signified the fullest authority of the law. Despite all the difficulties Gothic prompted as Roman replaced it, Gothic persisted for as long as it did in the law because, in the eye of the beholder, it was the law. Only when the elite readers of lawyers and lawmakers lost the ability to understand what the writers wrote, did Roman fully supplant Gothic. Today, the law lacks any sign of Gothic or even any visual prompt for the origins of the phrase blackletter law, leaving law students and lawyers to scratch their heads.

Considering how the law has appeared over time brings home a larger issue of accessibility: how the law looks matters, not just what it says. Strange as it may seem, there was a time when the law’s appearance made it effectively illegible to read and nearly unattainable to write in an acceptable shape. Now, anyone who can read and write can read and write about the law. Whether people are thwarted by a paywall or can soldier through the legalese are today’s controversies, insuring a continuing need for law librarians and lawyers committed to the public’s access to legal information. Still, the next time you sit down to read a legal text, whether it is in something as old-fashioned as a book or something as new-fangled as the latest legal app on your smartphone, do not take it for granted that you can read it and then write about it.

269 Lesser, supra note 12, at 105 (“Much of the meaning of black letter may not have been fully conscious to printers and publishers . . . .”).