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Books above the Throne: Geopolitical and Technological Factors Exalting Textual Authority in Seventeenth-Century England

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Books above the Throne: Geopolitical and Technological Factors Exalting Textual Authority in Seventeenth-Century England

By Paul Douglas Callister*

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“With the Bible in one hand and Coke's Reports in the other.”¹

I. Introduction

Actualization of the rule of law necessitates more than the enumeration of individual rights and the careful articulation of divided powers, but the presence of an information or media environment conducive to such rule. Specifically, in the case of seventeenth-century England, it is the ascendancy of the printed book, as characteristic of the information environment, that effectively establishes a limitation on royal power.

In reaching its intended objective, this paper sets forth in Section II its methodological rubric, known as Media Theory and Ecological Holism (borrowed from information sciences and history, specifically from the work of Ronald Deibert)² for analysis and support of the proposition that legal institutions and rule of law flourish or fail in relation to their compatibility with the information environment. To ensure a measure of brevity, only geopolitical and technological environmental factors are considered under Deibert's model.

Section III surveys the general characteristics defining the early seventeenth century. Turning to Deibert's rubric, first in section IV, the Article considers the geopolitical and temporal climate of the information environment of the seventeenth century, including the distributed nature of printing in Europe and the religious publishing wars of the sixteenth century that foreshadowed and contributed to the political and legal publishing conflicts in the seventeenth. Second, in Section V, the article discusses technological developments focusing on the use of cross-referencing in standardized legal texts as an innovative basis for constructing a web of authority sufficient to stand independent of royal sanction. Section VI, as the concluding section, summarizes the information

¹ HAROLD J. BERMAN, LAW AND REVOLUTION, II: THE IMPACT OF THE PROTESTANT REFORMATIONS ON THE WESTERN LEGAL TRADITION 215 (2003).

² See *generally* RONALD J. DEIBERT, PARCHMENT, PRINTING, AND HYPERMEDIA: COMMUNICATION IN WORLD ORDER TRANSFORMATION (1997).

environment with respect to geopolitical, temporal, technological, and media factors and assesses their impact on elevating the printed word as authority more compatible with democratic governance and the rule of law.

II. Methodology: Media Theory, Infosphere, and Ecological Holism

In the 1950s and 60s, Marshall McLuhan and Harold Adam Innis conceive of “Media Theory,” not simply as an underlying theoretical basis for librarianship and information systems, but as an explanation of historical evolution, including geopolitics and social institutions.³ For instance, per Innis’ theory, in about 2160 B.C. (during the Middle Kingdom), the movement from Egyptian monarchy to feudalism “coincides with a shift in emphasis on stone as a medium of communication or as a basis of prestige as shown in the pyramids, to an emphasis on papyrus.”⁴ However, the initial theory is faulted for being technologically deterministic and “monocausal,” crediting every geopolitical development to new media technology.⁵ Another prominent and prodigious media theorist, Elizabeth Eisenstein,⁶ is criticized for similar reasons.⁷

³ DEIBERT, *supra* note 2, at 6. See generally HAROLD ADAM INNIS, BIAS OF COMMUNICATION (1951), HAROLD ADAM INNIS, EMPIRE AND COMMUNICATIONS (1950); HAROLD INNIS, THE BIAS OF COMMUNICATIONS (1951); MARSHALL MCLUHAN, GUTENBERG GALAXY (1962), MARSHALL MCLUHAN, UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN (1964); MARSHALL MCLUHAN AND QUENTIN FIORE, THE MEDIUM IS THE MESSAGE (1967); MARSHALL MCLUHAN AND QUENTIN FIORE, WAR AND PEACE IN THE GLOBAL VILLAGE (1968).

⁴ EMPIRE AND COMMUNICATIONS, *supra* note 3, at 17.

⁵ See DEIBERT, *supra* note 2, at 26-27. See also James W. Carey, *McLuhan and Muford: The Roots of Modern Media Analysis*, 31 J. COMM., Summer 1991, at 162, 168.

⁶ See generally ELIZABETH L. EISENSTEIN, THE PRINTING PRESS AS AN AGENT OF CHANGE: COMMUNICATIONS AND CULTURAL TRANSFORMATIONS IN EARLY-MODERN EUROPE (1979).

⁷ See DEIBERT, *supra* note 2, at 27 (citing Michael Hunter, *The Impact of Print*, in BOOK COLLECTOR 341 (1980)). See also Theodore K. Rabb, *The Advent of Printing and the Problem of the Renaissance: A Comment*, 52 PAST AND PRESENT 135 (1971).

In a later generation, Ronald Deibert, a political scientist from the Munk Centre for International Studies at the University of Toronto, imposes a less deterministic, and ultimately, Darwinistic model on Media Theory, in what he termed to be a “holistic” approach.⁸ Ronald Deibert modifies the theory by moving away from technological determinism to emphasize the ecological and holistic nature of information media: “New technologies of communication do not *generate* specific social forces and/or ideas, as technological determinists would have it. Rather, they *facilitate* and *constrain* the extant social forces and ideas of a society.”⁹ Much like Darwin’s theory, those institutions best adapted for the media environment are most likely to survive and prosper.

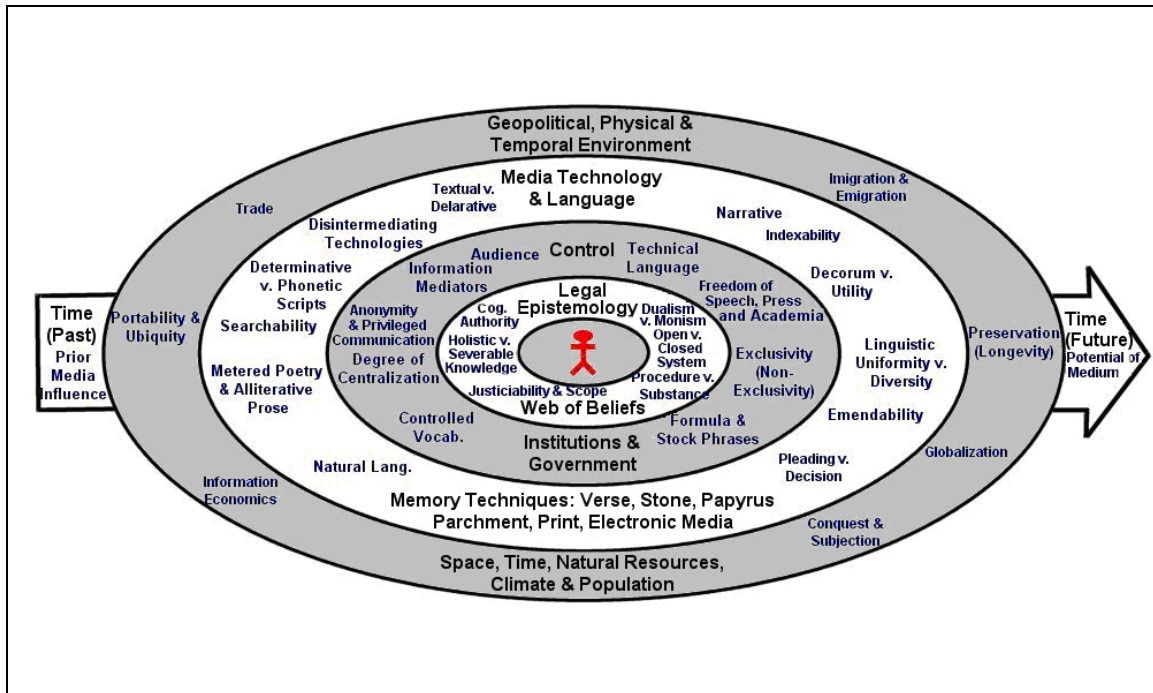


Figure 1 Author's Adaptation of Deibert's Model

Deibert represents the information environment or “infosphere” as a series of concentric rings, with humanity’s shared “web” of beliefs at the center surrounded by various spheres of influence, each one bearing down upon on

⁸ See DEIBERT, *supra* note 2, at 37-38.

⁹ DEIBERT, *supra* note 2, at 36 (emphasis in original).

another.¹⁰ For Deibert, the inner-most ring or the shared web of beliefs influence and are influenced by institutions and organizations, which in turn, affect, and are affected by technologies, which finally impact and are impacted by the geophysical environment. Deibert's model is primarily devoted to explaining changes in a society's web of beliefs and the relative power of social forces that are facilitated by developments in media technology.¹¹

In Figure 1 above, legal systems are recognized as existing within a larger environment, or Infosphere.¹² Working from the outermost ring, the legal infosphere, in terms of its geopolitical environment, can be profoundly affected by access to resources (such as papyrus and parchment),¹³ influxes from invasion and immigration, which may introduce new laws,¹⁴ customs, and ideas (such as the effect of the fall of Constantinople on introducing Hebrew and Greek scholars

¹⁰ See DEIBERT, *supra* note 2, at 38, fig.2

¹¹ Paul Douglas Callister, *Law's Box: Jurisprudence and the Information Ecosphere*, 74 UMKC L. REV. 263, 266 (2005) ("Changes in social epistemology have to do with the 'web-of-beliefs into which people are acculturated and through which they perceive the world around them.'") (citing DEIBERT, *supra* note 2, at 94). "Distributional changes are changes in the relative power of social forces as a consequences of the change in the mode of communications." DEIBERT, *supra* note 2, at 67.

¹² See Callister, *supra* note 11, at 267 (original publication of Figure 1 as adapted by Callister).

¹³ INNIS, *EMPIRE AND COMMUNICATIONS*, *supra* note 3, at 7 ("The conquest of Egypt by Rome gave access to supplies of papyrus which became the basis of a large administrative empire. . . . [M]aterials that . . . emphasize space favor centralization and systems of government less hierarchical in character."). See also DEIBERT, *supra* note 2, at 54-55 ("Unlike papyrus, which was grown almost exclusively in the Egyptian Nile delta region, parchment was especially suited to the decentralized agrarian-rural monastic network that spread through western Europe after the collapse of the Roman Empire.").

¹⁴ See Callister, *supra* note 11, at 305-06 (citing example of influence of Greek influence on Egyptian law from Dorothy J. Thompson, *Literacy and Power in Ptolemaic Egypt*, in LITERACY AND POWER IN THE ANCIENT WORLD 77-78, 82 (Alan K. Bowman & Greg Wolf eds., 1st paperback ed. 1996)).

and texts to Western Europeans),¹⁵ trade conditions (for example, illegal trade in English bibles smuggled in from Europe),¹⁶ the needs for global communications and regulation of trade, etc.

In conjunction with the first ring, as well as other rings, the influence of the past must always be considered. The oral nature of the Celt's pre-Christian existence had a profound impact on the development of its own literary traditions, including law. The presence of metrical verse in written text, the tendency to narrative, and annual traditions of reading the law aloud all influence print forms of Celtic legal texts such as the *Senchus Mor*.¹⁷ Similarly, the proximity of the Homeric, oral tradition affected later developments in the Greek classical states.¹⁸ Consequently, the basis of English common law in oral tradition and subsequent "manuscript culture" must be carefully considered.¹⁹

In the second ring, technological developments (for instance the printing press) may vastly improve the circulation of information over time and space and may also act to disintermediate the influence of special social classes that controlled information such as scribes, priests, the local bar, etc.²⁰ Even alphabets and scripts can have profound effects. The Greek alphabet was known as the demotic (or democratic) because its script contained no silent

¹⁵ See BENSON BOBRICK, *WIDE AS THE WATERS: THE STORY OF THE ENGLISH BIBLE AND THE REVOLUTION IT INSPIRED* 84 (2001) ("Then in 1453, Constantinople fell to the Turks, and for classical scholarship, at least, this apparent catastrophe worked an unexpected gain.").

¹⁶ See *id.* at 106-07.

¹⁷ See generally Callister, *supra* note 11, at 306-325

¹⁸ See *id.* at 278-280.

¹⁹ See *id.* at 317-19, 321-22.

²⁰ See *id.* at 268-69 (control and mediating factors), 277-78 (impact in Greece of writing on stone and demotic alphabet), 287-89 (Mesopotamian scribal classes and clay), 305 (Egyptian language and scribes as disintermediating), and 319-21 (mediating function of Celtic *filid*).

determinatives.²¹ The process of reading was the vocalization of recorded sound. In contrast, determinative scripts like Egyptian hieroglyphs contained non-phonetic as well as phonetic elements whose meaning required interpretation, usually by a member of the scribal class.²² The Greek alphabet, along with the tendency of Greeks to record their law upon stone during the classical period, facilitated Greek notions of a democratic and engaged citizenry.²³ Technological innovations permitting indexing and classification schemes (appearing in softer media such as clay and parchment rather than stone) and increasing the amount of text that can be stored are important for the development of hierarchical structures, disciplines of knowledge, and scholarly schools.²⁴ Some media such as parchment codices, facilitated gloss, and emendation produced constant innovation and commentary upon core texts through the process of recopying by hand.²⁵ The printing press greatly reduced

²¹ See *id.* at 278.

²² See *id.* at 296-300.

²³ See *id.* at 278.

²⁴ See *id.* at 274 (limitations of stone to hold information), 288 (appearance of rubrics on scribal clay tablets as an organizing function).

²⁵ See Guglielmo Cavallo, *Between Volumes and Codex: Reading in the Roman World*, in *A HISTORY OF READING IN THE WEST* 88 (Guglielmo Cavallo & Roger Chartier eds., Lydia G. Cochrane trans., 1st paperback ed., University of Massachusetts Press 2003) (1995) (“Textual exegesis by more than one hand often accumulated in the page margins [of codices]; entire commentaries had to be transferred to separate books.”); M.T. CLANCHY, *FROM MEMORY TO WRITTEN RECORD: ENGLAND 1066-1307*, at 133 (2nd ed. 1993) (“The gloss took definite shape in the twelfth century and grew out of the practice of lecturers and students making explanatory notes on spare space around the texts they studies. Master Vacarius, in the textbook of Roman law he wrote for English students . . . describes how he first put particular passages into the text and then perfected the book ‘by sprinkling other passages into the space for the gloss.’”); ALBERTO MANGUEL, *A HISTORY OF READING* 126-27 (describing the ascension of parchment codices over papyrus rolls); Callister, *supra* note 11, at 308, 310 (describing transcription of Celtic *Senchus*, which was originally oral, to glossed parchment and inherent problems); DEIBERT, *supra* note 2, at

the cost of production and ownership as well as standardizing and stabilizing texts in editions.²⁶ Electronic media permit free-text searching and disintermediated access to texts such that human indexes and abstracts appear as less relevant.²⁷

The third and forth rings are not considered within the scope of this paper, but the third ring has to do with social institutions and organizations that provide mechanisms for intermediation and in many cases control the flow of information. The fourth ring concerns the shared web of beliefs concerning what is law and what are the accepted or cognitive legal authorities of a society.

(54-55) (papyrus may have been too fragile a medium for the rigors of monastic life); Ronald K.L. Collins & David M. Skover, *Paratexts*, 44 STAN. L. REV. 509, 521-29 (1991-92) (ground breaking article on the significance of media environment and, in particular, describing “scribal” or “chirographic” age, including medieval England, and its effect on law).

²⁶ See EISENSTEIN, *supra* 6, at 80-88 (discussion of effects standardization); CHRISTOPHER HILL, *THE ENGLISH BIBLE AND THE SEVENTEENTH-CENTURY REVOLUTION* 12 (1994) (e.g., manuscript bibles cost many times the same amount as later printed editions).

²⁷ For instance, Robert Berring, perhaps law librarianship’s foremost thinker on the effects of electronic legal research on the practice of law, sees a revolution affecting legal authority:

The century’s close sees this situation changing radically. The comfortable structure of cognitive authority that had been so central to legal information has fallen, and it can’t get up. Old tools are slipping from their pedestals while new ones are fighting for attention. Where once there was a settled landscape, there now is a battlefield. The change is not an organic growth, nor are the learned hands like those of the American Law Institute or the American Bar Association guiding it. This change is being driven by publishers as they battle in the information marketplace for consumers. Many senior lawyers who would normally function as the gatekeepers of change are unaware that the earth is shifting under their feet, but it is. Law students and young lawyers do not see current events as revolutionary, but they are. To them it is odd that anyone ever used Shepard’s in print or that anyone actually *used* a digest volume at all.

Robert C. Berring, *Legal Information and the Search for Cognitive Authority*, 88 CAL. L. REV. 1673, 1677 (2000).

III. The General Information “Milieu”: An Information Revolution

Early seventeenth-century England was, in a word, remarkable. Queen Elizabeth had reigned through the end of the prior century with judicious tolerance, and after a two-hundred year battle, popular access to the bible in the vernacular is finally secure with the publication of the “authorized version” or King James Bible in 1611.²⁸ The edition resulted from seven years of committee work under the direction of Elizabeth’s successor, King James I, the “textual” and scholarly monarch of Britain.²⁹ James was inclined to authorship and debate, particularly with reference to his own prerogatives.³⁰ “James was not only an active patron [both supporting and suppressing important works], but also a

²⁸ *King James Version*, ENCYCLOPÆDIA BRITANNICA ONLINE, at <http://www.search.eb.com/eb/article-9045516> (last visited on Jan. 7, 2008).

²⁹ See BOBRICK, *supra* note 15, at 206 (James “was a true bibliophile. He built up a considerable private library in the classics; owned a host of theological works (. . . which he read in Latin); was especially well read in the French poets . . .; and of course had many writings in English and Scots” and apparently received an honorary degree from Oxford.); PRINTING AND THE MIND OF MAN 68-69 (John Carter & Percy H. Muir eds., Karl Pressler 2nd ed. 1983) (1967); Stephen Leslie Val King, “This Prince Most Rare”: James Stuart and the Textuality of Kingship (Jan. 24, 2002) (unpublished Ph.D. dissertation, University of Alberta) (on file with author).

³⁰ See BOBRICK, *supra* note 15, at 270 (referring to James’s authorship of *The True Law of Free Monarchies* setting forth his theory of kingship, with the king as “God’s lieutenant” without being bound to “frame his actions according to the law”); CATHERINE DRINKER BOWEN, *THE LION AND THE THRONE: THE LIFE AND TIMES OF SIR EDWARD COKE (1552-1634)*, at 228-29 (4th prtg., 1957) (referring to his authorship in defense of royal privilege, “There were Kings, James stated, before there was law.”), 302-305 (debate in Privy Council with Lord Coke on the jurisdiction of ecclesiastical courts and the extent of royal privilege); and BOBRICK, *supra* note 15, at 208-14 (James at Hampton Court Conference demonstrating intellectual prowess to Puritans, representatives of the Church of England, and the Court).

published author, which was a rarity among European monarchs before and since.”³¹ These were unusual times indeed.

The textuality of James’ reign befitted the early seventeenth century, which was the era of numerous luminaries in both law and literature, such as William Shakespeare (1564-1616). The bard’s “first folio” was published in 1623.³² Even more voluminous, if not as aesthetically inspiring, the legal works of Sir Edward Coke (1552-1634) have been praised among the masters of English Common Law: “Glanville, Bracton, Littleton, Coke, Blackstone.”³³ In effect, Coke surpasses them all by serving as the common thread uniting these diverse “masters” by transcending ancient law (Glanville, Bracton and Littleton) in contemplation of modern law (Blackstone). “If Bracton first began the codification of Common Law, it was Coke who completed it.”³⁴ Besides rounding out and completing a description of the common law, Coke provides continuity with the past. “[H]is writings stand between, and connect the ancient and modern parts of the law, and by showing their mutual relation and dependency.”³⁵ He is the important link of legal traditions.

The effect of Coke’s *Institutes* was conflict as well as constitutionalism: “With it [the *Institutes*] the lawyers fought the battle of the constitution against the

³¹ King, *supra* note 29, at 12. “With his patronage and repression of works, James believed that he demonstrated that he ruled over the literary realm with the same mediating authority which he wielded in his political and religious ones.” *Id.*

³² See PRINTING AND THE MIND OF MAN, *supra* note 29, at 73-74. See also THE RIVERSIDE SHAKESPEARE 59 (G. Blake Evans ed., 6th prtg. 1974) (facsimile of first folio title page).

³³ Eugene Wambaugh, *Introduction*, in LITTLETON’S TENURES IN ENGLISH, at xi (Eugene Wambaugh ed., 1903). See also FREDERICK C. HICKS, MEN AND BOOKS FAMOUS IN THE LAW 83 (Lawbook Exchange 1992) (1921).

³⁴ PRINTING AND THE MIND OF MAN, *supra* note 32, at 75.

³⁵ Charles Butler, *Preface to the Present Edition*, in EDWARD COKE, FIRST PART OF THE INSTITUTES OF THE LAWS OF ENGLAND, at an unnumbered page prior to the editor’s signature in the preface (13th ed., 1775-78). See also HICKS, *supra* note 33, at 96.

Stewarts; historical research was their defense for national liberties. In the *Institutes* . . . the tradition of the common law from Bracton and Littleton . . . made famous, firmly established itself as the basis of the constitution of the realm.”³⁶ The influence of Coke’s writing were recognized as such value that upon his deathbed in 1634, drafts of his *Institutes* (parts II through IV) not having been published were seized by the crown (King Charles, whose throne would soon devolve into Civil War), and were only later released in 1641,³⁷ at a time when parliamentary power was at its zenith and capable of compelling the production of Coke’s works by the crown.³⁸ Interestingly, the quality of Coke’s *Institutes* was so valuable that the monarchy may have audaciously resorted to citing then unpublished versions that it held captive.³⁹

By the mid-seventeenth century, events had further degenerated into pamphlet wars, and civil war.

[L]iterature was part of the crisis and the revolution, and was at its epicentre. Never before in English history had written and printed literature played such a predominant role in public affairs, and never before had it been felt by contemporaries to be of such importance: “There had never been anything before to compare with this war of words. It was an information revolution.”⁴⁰

For England, the century which began with “textual” monarchy, the King James Bible, and relative tolerance made its unhappy way from religious to political conflict through provocative discourse in a new tradition of legal texts, debate in royal and parliamentary counsels, the revival of censorship, illegal pamphleteering, governmental paralysis, and finally, civil war and dethronement.

³⁶ PRINTING AND THE MIND OF MAN, *supra* note 31, at 76.

³⁷ See HICKS, *supra* note 33, at 99-101.

³⁸ BOWEN, *supra* note 30, at 517.

³⁹ See *id.* at 519-20. See also HICKS, *supra* note 33, at 101-20.

⁴⁰ NIGEL SMITH, LITERATURE AND REVOLUTION IN ENGLAND 1640-1660, at 1 (1994).

One commentator noted about the culmination of the revolution, “By the summer of 1660 the revolution was lost but literature had triumphed.”⁴¹ Apparently, the new media environment, besides fostering literary genius, “textual” monarchy, and ambitious legal and religious scholarship, proved to be wonderfully unstable and capable of hosting a violent, but ultimately, progressive revolution. Hence, it is worthy of careful study.

IV. Temporal and Geopolitical Factors: Why not Burn the Books?

In 1616, King James I ordered Lord Edward Coke “to review all the cases in his previously published eleven volumes of Reports in order to eliminate erroneous statements concerning the royal prerogative.”⁴² Notwithstanding the pressure, Coke found only five trivial errors and appears never to have made any changes.⁴³ King James I removed Lord Edward Coke from office as a result of displeasure with Coke’s *Reports*.⁴⁴ However, there is no evidence of any attempt to recall or destroy the *Reports*. The question is why not? The answer is that diffusive spread of printing combined with the geopolitical conditions of Europe and England’s prior history with the English Bible and religious tracts may have made such an effort, if ever proposed, appear as wholly ineffective to King James.

As described above,⁴⁵ the temporal factors in Deibert’s holistic model, mandate that an information environment not be considered in isolation, without respect to history. Like Ronald Dworkin’s paradigm of law as the unending chain

⁴¹ *Id.* at 32.

⁴² Harold J. Berman, *Origins of Historical Jurisprudence, Coke, Selden, Hale*, 103 YALE L.J. 1651, 1676 (1994). For the date, see BOWEN, *supra* note 30, at 376.

⁴³ See BOWEN, *supra* note 30, at 381.

⁴⁴ See generally *id.* at 379-88.

⁴⁵ See *supra* notes 17-18 and accompanying text.

story, where prior events in the chain affect current interpretations of law,⁴⁶ a fuller understanding of the effect of the information environment upon legal institutions and thinking only comes through grounding in the past. Consequently, section A below sets forth in some detail sixteenth century history with the Bible and religious tracts in the sixteenth century in order that development in the seventeenth century might be more thoroughly appreciated. Section B develops the geopolitical factors of the seventeenth century which make it difficult for English government to control its information environment and which encourage the revolutionary literature surrounding the English civil war. It is in this context that Lord Coke's *Institutes* appear, providing a new anchor for authority.

A. Sixteenth Century – the Peripatetic Press and the English Bible

The principal effect of the geopolitical environment of the sixteenth and seventeenth century was to render ineffectual attempts by the crown to censor information flow, and in particular, to maintain tight control over the book trade. Within 50 years of the commencement of printing (in Germany between 1452 and 1456),⁴⁷ some fifteen to twenty million books (representing 35,000 editions)

⁴⁶ See generally RONALD DWORKIN, *LAW'S EMPIRE* 228–38 (1986).

⁴⁷ S.H. STEINBERG, *FIVE HUNDRED YEARS OF PRINTING* 5-6 (1996).

No book or other printed work bearing the name of Gutenberg survives (if indeed any such ever existed), and only one major work can confidently be called a product of his workshop – the 42-line ('Marzarin') Bible which was set up from 1452 and published before August 1456. The oldest European piece printed from movable metal types may be the surviving fragment of a German poem known as the *Sibyllenbuch* Various dates have been suggested for this fragment, the earliest 1442, the latest perhaps twelve years later. The earliest dated typographical documents are two editions of an indulgence set in type associated with Gutenberg: some copies are dated 1454, other 1455.

Id. The irony that indulgences may have preceded the bible into print should not go unnoticed. Indeed, Luther's 95 theses were a reaction to printed indulgences. See HILL, *supra* note 26, at

were published, with printing presses in 151 towns throughout Europe.⁴⁸ However, only four of these were in England.⁴⁹ The table displayed as Figure 2 below reveals the relative diverse spread of printing throughout Europe.

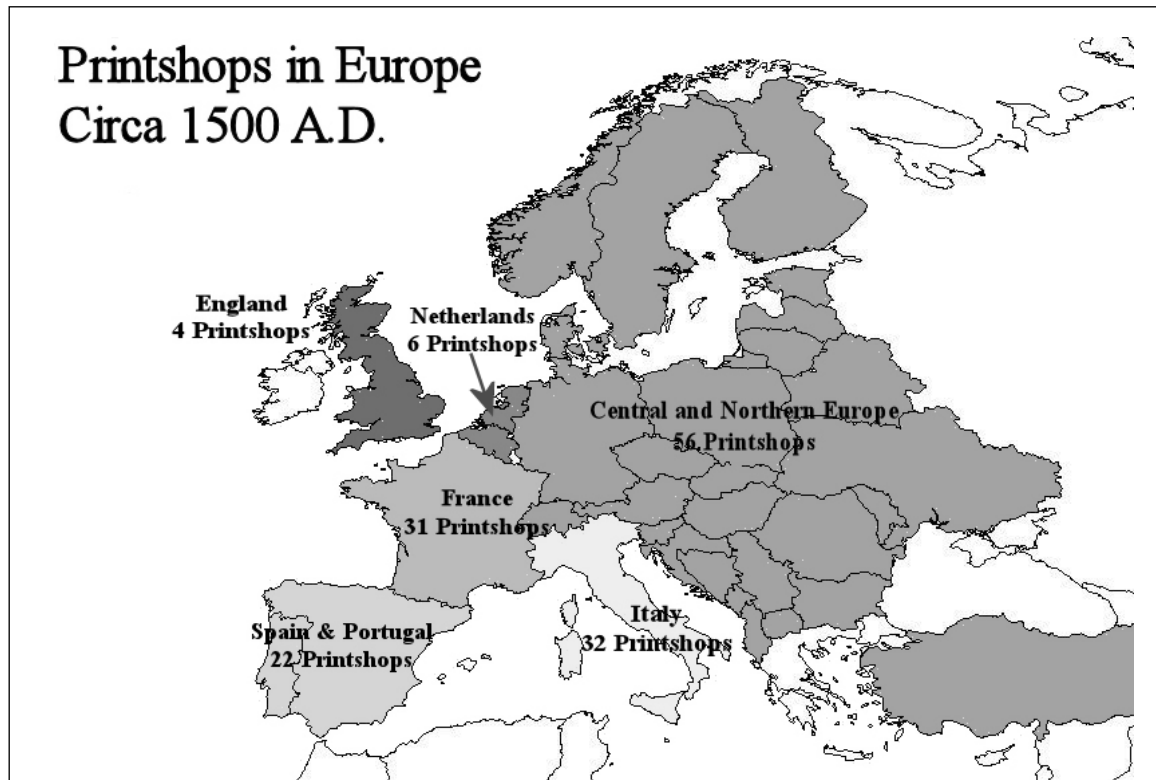


Figure 2—Map created from data in THEO. L. DE VINNE, *THE INVENTION OF PRINTING 492-513* (2nd ed. 1877).

12. Printing of indulgences facilitated the profiteering that so offended Luther. See *id.* Often it is small, overlooked changes that have the greatest impact, and their study leads to a complete understanding of the dimensions of historical events. “The printed calendars and indulgences that were first issued from the Mainz workshops of Gutenberg and Fust, for example, warrant at least as much attention as the more celebrated Bibles. Indeed, the mass production of indulgences illustrates rather neatly the sort of change that often goes overlooked, so that its consequences are more difficult to reckon with than perhaps they need be.” ELIZABETH L. EISENSTEIN, *THE PRINTING REVOLUTION IN EARLY MODERN EUROPE* 29 (1983).

⁴⁸ This number was tabulated from data extracted from THEO. L. DE VINNE, *THE INVENTION OF PRINTING 492-513* (2nd ed. 1877). See also LUCIEN FEBVRE & HENRI-JEAN MARTIN, *THE COMING OF THE BOOK: THE IMPACT OF PRINTING 1450-1800*, at 184-185 (David Gerard, trans., Geoffrey Nowell-Smith & David Wootton, eds. 1976) (1958).

⁴⁹ *Id.* at 184-85.

England's lack of a printing industry led to the unusual step of legislation relating to restrictions on foreign workers in the book trade.⁵⁰ In the thirty-year period between 1520 and 1549, England as a whole produced just 2,217 titles, or 73.9 titles a year (which is rather weak compared to Paris' annual output of about 300 titles during the same period).⁵¹ Thus, as of 1500 A.D., the corpus of the printing industry lay without England on the European continent.

To give a sense of perspective, the twenty to twenty-five million books published prior to 1500 A.D., "eclipsed the entire estimated [written] product of the previous thousand years."⁵² This was about one book for every four inhabitants of Europe (population estimated at 100 million).⁵³ In the sixteenth century, between 150 and 200 million books were printed, constituting between 150,000 and 200,000 editions.⁵⁴ England produced about 10,000 editions from 1600-1640.⁵⁵ By 1640, in England alone an estimated one million Bibles and New Testaments had been published,⁵⁶ an estimated one Bible for every six people in Great Britain.⁵⁷ An explosion of accessible written material had taken place, in which England's role in production of that information was but a footnote.

⁵⁰ *Id.* at 191 (referring to the Act of 1484). This permissive attitude toward foreign printers was repealed in 1534. *Id.*

⁵¹ *Id.* at 191.

⁵² DEIBERT, *supra* note 2, at 65.

⁵³ *Id.*

⁵⁴ FEBVRE & MARTIN, *supra* note 48, at 262. *See also*, DEIBERT, *supra* note 2, at 65.

⁵⁵ FEBVRE & MARTIN, *supra* note 48, at 262

⁵⁶ HILL, *supra* note 26, at 18.

⁵⁷ As of 1642, there were an estimated six million inhabitants of Great Britain. *See* BBC History – Population Animation, <http://www.bbc.co.uk/history/games/population/population.html> (last visited March 8, 2006). *See also* ANDREW HINDE, ENGLAND'S POPULATION: A HISTORY SINCE THE DOMESDAY SURVEY 2, fig.1.1 (2003).

Both the scale of information and the diverse sources of production made it difficult for any monarch to control the flow of information in Europe. Attempts to regulate the distribution and reading of the Bible, especially in English, bear this out. Despite the risks, and lack of traditional economic incentives, a robust “trade” in smuggled biblical texts and religious tracts made its way from overseas. By the 1520s, Thomas More wrote about the problem of foreign religious books:

[T]hough they neither can be printed without great cost [nor] none there sold without great adventure and peril, yet they cease not with money sent from thence to print them there and send them hither by the whole vats full at once and in some places looking for no lucre, cast them abroad by night. . . . I was by good honest men informed that in Bristol . . . there were of these pestilent books some thrown in the streets and left at men’s doors by night that where they durst not offer their poison to sell, they would of charity poison men for naught.⁵⁸

More, who estimated that half of the English population could read, was alarmed by the circulation of “old Lollard tracts, Luther’s works, vernacular Scriptures”⁵⁹ and the writings of the exiled.⁶⁰ King Henry VIII lamented in 1546 that ‘the Bible

⁵⁸ DEREK WILSON, *THE PEOPLE AND THE BOOK, THE REVOLUTIONARY IMPACT OF THE ENGLISH BIBLE 1380-1611*, at 43 (1976) (quoting Thomas More, *The Works of Sir Thomas More Knyght* 344 (William Rastell, ed. 1557).

⁵⁹ The Lollards were among the earliest to challenge the authority of the church through scripture. Their origins date to the time of Wycliff in about 1382. See *Lollard*, *ENCYCLOPÆDIA BRITANNICA* 2007, available at <http://www.search.eb.com/eb/article-9048798> (last visited 31 Aug. 31, 2007).

⁶⁰ WILSON, *supra* note 58, at 42. Elsewhere, More estimated that forty percent of the population could not read, inferring that sixty percent could. See DAVID CRESSY, *LITERACY AND THE SOCIAL ORDER: READING AND WRITING IN TUDOR AND STUART ENGLAND* 44 (1980). Despite More’s estimate high estimates (circa 1520), the literacy rate in England at around 1500 A.D., based upon those who could sign their name rather than make a mark, is estimated to have been ten percent for men and one percent for women. See *id.* at 177, graph 8.1 (1980) (based upon the ability to write name, rather than reading, as of 1500). By 1550, that figure had risen to about

was ‘disputed, rhymed, sung, and jangled in every alehouse and tavern.’⁶¹ In sixteenth century England, concern about mass literacy was palpable among the elites. “Twas a happy time when all learning was in manuscript, and some little officer, like our author, did keep the keys of the library.”⁶² As King Henry knew, printing could ignite revolution.

Presaging England’s experience on the continent, the printing press had served as a mighty amplifier for Luther’s message. The extent of publications gave rise to the era of the *Flugschriften* (or “flying texts”).⁶³

Within fifteen days Luther’s theses had been translated into German, summarized, and distributed to every part of the country. During Luther’s life, five times as many works authored by Luther alone were published than by all the Catholic controversialists put together. Martin Luther alone is responsible for 20 percent of the approximately 10,000 pamphlet editions issued from presses in German-speaking territories between 1500 and 1530. . . . Prior to the emergence of the printing environment, heresies similar in form to the Protestant Reformation could not count on such a quick ignition rate.⁶⁴

While Protestant presses had acted as a catalyst for widespread pamphleteering, the presses themselves were also diffusive instruments and resistant to centralized control.

twenty percent for men and three to five percent for women. *See id.* By 1650, the literacy rate (based upon making a mark) would rise to about thirty percent for men and fifteen percent for women and in London as of about 1641 the rate for men was as high as seventy-eight percent. *Compare id. with id.* at 74, map 1. Thus, More’s estimates may have been correct within the context of his urban view point.

⁶¹ HILL, *supra* note 47, at 15 (citing H. WHEELER ROBINSON, THE BIBLE IN ITS ANCIENT AND ENGLISH VERSIONS 180 (1940)).

⁶² ANDREW MARVELL, THE REHEARSAL TRANSPOS’D 4 (D.I Smith ed. 1971) (1672).

⁶³ *Id.* at 291.

⁶⁴ DEIBERT, *supra* note 2, at 71.

Protestant presses for the “War of the Pamphlets” initially established themselves throughout Germany, and then discretely, in countries such as France (in Paris), Italy (in Venice), and the Low Countries (in Antwerp), which were still loyal to the Roman Church. However, “after 1540 printing them became too dangerous, and a pedlars’ network was established from a base of operation in neighbouring lands (working from Geneva, Strasbourg and Emden in Particular).”⁶⁵ The importance of Europe’s fractured geopolitical structure is important, providing refuge for the press and frustrating the efforts of the Roman Church as well as the English state to suppress information flow.

After William Tyndale’s New Testament was smuggled into England, Bishop Tunstall issued a proclamation on October 24, 1526 to destroy copies of the translated New Testament.⁶⁶ The heretical books were burned.⁶⁷ Besides seizing books at home, the English Church unsuccessfully attempted to curtail the spread of vernacular Bibles through pressuring governments in Europe to seize books before they shipped, by discrediting the books through vigorous attacks (in print) by none other than Sir Thomas More, and even by buying up the new books before they could reach their intended audiences.⁶⁸ However, despite

⁶⁵ JEAN-FRANÇOIS GILMONT, *THE REFORMATION AND THE BOOK* 215 (Karen Maag trans., 1998).

⁶⁶ See BOBRICK, *supra* note 15, at 106-07. Tunstall’s order reads:

Wherefore, we having understanding, . . . that many children of iniquity, maintainers of Luther’s sect, blinded through extreme wickedness, wandering from the way of truth and the Catholic faith, craftily have translated the New Testament into our English tongue, intermingling therewith many heretical articles and erroneous opinions, pernicious and offensive, seducing the simple people Wherefore we do charge you, jointly and severally (the Archdeacons), . . . that within thirty days’ space . . . they do bring in . . . such books as contain the translation of the New Testament in the English Tongue.

Id.

⁶⁷ See *id.* at 107.

⁶⁸ *Id.* at 107-11.

these measures, by 1532, there were as many as fifty thousand copies of Tyndale's New Testament in England.⁶⁹

Political geography plays an important role in the inability of the English monarchy to stop the flow of illegal bibles. After failing altogether in England and an initial attempt to publish in Cologne, Germany in early 1525, Tyndale's New Testament was printed in Worms later in 1525 or 1526.⁷⁰ Tyndale made a narrow escape with the print sheets of his translation of Matthew from Cologne in 1525 after a "champion of the Roman Church," John Cochlaeus overheard employees of the print shop gossiping about an English book.⁷¹ Traveling up the Rhine to Worms, Tyndale had 6,000 of his translation of the New Testament printed by Peter Schoeffer, which made their way to various English book dealers by way of traveling back down the Rhine to Antwerp.⁷² "Between 1525 and 1528 at least eighteen thousand copies of Tyndale's New Testament, in both quarto and octavo editions, were printed, concealed in corn ships and bales of merchandise, and brought into English ports."⁷³

The reception of the new bible had been carefully prepared. "The Christian Brethren [a guild of merchants dedicated to smuggling reformist literature] had handled well their pre-publication advertising and everywhere men were waiting eagerly for the forbidden books which filtered inland from London and the east coast ports."⁷⁴ The New Testaments made their way to Oxford.

⁶⁹ BOBRICK, *supra* note 15, at 142. See also H.C. CONANT, THE POPULAR HISTORY OF THE TRANSLATION OF THE HOLY SCRIPTURES INTO ENGLISH TONGUE 164 (1880) ("Bibles came thick and threefold into England").

⁷⁰ David Daniell, *William Tyndale, the English Bible, and the English Language*, in THE BIBLE AS BOOK: THE REFORMATION 39, 40, 42 (Orlaith O'Sullivan ed., 2000).

⁷¹ WILSON, *supra* note 58, at 45.

⁷² *Id.*

⁷³ BOBRICK, *supra* note 15, at 107.

⁷⁴ WILSON, *supra* note 58, at 45-46.

Thomas Garrett was arrested in 1528 for having distributed 350 copies throughout the university, and even Queen Anne Boleyn had a copy “specially bound in vellum with her name, ‘Anna Regina Angilia’, in red letters on the fore-edge.”⁷⁵ Given the economics of the time, at the time, the cost of the New Testament was not cheap—three marks.⁷⁶ However, “manuscript Lollard Testaments had cost from seven to eighteen times as much. That was a revolution.”⁷⁷ John Foxe observed the sacrifice the English people made to purchase Tyndale’s New Testament, “of whom some gave five marks [note as being “in excess of £200” in about 1976], some more, some less, for a book; some gave a load of hay for a few chapters of St. James or of St. Paul in English.”⁷⁸ It would appear that in the age of the press, economics was no great barrier to the written word.

The inability of the state to control access to the Bible confirms a fundamental principle from the information sciences:

Information is diffusive. It tends to leak; the more it leaks the more we have and the more of us have it. Information is aggressive, even imperialistic, in striving to break out of unnatural bonds of secrecy in which thing-minded people try to imprison it. Like a virus (itself a tiny information system), information tries to affect the organisms around it, whether by over-the-fence gossip or satellite broadcasting.⁷⁹

Ironically, the modern nation-state, at the very moment of its emergence from feudalism,⁸⁰ appears helpless against the “leaky” power of information, made all

⁷⁵ *Id.*

⁷⁶ See HILL, *supra* note 47 at 11.

⁷⁷ *Id.*

⁷⁸ WILSON, *supra* note 58, at 43 (citing E. ARBER, 28 ENGLISH REPRINTS 165 (1926)).

⁷⁹ Harla Cleveland, *The Knowledge Dynamic*, in THE KNOWLEDGE EXECUTIVE 32-33 (1985)

⁸⁰ The relationship between the press, standardized language, and emergence of the modern nation-state has been commented on by Deibert:

the more potent by changing technologies, which in the case of state efforts to regulate the Bible meant the printing press.

B. Seventeenth Century – From Bible to Political and Legal Texts

By fixing one dialect as the predominant mode of speech, printing helped reduce other local dialects to the status of regional or local patois, thus undermining more parochial identities while at the same time legitimating a common standardized language within territorial boundaries. The legitimating of singular “national” languages, in turn, became an important basis of differentiating people from people to people and state from state, fragmenting, the transnational hegemony of Church-Latin with various national vernaculars. . . . In other words, the properties of printing in conjunction with a conscious unification and homogenization drive, led to the exaltation of language as a quasi-divine mark of shared national identity and a *visible* affirmation of political differentiation.

DEIBERT, *supra* note 2, at 107. In similar manner, electronic media may undermine the modern nation state. See Monroe E. Price, *The Market for Loyalties: Electronic Media and the Global Competition for Allegiances*, 104 YALE L.J. 667, 696-97 (1994).

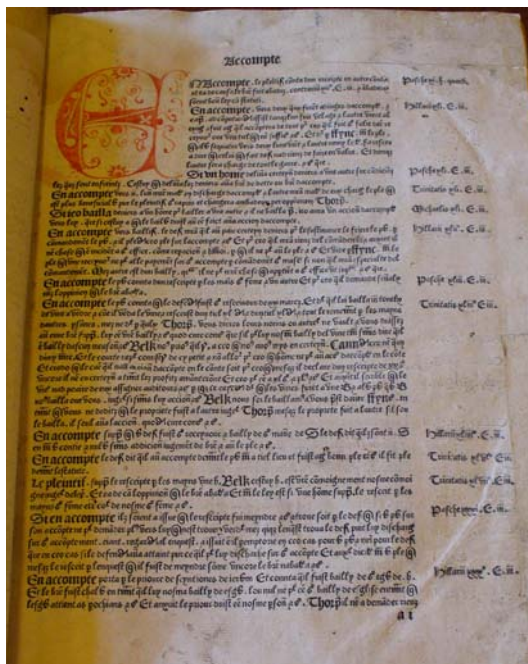


Figure 3—First Page of *Statham's Abridgement* (circa 1470-1490). Source: Missouri Supreme Court Library.

discounting the significance of protests and trial accounts, the mere fact that publications could be quickly printed beyond a state's border (especially given the experience with religious texts) may have discouraged suppression. Furthermore, there were significant exceptions that proved publication of English legal tracts need not have been exclusively confined to England within the reach

Study of the information environment surrounding the printing of various religious texts and bibles would prove to have important ramifications for legal and political texts. The focus of this paper is whether the geopolitical aspects of the information environment affected the rule of law and triumph of the book over absolute monarchy. Unlike bibles and religious materials, few legal texts were ever printed outside of England,

except protests and accounts of trials and unjust imprisonment.⁸¹ However, even

⁸¹ See, e.g., JOHN LILBURNE & WILLIAM WALWYN, ENGLANDS WEEPING SPECTACLE: OR, THE SAD CONDITION OF LIEVTENANT COLONELL JOHN LILBURNE : CRYING TO ALL WHO HAVE ANY CONSCIENCE OR COMPASSION, FOR ASSISTANCE AND DELIVERANCE FROM HIS UNJUST, LONG AND CRUELL SUFFERINGS (1648) ; JURY-MAN, A JURY-MAN'S JUDGEMENT UPON THE CASE OF LIEUT. COL. JOHN LILBURN: PROVING, BY WELL-GROUNDED ARGUMENTS, BOTH TO HIS OWN AND EVERY JURY-MAN'S CONSCIENCE, THAT THEY MAY NOT, CANNOT, OUGHT NOT FINDE HIM GUILTY UPON THE ACT OF PARLIAMENT MADE FOR HIS BANISHMENT, AND TO BE A FELON FOR RETURNING INTO ENGLAND (1653); THE PETITION REJECTED BY THE PARLIAMENT, BEING TENDERED TO THEM IN BEHALF OF LIEVT. COL. JOHN LILBURN: AND IN BEHALF OF THE LIBERTIES OF ALL THE PEOPLE OF ENGLAND, HIGHLY VIOLATED BY THEIR UNJUST ACT MADE FOR HIS BANISHMENT, CONFISCATION OF HIS ESTATE, AND IN RENDRING HIM A FELON IF HE SHOULD RETURN, NOW PUBLISHED: HE BEING PEACEABLY RETURNED, AND CASTING HIMSELF IN ALL HUMILITY UPON THE JUSTICE OF HIS CAUSE, AND THE CONSCIENCE OF THESE KNOWING TIMES (1650).

of state censors. Early in the development of English legal publishing, *Statham's Abridgment of the Law* (circa 1470-1490)⁸² (see Figure 3) and *Littleton's Land*

⁸² There is some uncertainty as to the date of *Statham's Abridgement*. The photo in Figure 3 comes from the Missouri Supreme Court Library. The library's archivist, Joseph F. Benson, indicates the spine for this copy of *Statham's Abridgement* bears a date 1470; however, three prominent catalogs of early English bibliography date the Abridgment to 1490. See AMES FOUNDATION, A BIBLIOGRAPHY OF EARLY ENGLISH LAW BOOKS 104, no.R 455, 111 no.T 5, 187-88, 287, no.R 455 (comp. by Joseph Henry Beale, 1926); SWEET & MAXWELL, 1 SWEET & MAXWELL'S COMPLETE LAW BOOK CATALOGUE 189, no.14, 292, no.50 (comp. by W. Harold Maxwell, 1925); English Short Title Catalog, at <http://estc.bl.uk/> (follow the "Advanced search hyperlink, then enter, "Statham, Nicholas" and select the "word from Author" field, then follow the hyperlinked number to view all of the records for Nicholas Statham, including the *Abridgement*) (last visited Feb. 8, 2008). The uncertainty of the date of original publication of Statham's Abridgement is discussed in an article in Harvard Law Review:

The date at which the book was printed can only be approximated. None appears in the book itself. There is some preponderance in favour of 1495 in catalogues of the various public libraries, but a query is often added to this. The year 1490 has also been suggested, and so have other years. It must be later than 1461, as that was the case in it. Moreover, no book appears to have been printed in France before 1474 approximately. There are no folio references to the Year in the Abridgement, and the Year Books began to be printed in 1481-1482. If the Abridgement had been printed long after this, it is conceivable that it would have had folio references to some of the printed Year Books

Percy H. Winfield, *Abridgements of the Year Books*, 37 HARV. L. REV. 214, 225 (1923-1924). If the 1470 date on the spine of Missouri Supreme Court Library's copy of *Statham's Abridgement* were accurate, *Statham's Abridgement* would pre-date the Year Books, which were first produced only as "prints", and would be the oldest known printed book on English Law, as well as perhaps the oldest book printed in France. See Charles C. Soule, *Year-Book Bibliography*, 14 HARV. L. REV. 557, 561, 563 (1900-1901) (indicating Year Books were first published as "prints" or pamphlets by William de Machlinia). It is not entirely improbable that *Statham's Abridgements* preceded the Year Books, since the *Abridgements* make no mention of them and since the *Abridgments* was published expressly for Richard Pynson, "the first systematic publisher of Year Books," who may have commenced publishing them in the 1490s with the help of the *Abridgements*. See Winfield, *supra*, at 225.

Tenures (3d 1495),⁸³ two of the most important early legal texts, were published by Richard Pynson, who eventually became a King's Printer. Rather than publishing in England, Pynson used a Norman printing firm, Tailleux from Rouen, for this important work, possibly because these works were in Norman French.⁸⁴ Because early English printers and publishers were almost entirely made up of foreigners, connections to the continent were never far removed.⁸⁵ "From 1476 to 1536, two-thirds of the printers, booksellers and bookbinders in England were foreigners. The equipment was often French From Paris, Rouen and soon from Antwerp, books intended for the English market were exported; while several Paris booksellers . . . had branches in London."⁸⁶ There would have been abundant opportunities for anyone who wanted to print books overseas, away from English authorities.

What happened with religious texts in the sixteenth century on the continent is important because it foreshadows a "literature" revolution in the mid-seventeenth century (specifically, prior to the English Civil War, "literature was part of the crisis and the revolution and was at its epicenter").⁸⁷ As described by Roger Coke (Lord Coke's grandson):⁸⁸ "before it came to sword and pistol, men began a war with

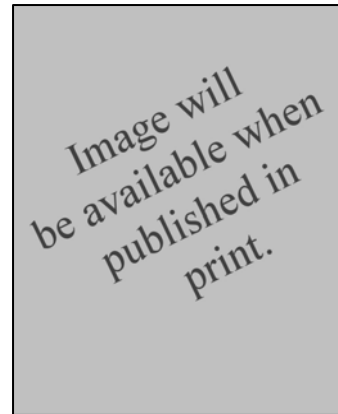


Figure 4--Printer's mark of the Rouen firm of Tailleux in *Statham's Abridgement*

⁸³ See SWEET & MAXWELL, *supra* note 82, at 292, no.50.

⁸⁴ See AMES FOUNDATION, *supra* note 82, at 105 no.R 455, 111 no.T 5, 187-88, 214 fig.2.; SWEET & MAXWELL, *supra* note 82, at 189, no.14, 292, no.50 (comp. by W. Harold Maxwell, 1925).

⁸⁵ See FEBVRE & MARTIN, *supra* note 48, at 191.

⁸⁶ *Id.*

⁸⁷ SMITH, *supra* note 40, at 1.

⁸⁸ See BOWEN, *supra* note 30, at 395 (Roger Coke is Sir Edward Coke's grandson).

their pens”⁸⁹ This literature was dominated by pamphlets, and considered political, legal and religious issues (the unifying theme being the defiance of authority).⁹⁰

Examples of seventeenth-century tracts with legal and political themes include *The Kings Cabinet Opened* (1645), *The Vindication of the Professors and Profession of the Law* (1645), *A Warning for all the Counties of England* (1646), *Gold Tried in Fire, Or the Burnt Petitions Revived* (1647), *Jonahs Cry Out of the Wales Belly* (1647), *The Lawes Funerall* (1648), *The Prisoners Plea for a Habeas Corpus* (1648), *An Agreement of the Free People of England* (1649), and *The Picture of the Councel of State* (1649).⁹¹ It was a veritable pamphlet revolution.

Not surprisingly, pamphlets printed overseas, in the Lowlands, played a significant part in the revolution. Excluding duplicate entries, WorldCat, the world’s largest union catalog, lists 350 English language items printed in Amsterdam during the century. Of these, 215 items touch upon religious topics and 62 concern political developments, with many of the items concerning both subjects (e.g., separation of church and state and religious legislation).⁹² While the totality of 350 English publications from Amsterdam may appear a pin prick compared to the 70,484 cataloging records for items published in London (in English) during the same period, the Amsterdam publications are nonetheless important, particularly considering the historical significance of the authors of

⁸⁹ HICKS, *supra* note 33, at 101 (citing Roger Coke, 2 DETECTION OF THE COURT AND STATE OF ENGLAND 134-35 (2nd ed. 1696)).

⁹⁰ See SMITH, *supra* note 40, at 132 (“Traces of dissatisfaction with the law and its administration maybe found in the pamphlets of 1645”).

⁹¹ See THEODORE CALVIN PEASE, THE LEVELLER MOVEMENT: A STUDY IN THE HISTORY AND POLITICAL THEORY OF THE ENGLISH GREAT CIVIL WAR 155 (*Vindication*), 158 n.3 (*Gold Tried in Fire*), 166 n.16 (*King’s Cabinet*), 171 n.20 (*Jonahs*), 180 n.37 (*Warning*), 240 n.18 (*Prisoner Plea*), 241 n.19 (*Lawes Funerall*), 246 n.26 (*Councel of State*), 311 n.12 (*Agreement of the Free*) (1916). See also similar titles listed in Exhibits A and B.

⁹² See *infra* note 98.

such works. The writings of prominent religious libertarians and political reformers (William Bradshaw, a prominent puritan scholar;⁹³ Henry Ainsworth, Francis Johnson, and John Smyth, all puritan separatists;⁹⁴ William Prynne, a puritan tract author who lost his ears and suffered other disfigurement⁹⁵; John Lilburne, a foremost Leveler hero;⁹⁶ and John Milton, author of *Paradise Lost*, Cromwell supporter, and early advocate of freedom of the press)⁹⁷ were printed in Amsterdam, circumventing censorship in England.

A partial list of items printed or published in Amsterdam in English during the seventeenth century, with particular reference to controversial works is found as Appendix A.⁹⁸ In addition, many controversial pamphlets were falsely

⁹³ See generally C. Matthew McMahon, *Memoirs of the Puritans: William Bradshaw*, <http://www.apuritansmind.com/MemoirsPuritans/MemoirsPuritansWilliamBradshaw.htm> (last visited Mar. 28, 2006).

⁹⁴ See *Ainsworth, Henry* ENCYCLOPÆDIA BRITANNICA ONLINE, <http://www.search.eb.com/eb/article-9001672> (last visited Mar. 28, 2006) (also referring to Francis Johnson); *Smyth, John* ENCYCLOPÆDIA BRITANNICA ONLINE, <http://www.search.eb.com.ezproxy.mnl.umkc.edu/eb/article-9068347> (last visited Mar. 28, 2006); *Robinson, John*, ENCYCLOPÆDIA BRITANNICA ONLINE, <http://www.search.eb.com.ezproxy.mnl.umkc.edu/eb/article-9063926> (last visited Mar. 28, 2006). See also HILL, *supra* note 47, at 173-74 (Ainsworth's views on church government).

⁹⁵ See *Prynne, William*, ENCYCLOPÆDIA BRITANNICA ONLINE, <http://www.search.eb.com.ezproxy.mnl.umkc.edu/eb/article-9061669> (last visited Mar. 28, 2006) (Prynne challenged the "ceremonialism of the Anglican church" and, among other punishments, was branded with the letter's "S" and "L" on his cheeks indicating he was a "seditious libeler."). See also PEASE, *supra* note 90, at 72-76 (Prynne's advocacy of parliamentary supremacy of parliament in ecclesiastical matters), 101-103 (debate with Lilburne).

⁹⁶ See PEASE, *supra* note 90, at 88-92 (Lilburne's arrest, trial and punishment for printing Puritan books in Holland).

⁹⁷ See *John Milton 1608-1674*, in 1 NORTON ANTHOLOGY OF ENGLISH LITERATURE 1401-03 (5th ed., M.H. Abrams ed., 1986). In 1644, Milton published an unlicensed tract, known as *Areopagitica*, in reaction to a parliamentary statute restricting printing. *Id.* at 1430-31.

⁹⁸ The author compiled the list through examining OCLC bibliographic records provided through the WorldCat Online Catalog, the world's largest union catalog, consisting of over 60 million

imprinted as published in Amsterdam but were published in secret in England. See Appendix B for a list. Thus, even the possibility of publishing overseas afforded a means for English printers to evade censors, and facilitated freedom of the press. Fictitious names were also used for locations of publication. Richard Overton and John Lilburne, both prominent Levellers, published in places such as “backside of the Cyclopien Mountains,” “the Rota,” “Nod-No! . . . Printed at the sign of the [Bull] by the hill on the whim-wham side of the Beare-Garden,” and “a corner of Freedome, right opposite to the Councel of Warre.”⁹⁹

bibliographic records. The author queried the *Publication Location* field for works published in the Amsterdam, set the year fields to 1601-1700, and restricted the Language field to *English*. Furthermore, the author limited the search to books, and selected subtype limits which excluded microfilm (the assumption being that there would not be many unique items in microfilm for which there were no print analog and that this would eliminate duplicate records from both microfilm and print formats of the same work). After downloading 471 such records, the author created a bibliographic database in Microsoft Excel and eliminated 121 items which were either duplicate records of the same work (i.e., edition) or were included by error (not published in English or not published in Amsterdam). The final result consisted of 350 recorded items. A computer file with the complete results of the author may be downloaded at <http://www1.law.umkc.edu/faculty/callister/pubs/amsterdambooks.xls>.

⁹⁹ See OCLC bibliographic records (available on WorldCat) for RICHARD OVERTON, *AN ARROW AGAINST ALL TYRANTS AND TYRANY: SHOT FROM THE PRISON OF NEW-GATE INTO THE PEROGATIVE BOWELS OF THE ARBITRARY HOUSE OF LORDS, AND ALL OTHER USURPERS AND TYRANTS WHATSOEVER* (1646) (described in bibliographic records as printed both “backside of the Cyclopien Mountains”, e.g., OCLC Access no. 20366397, and “The Rota”, OCLC Accession No. 2732441); JOHN LILBURN, RICHARD OVERTON, THOMAS PRINCE, & WILLIAM WALWYN, *A NEW BULL-BAYTING: OR, A MATCH PLAY'D AT THE TOVVN-BULL OF ELY BY TWELVE MUNGRILLS. VIZ. 4 ENGLISH 4 IRISH 4 SCOTCH DOGGS* (1649) (“Nod-No!”, see OCLC Accession No. 62855596); RICHARD OVERTON & JOHN LILBURNE, *THE HUNTING OF THE FOXES: FROM NEW-MARKET AND TRIPLOE-HEATHS TO WHITEHALL, BY FIVE SMALL BEAGLES (LATE OF THE ARMIE.) OR THE GRANDIE-DECEIVERS UNMASKED (THAT YOU MAY KNOW THEM)* (1649) (“corner of freedom,” see OCLC Accession No. 55141241).

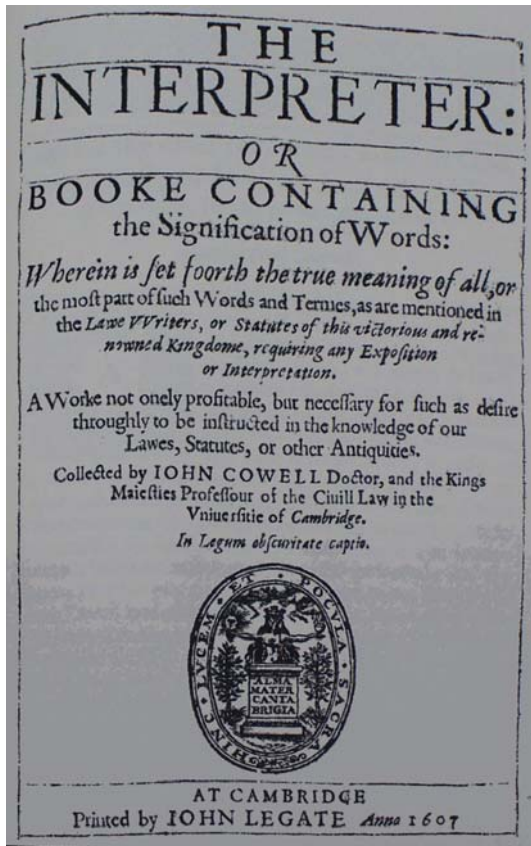


Figure 5--Frontispiece of Cowell's *Interpreter* (1607)

The geographically indistinct “Europe” was also frequently employed to describe the place of many publications.¹⁰⁰

The borderless nature of the larger information environment is important. In the legal context, it helps to explain why Lord Coke’s important texts—the first eleven volumes of his *Reports* and the first part of the *Institutes*—were neither banned nor burned by James I (nor his successor Charles I). As Catherine Bowen, one of Lord Coke’s biographers put it, “English Kings, whatever their faults, have not been known as book burners.”¹⁰¹ Bowen’s statement gives only a partial, if not inaccurate, picture.

Wycliff’s works, and later, Tyndale’s printed New Testament, were burned in 1412 and 1526, respectively, at the order of church officials.¹⁰² Regardless of Bowen’s assertion, book burning did occur in England even in the time of Lord Coke. For example, the Stationer’s Company did burn printed but undistributed works.¹⁰³

¹⁰⁰ See, e.g., OCLC bibliographic records (available on WorldCat) for RICHARD OVERTON, *DIVINE OBSERVATIONS UPON THE LONDON-MINISTERS LETTER AGAINST TOLERATION* (1646); RICHARD OVERTON, *ARAIEMENT OF MR. PERSECUTION* (1645).

¹⁰¹ BOWEN, *supra* note 30, at 517.

¹⁰² BOBRICK, *supra* note 15, at 69, 106-07 .

¹⁰³ See 4 A TRANSCRIPTS OF THE REGISTERS OF THE COMPANY OF STATIONERS OF LONDON; 1554-1640 A.D. 528 (Edward Arber & Peter Smith eds., 1967) (1877) (reference to *The Holy Table* as one such book and a certain book “lately Burnt,” printed by Nicholas Okes.). Apparently, the

By King James I's reign in the early seventeenth century, the futility of suppression, particularly for the "textual monarch," may have been becoming readily apparent, especially given the English experience with the Bible. Nonetheless, in Lord Coke's time, the Stationers Company was active in controlling publication through a process of registering and reviewing manuscripts prior to printing.¹⁰⁴ Furthermore, James I did suppress an early English legal dictionary, *Cowell's Interpreter*, after its publication in 1610, as a concession to parliament (which had held hearings on the subject) because, ironically, the *Interpreter* was too favorable to the king with respect to his prerogatives.¹⁰⁵ Allegedly, the suppressed books were burned by the common

book that Okes printed which was burned was *An Introduction to a Devout Life*. See A COMPANION TO ARBER 347 no.88-89, 349 no.89 (W.W. Greg ed., 1967).

¹⁰⁴ An entry into the *Transcripts of the Registers* of the Stationer's Company for June 1, 1599, indicates that as of that date English histories required the approval of the Privy Counsel prior to printing and that satires, plays and epigrams required the approval of either the Lord Archbishop or Bishop. See 3 TRANSCRIPTS OF THE REGISTERS, *supra* note 101, at 677. Similarly, a 1624 royal proclamation summarized in the Calendar of Documents summarizes, "Proclamation, that for prevention of seditious, Popish, and Puritanical books and pamphlets, no books be printed, imported, or sold, unless allowed by one of the Archbishops, the Vice Chancellor of one of the Universities, or some learned person appointed by them." HER MAJESTY'S PUBLIC RECORD OFFICE, CALENDAR OF STATE PAPERS, DOMESTIC SERIES OF THE REIGN OF JAMES I, 1623-1625, at 327 (Mary Anne Everett Green ed., 1859) (entry for "Aug. 15 Nottingham"). In 1637, a few years after Lord Coke's death, another, now famous Star Chamber proclamation was issued, which required registration with the Stationer's Company along with many other severe regulations on the publishing trade. However, the registration requirement was not new and had been required by proclamation as early 1622, and again in 1624. See CYPRIAN BLAGDEN, THE STATIONERS' COMPANY: A HISTORY, 1403-1959, at 119 (1960).

¹⁰⁵ See HICKS, *supra* note 33, at 37-44. Cowell also offended common law practitioners because, as a civil law scholar, he had presented the common law in an inferior light and he "lay it open and obvious to common capacities." *Id.* at 35. As an example of Cowell's offensive deference to the King, Cowell writes in his definition of parliament: "either the king is above the Parliament, that is, the positive lawes of the kingdome, or els that he is not an absolute king." *Id.* at 57. Similar assertions were made about the king's preeminence over the common law. *Id.* The most

hangman, but this claim is thought to be inaccurate given the number of surviving first edition copies of the text, evidencing how hard it is to restrict a book once distributed.¹⁰⁶ “It was not much easier to suppress a published book in 1610 than it is to-day. . . [t]he King interposed, and promised to call in these books by proclamation, as he did, but they were out, and the proclamation could not call them in, but only served to make them more taken notice of”¹⁰⁷ Indeed, since King James was a vociferous champion of his own royal prerogatives,¹⁰⁸ the burning of Cowell’s *Interpreter*, which supported his claims, should be viewed for what it was--a token political concession without any practical effect. While still maintaining some control of the press through the mechanism of the Stationer’s Company, English Kings had largely given up book burning, simply because it did not work.

In conclusion, not only is the geopolitical landscape of seventeenth century Europe conducive to heretics fleeing from suppression with their sacred

controversial passage, which was heavily edited in second edition in 1684, was the entry for “Prærogative of the king (*prærogativa regis*).” *Comp.* JOHN COWELL, THE INTERPRETER: CONTAINING THE SIGNIFICATION OF SUCH OBSCURE WORDS AND TERMS USED EITHER IN COMMON OR STATUTE LAWES OF THE REALM, at entry for the same (no page or folio references given) (Law Book Exchange 2002) (1607) (“And whether his [the king’s] power of making lawes be refrained (*de neceffitate*) or of a godly and commendable policy, not to be altered without great peril, I leaue to the judgement of wifer men.”) *with* JOHN COWELL, THE INTERPRETER: OR BOOKE CONTAINING THE SIGNIFICATION OF WORDS, at entry for the same (no page or folio references given) (Law Book Exchange 2004) (Thomas Manley ed., 2nd ed.1684).

¹⁰⁶ See HICKS, *supra* note 33, at 54-55.

¹⁰⁷ *Id.*

¹⁰⁸ See, e.g., BOWEN, *supra* note 34, at 304 (King James I’s exchange with Lord Coke over the issue of royal prerogative and its extension to acting as judge in legal matters); Roland G. Usher, *James I and Sir Edward Coke*, 18 ENG. HIST. REV. 664, 672-73. (1903) (further discussion of the dispute between James and Coke). On King James’ views on prerogative and monarchy in general, see his own published work on the subject, JAMES I, THE TRUE LAW OF FREE MONARCHIES AND BASILIKON DORON (Daniel Fischlin & Mark Fortier eds., 1996) (*True Law of Free Monarchies* was first published in 1598 and *Basilikon Doron* was first published in 1599).

texts and contentious pamphlets, but it facilitates a competitive information environment. The fractured geopolitical state of Europe should not be taken for granted. It was not the norm.

The one feature of Europe which immediately strikes the eye when looking at a map of the world's "power centers" in the sixteenth century is its political fragmentation This was not an accidental or short-lived state of affairs, such as occurred briefly in China after the collapse of one empire and before its successor dynasty could gather up again the strings of centralized power. Europe had *always* been politically fragmented . . . and for a thousand years after the fall of Rome, the basic political power unit had been small and localized. . . .¹⁰⁹

Such a landscape, with the attendant consequences of political fragmentation, was an ideal environment for an information revolution such as followed the invention of the printing press.

V. Media and Technological Factors: "Piling Pelion on Ossa"

The importance of media and information technologies lies in what they facilitate.¹¹⁰ In the seventeenth century, the ascendancy of the book as supreme legal authority coincides with the cross-referencing of standardized legal texts, made possible after a century of modern print technology in England. In other words, the prerogatives of English kings and their status as absolute monarchs are rebutted by the arrival of the footnote, which is made possible by technical innovations producing standardized texts.

¹⁰⁹ PAUL KENNEDY, *THE RISE AND FALL OF THE GREAT POWERS: ECONOMIC CHANGE AND MILITARY CONFLICT FROM 1500 TO 2000*, at 17 (First Vintage Books ed., 1989) (1987).

¹¹⁰ For a more thorough discussion of *technology* and its meaning, see generally Paul D. Callister, *Law and Heidegger's Question Concerning Technology: A Prolegomenon to Future Law Librarianship*, 99 LAW L. J. 285 (2006); See also Callister, *supra* note 11, at 325-34 (2005) (citing D.A. BINCHY, *THE LINGUISTIC AND HISTORICAL VALUE OF THE IRISH LAW TRACTS* 15 (1943)).

A. Deibert's Model in the Print Era

Returning to this author's adaptation of Deibert's model (see Figure 1 above), the factors affected by technology, media, and language (which may be the penultimate technology) include:

- The emendability versus the standardization, permanence, and utility for authentication that is characteristic of the medium;¹¹¹
- "Searchability," "indexability," and suitability for hierarchical organization and cross-referencing of the medium (including the uses of controlled or technical vocabularies versus natural languages as a part of such access tools);¹¹²
- The approachability versus the reserve, reverence and decorum suggested by the medium;¹¹³

¹¹¹ For example, Mesopotamian clay legal tablets were uniquely suited for both emendation (since clay is malleable) and permanence (through backing). Through the use of envelopes and seals, Mesopotamians created a system of authentication. See Callister, *supra* note 11, at 285-86. See also John W. Welch & Kelsey D. Lambert, *Two Ancient Roman Plates*, 45 *BYU STUDIES* 55-76 (2006) (discussing in general the use of sealed copies for purposes of authentication with Roman metal plates). "Several legal systems in the ancient world used doubled or duplicated documents to back up and to preserve important texts. Doubled, sealed, witnessed documents are found written in Akkadian, Hebrew, Greek, and Latin, on clay, papyrus, parchment and metal plates." *Id.*

¹¹² For instance, only once the knowledge of the Celtic *filid* was set down in writing, with the arrival of Christian monasticism, did that knowledge become subject to classification. See Callister, *supra* note 11, at 317 (citing D.A. BINCHY, *supra* note 110, at 15). Furthermore, the move to standardized editions, made possible by printing, coincides with the arrival of published indexes. For criticism of modern legal and indexing classification systems, which may obscure information as much as they reveal, see Berring, *Collapse*, *supra* note 27, at 27-28 (1994).

¹¹³ Stone was used by classical Greek and Mesopotamian civilizations to emphasize the law's decorum and as means of memorialization.

[I]n so far as the [Greek city-state] did try to enforce or extend its power through the written word, it did this almost overwhelmingly by means of public, visible and usually inscribed record, rather than hidden archival documents. . . . [T]hose establishing the law were concerned to impress on the citizenry the importance

- The tendency of the medium or language, and in particular the use of silent and determinative scripts versus phonetic alphabets, to encourage mediation through some class (such as priests, scribes, professionals, etc.);¹¹⁴
- The use of meter (to enhance memory),¹¹⁵ limited use of short declarative statements on stone stelæ,¹¹⁶ or more literary employment of narrative and the conduciveness of the medium to emphasize pleadings, decisions, aphorisms or code (all which may depend upon the “information density” of a medium—e.g., stone can hold less information per square inch than papyrus”);¹¹⁷
- The propensity of the medium to promote or rely upon linguistic diversity or uniformity.¹¹⁸

of the stone version—very seldom is there any mention of other kinds of documents.

Rosalind Thomas, *Literacy and the City-state in Archaic and Classical Greece*, in *LITERACY AND POWER IN THE ANCIENT WORLD* 49 (Alan K. Bowman & Greg Woolf eds., 1996). *See also*, Callister, *supra* note 11, at 273. Similarly, the Hittite and Semitic peoples use diorite *stelæ* in their covenant rituals and even to bind subsequent monarchs. *See id.* at 283-85

¹¹⁴ For instance, the structure of Egyptian in both hieroglyphic and hieratic forms tended to promote mediation of government through a scribal class whereas the Greek alphabet (known as the “demotic script”) was far more accessible to a wide base of citizenry in the Greek city states of the classical period. *Compare* Callister, *supra* note 11 (discussion of Greek demotic script), at 278 *with id.* at 296-300 (discussion of Egyptian scripts).

¹¹⁵ *See id.* at 306-25 (discussing use of metered law by Celtic and Icelandic bards).

¹¹⁶ *See id.* at 293-96 (contrasting epigraphic legal texts of the Greeks with Egyptian texts appearing on papyrus).

¹¹⁷ *See id.* “In short, the development in Egypt of legal literature of any kind does not make any significant appearance until later dynasties, when hieratic on papyrus, rather than epigraphic hieroglyphs, were the more common form.” *Id.* at 295-96.

¹¹⁸ *See id.* at 304-06 (accommodation of Egyptian scripts and legal system to other languages).

The most important changes resulting from the transition to print, eventually manifesting themselves in seventeenth-century England, concern the factors described in the first two bulleted items above.

As shall be explained, the result of standardization and cross-referencing of Coke's legal texts was to create a web of authority sufficient to challenge royal prerogative. The effects of printing have been discussed at length by Elizabeth Eisenstein, and include, in summary: increased dissemination and output; textual standardization; bibliography and reference index guides and catalogs; arresting innumerable copy errors with improved editions; preservation through multiple copies of fixed editions; and amplification of stereotypes and linguistic divisions.¹¹⁹ The consequences of increased output in print environments is discussed in Section IV above with reference to literacy and the book trade in bibles and religious and political pamphlets in England. Eisenstein's other observations about the effects of the transition to print can in large measure find place in Deibert's model as modified by this author (see Figure 1 above), and are treated accordingly.

B. Standardized Versions, Indexing, Cross-Referencing and the Creation of New Webs of Authority

A primary effect of modern printing, at least after a sufficient time, is the use of indexing and cross-referencing to buttress and organize knowledge. Standardization helped clear up errors and provide access to medieval texts, but at the same time it ended dominance of legal scholarship by medieval sources, at least in England. In particular, innovations brought about by cross-referencing to standardized texts led to the prominence of a new form of treatise, as exemplified by Lord Coke's *Institutes* and the emergence of the common law as primal authority.

Media environments and technology impact the capacity to organize and ultimately access knowledge. For instance, only once the knowledge of the

¹¹⁹ See generally EISENSTEIN, *supra* note 6, at 71-126.

Celtic *filid* (or druidic bards) was set down in writing, with the arrival of Christian monasticism, did that knowledge become subject to classification.¹²⁰

Furthermore, the move to standardized editions, made possible by printing, coincides with the arrival of published indexes. Prior to printing, “the owner of a medieval compendium, prepare[ed] an index for his own use, [and] felt no obligation to employ anybody else’s system but rather follow whatever method he chose.”¹²¹ Even use of alphabetical arrangements did not catch on to widespread use until well after the advent of print in the sixteenth century.¹²²

Scribal cultures went to great efforts to cross-reference, index and catalog, but “they were invariably thwarted by scribal errors of diverse kinds.”¹²³ Non-alphabetical methods were utilized for arranged libraries and information, which tended to be idiosyncratic or in some instances even metrical in arrangement.¹²⁴

The impact of modern publishing features such cross-references, tables, catalogs and indexes was not just ease of access, but it provided systemic presentation of the law itself in a way that few had grasped in the past, when the law was posted more perfunctorily and without systemic arrangement.

Publications of abridgements and lists of statutes issued by John Rastell and his son [sixteenth-century printers] offer a good illustration of how a rationalized book-format might affect vital organs of the body politic. The systematic arrangement of titles; the tables which followed strict alphabetical order; the indexes and cross-references to accurately

¹²⁰ See *id.* at 317 (citing BINCHY, *supra* note 112, at 15).

¹²¹ EISENSTEIN, *supra* note 6, at 90.

¹²² *Id.* at 89.

¹²³ *Id.* at 90.

¹²⁴ *Id.* (“The rhymed book list [for an eighth-century library at York] was incomplete because metrical exigencies required the exclusion of various works.”).

numbered paragraphs all show how new tools available to printers helped to bring more order and method into a significant body of public law.¹²⁵ Rastell's rationalization of English statutes through his *Book of Statutes* was a significant step forward. Percy Winfield, in an early article in *Harvard Law Review*, points out how the organization of the Year Books, perhaps the earliest printed English law books, dating from the last decade of the fifteenth century, evolved from the use of "catch phrases" to more elaborate "side notes," similar to modern headnotes.¹²⁶ In like manner, in the early seventeenth century, Lord Coke's *Institutes* would bring to bear the benefits of modern printing, particularly with respect to topical organization, which had reached civil and statutory law, to the common, hitherto defined as "unwritten law." Without such attention, the common law would have been at a competitive disadvantage to other legal systems and traditions, such as Roman civil law, and might have perished.¹²⁷

¹²⁵ EISENSTEIN, *supra* note 6, at 105. Advanced in printing helped address lack of access, a fundamental requirement for the rule of law and statutory law.

Until the end of the fifteenth century, it was not always easy to decide just "what a statute really was" and confusion had long been compounded concerning the diverse "great" charters. In "Englishing and printing" the "Great Boke of Statutes 1530-1533" John Rastell took care to provide an introductory "Tabula": a forty-six page "chronological register by chapters of the statutes 1327 to 1523." He was not merely providing a table of contents; he was also offering a systematic review of parliamentary history – the first many readers had ever seen."

Id. Eisenstein quotes Gerald Strauss to emphasize that efforts at "clarity and logic of organization" are hallmarks of the end of the sixteenth century, and flow from the "Ramist doctrine that every subject could be treated topically" *Id.* at 101-02 (quoting Strauss, *Sixteenth Century Encyclopedia: Sebastian Münster's Cosmography and Its Editions*, in *FROM THE RENAISSANCE TO THE COUNTER REFORMATION*, 145, 152 (Charles Howard Carter ed., 1965)).

¹²⁶ See Winfield, *supra* note 82, at 218-19.

¹²⁷ See *infra* note 218 and accompanying text.

With the arrival of printing, the scribal culture of the wandering scholar transformed, placing itself in position for a much more rapid, thorough, systematic, and “cross-referenced” organization of knowledge:

To consult different books it was no longer necessary to be a wandering scholar. Successive generations of sedentary scholars were less apt to be engrossed by a single text and expend their energies in elaborating on it. The era of the glossator and commentator came to an end, and a new “era of intense cross referencing between one book and another” began.¹²⁸

Print’s facilitation of cross referencing and indexing would have profound consequences for Sir Edward Coke and his efforts to establish the printed word as primal authority and a limitation on royal prerogative.¹²⁹ Indeed one reason given for the failure of Bracton’s treatise on the common law in the thirteenth century to have an impact on Coke’s treatise was that “[b]ulk and want of indexes made such treatises, before the invention of the art of printing, of little use in the practical administration of judicial business.”¹³⁰ In other words, the early treatises, such as from Bracton, who preceded Coke by several centuries, were inaccessible works because they lacked features such as indexes.

Commercially printed and standardized indexes and topical arrangements made the law accessible in new ways, leading to correction and fundamental changes in scholarship. Consider the advantages that publication in print afforded to renaissance scholars of Justinian’s *Corpus Juris Civilis* (originally written between 528 and 535 A.D.):¹³¹

¹²⁸ EISENSTEIN, *supra* note 6, at 72 (citing *Note to the Art of Learning*, in DESIDERIUS, ERASMUS, THE COLLOQUIES OF ERASMUS 458 (Craig Thompson tr. and ed. 1965)).

¹²⁹ See *infra* notes 135-209.

¹³⁰ FRANCIS MORGAN NICHOLS, BRITTON: AN ENGLISH TRANSLATION AND NOTES, at viii-viii (1901).

¹³¹ See LUTHER S. CUSHING, INTRODUCTION TO THE STUDY OF ROMAN LAW 110-117 (William S. Hein 1989) (1854).

Its publication in 1553 was thus an event of some significance – one which enabled a new generation led by Jacques Cujas, to complete what earlier scholars, such as Budé [who was only allowed to glimpse the manuscript through a grate] . . . , had begun. Cujas’s corrections ranged from the “simplest textual errors” to “anachronistic substitutions.” He also undertook the “job of indexing the citations.” By the end of the century the whole compilation had been made available in an emended and indexed form.¹³²

Only with initial publication in 1553, did the possibility of indexing, let alone correction, become possible for the *Corpus Juris Civilis*.¹³³ In turn, those innovations facilitated yet better scholarship, access and understanding of the law. Ironically, the appearance of standardized editions of the *Corpus Juris Civilis*, which made possible the kind of scholarship necessary to strip away intervening and obscuring gloss from the original work, may have ultimately deprived the work of much of its utility and relevancy to legal practices in the modern, print era.¹³⁴ While emendated glosses to medieval texts have facilitated their preservation across time, even ensuring continued vitality across cultural divides, the lack of standardization has also lead to confusion and obfuscation of the original works.¹³⁵ Almost paradoxically, once printing addressed problems of

¹³² EISENSTEIN, *supra* note 6, at 103-04. Besides errors arising from transcription, and the ensuing conflict between version of medieval texts, Eisenstein points out that the lack of access of medieval law faculty to the text in its entirety, when combined with the layers of gloss, made it difficult to comprehend the “logic of the whole.” See *id.* at 103.

¹³³ Per Eisenstein, the appearance and circulation of standardized versions makes it possible for errors to more quickly identified and corrected through printed errata. *Id.* at 80-81.

¹³⁴ *Id.* at 104.

¹³⁵ The layers of emendating gloss of the Irish *Senchus Mor* not only helped to ensure retransmission of the fragments of the original into our own times, but it helped later Christian legal scholars understand the druidic and early Christian origins of the legal text. See e.g., Callister *supra* note 11, at 309-10 (explanation in gloss of how *Senchus* was preserved), 311

textual errors and access, and where possible, uncovered original texts in more accurate form, those same texts, such as the *Corpus Juris Civilis*, became less relevant for study. With diminishing prominence of the *Corpus Juris Civilis*, room is made for a new type of treatise, one devoted to the common law.

C. **Coke's Institutes**

Unlike the *Corpus Juris Civilis*, the initial effort to publish the common law as a whole, such as with Coke's *Reports* and *Institutes*, occurred in a very different information milieu, and was accompanied by tools, which theoretically at least, should have enabled scholarship and learned practice to progress much more quickly than had been the case with civil law. When Coke's *Institutes* appeared in 1628, they were heavily footnoted, cross-referenced, and, although added later in 1630, indexed with a table.¹³⁶

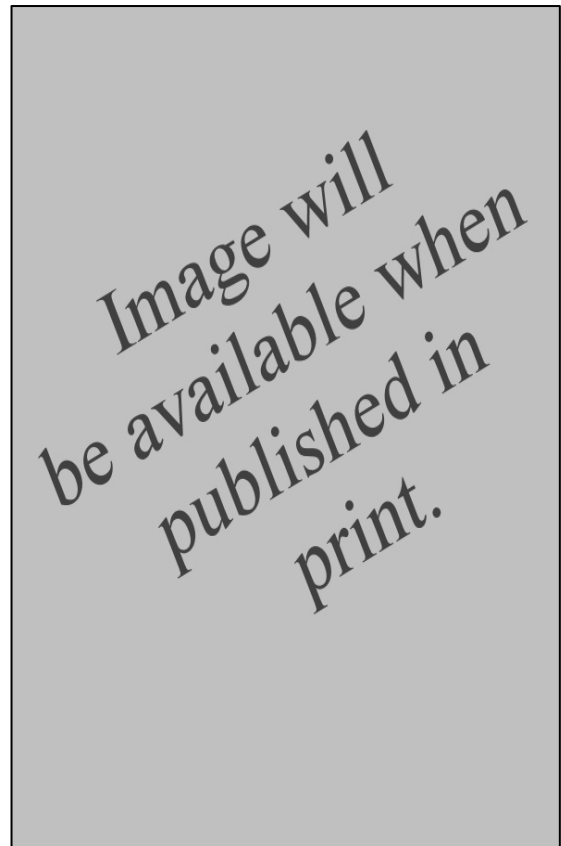


Figure 6--Folio 1b of Coke's Institutes (1st ed. 1628).
Source: Early English Books Online {Get Permission}

(gloss explanation of classes of persons permitted to speak in public), 316 n.306 (account in gloss of the limitations placed on classes of bards with respect to rendering judgment), and 317 (gloss explaining time allowed for pleading by *filid* or bards was measured in breaths).

¹³⁶ See WILLIAM HARGOLD MAXWELL, *A Bibliography of English Law to 1650*, in 1 SWEET & MAXWELL'S COMPLETE LAW BOOK CATALOG 286 (1925). Maxwell notes the index table appearing in the second edition in 1629, but this author examined a first edition from 1628 (STC 15784) at Oxford's Bodleian Library and discovered it also to be cross-referenced and contain a table. See EDWARD COKE, *THE FIRST PART OF THE INSTITUTES OF THE LAWES OF ENGLAND* (1628). However, the table appears to be of a later date (1630).

For example, the first folio page of the *Institutes* includes cross references to “*vid.* Sec. 5 (an internal reference)”;¹³⁷ “8 Henry VII 12”; “18 Elizabeth III, 35”; “24 Elizabeth III 65, 66”; “44 Elizabeth III 5”; and “48 Elizabeth III 9.”¹³⁷

The production of standardized statutes through printing makes indexing and, by implication, cross-referencing, possible.¹³⁸ Thumbing through the pages quickly reveals citations to *Bracton*, *Britton*, *Fleeta*, *Dyer*, *Glanville*, the Bible, and a host of others, with all of the citations to specific sections, folio, or chapters.¹³⁹ The point is that each of these sources had been published as standardized editions, which facilitated

cross-referencing.¹⁴⁰ Notable exceptions to “pinpoint” citations include references to the *Doomsday Book*,¹⁴¹ which although compiled immediately following the Norman Conquest, appears to have not been published until the eighteenth century, thus explaining the lack of pinpoint citations.¹⁴² In other words, Coke’s *Institutes*, which are especially known for their voluminous citations and cross-references,¹⁴³ are possible because Coke operates in an information

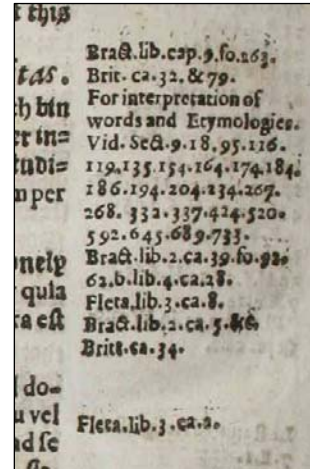


Figure 7—Marginal references from page of Coke’s *Institutes* (3rd ed.). Source: Leon E. Bloch Law Library, UMKC.

¹³⁷ EDWARD COKE, THE FIRST PART OF THE INSTITUTES OF THE LAWES OF ENGLAND: OR A COMMENTARY UPON LITTLETON 1 (3rd ed. 1633).

¹³⁸ See *supra* notes 121-125, 132-133 and accompanying text.

¹³⁹ See COKE, *supra* note 137, at 2, 5, 8. See also *infra* note 174 and accompanying text (Coke also referenced Pre-Norman charters).

¹⁴⁰ See *supra* notes 121-124, 128 and accompanying text.

¹⁴¹ See COKE, *supra* note 137, at 4.

¹⁴² See MAXWELL, *supra* note 136 at 76-80.

¹⁴³ See Max Radin, *On Legal Scholarship*, 46 YALE L.J. 1124, 1127-28 (1936-1937) (with reference to citation and “weight of authority”). Hicks described Coke’s *Institutes* as “a virtual piling of Pelion on Ossa enabling the law student to scale the heights of legal learning.” HICKS,

environment of largely standardized texts, which is conducive to his particular type of scholarship.

This is not to say that Coke was the first to use cross-referencing or that print culture alone supported cross-referencing. For instance, manuscript versions of Justinian's *Digest Novum* had appeared with gloss cross-referenced in the margins.¹⁴⁴ However, the function of such marginal notes, as with the Irish *Senchus*,¹⁴⁵ appears to be purely commentary, rather than added, supporting citation.¹⁴⁶ Other manuscripts of Justinian's work completely lack any such marginal gloss or cross-references.¹⁴⁷ Thus, Lord Coke's

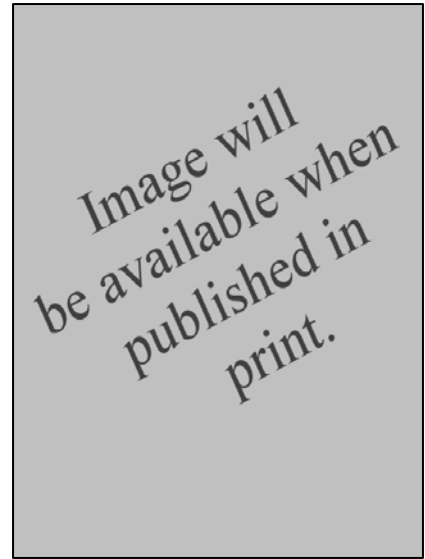


Figure 8-- Littleton's *Tenures* (1617) (lacking any published side cross-referencing). Source: Early English Books Online {Get Permission}

supra note 33, at 95. As to the extent of Coke's citations, See generally John Marshall Gest, *The Writings of Sir Edward Coke*, 18 YALE L.J. 504, 516-32.

¹⁴⁴ See, e.g., IUSTINIANUS: DIGESTUM NOVUM CUM GLOSSA (1325-1350), The Shøyen Collection, 8.3 Roman Law, MS 219, <http://www.schoyencollection.com/law.htm#219> (last visited Oct. 4, 2007) (although the resolution of the image makes study difficult, note the tiny alphabetical enumeration of the marginal gloss, but lacking any indication of cross-referencing, and any visible indication of citation to other sources).

¹⁴⁵ See *supra* note 135.

¹⁴⁶ See IUSTINIANUS, *supra* note 144.

¹⁴⁷ See CINUS DE PISTORIO: LECTURA IN CODICEM (circa first half of fourteenth century), The Shøyen Collection, 8.3 Roman Law, MS 209/04, http://www.schoyencollection.com/law.htm#209_04 (last visited Oct. 4, 2007) (note almost complete lack of gloss and no apparent cross-referencing note numbers); BARTOLUS DE SAXOFERRATO: COMMENTARIA IN INFORTIATUM (circa first half of fourteenth century), The Shøyen Collection, 8.3 Roman Law, MS 203/53, http://www.schoyencollection.com/law.htm#209_53 (image shows minimal notes, which appear to be subsequent gloss and not citations or cross-references). But see DIGESTUM VETUS, The Shøyen Collection, 8.3 Roman Law, MS 209/06, http://www.schoyencollection.com/law.htm#209_06 (extensive gloss included in the margins but without apparent use of marginal cross-references). None of these three manuscripts, each

Institutes represent innovation not only with respect to earlier common law treatises, immediately proximate to Coke's own era, but in comparison to iconic texts of civilian scholarship from an earlier millennium, such as Justinian's *Digest*.

1. Expounding Littleton's Tenures—Cross-Referencing and Self-Glossing

The first volume of Coke's *Institutes* is based upon *Littleton's Tenures*, itself having been published in seventy-three editions prior to the *Institutes*, with Littleton's first edition sharing the distinction of being the first law book published in England, in 1482.¹⁴⁸ An examination of various editions of *Littleton's Tenure's*, from 1568, 1592, 1608, 1617, and even a late edition from 1903,¹⁴⁹ reveals a very different work than produced by Coke. Most notably there are no cross-references in the columns (either internally or to external sources). See Figure 8. References in the text (other than those appearing in brackets in the 1903 edition) are to Year Books.¹⁵⁰ Coke's reliance upon cross-referencing, citation, and his employment of an index (although not in the first edition, but in editions published during his lifetime)¹⁵¹ stand in stark contrast to Littleton's work, which is

which included works of Justinian, appear to be standardized and differed considerably in their presentation of gloss, if any.

¹⁴⁸ See HICKS, *supra* note 33, at 88, 90.

¹⁴⁹ See LITTLETON TENURES IN ENGLISH (Fleetestrete, London, Rychard Tottill 1568); LITTLETONS TENURES IN ENGLISH (Temple Barre, London, Richard Tottell 1592); LES TENURES DE MONSIEUR LITTLETON (London, Companie of Stationers 1608); Les Tenures De Monsieur Littleton (London, Companie of Stationers, London 1617); THOMAS LITTLETON, LITTLETON'S TENURES IN ENGLISH (Eugene Wambaugh, ed. 1903).

¹⁵⁰ See, e.g., LITTLETON, *supra* note 149, at 14 (Eugene Wambaugh ed., 1903) (bracket references to session laws of Henry VI and Elizabeth III are footnoted to Coke). Note that while the session laws of Henry VI were first published as part of the *Abbreviamentum Statutorum* in 1481, nearly contemporaneously with Littleton, the earliest session laws (Elizabeth III) are not published until 1559. See MAXWELL, *supra* note 136, at 356 (entry for "Elizabeth"), 357 (no. 1).

¹⁵¹ The tabular index added, coming with the second edition, of the *Institutes* is preceded by a forward to the reader, written by Coke himself, explaining that the table was the basis of his own

published more than a century earlier, and which is much more readable (apparently, being read at Christmas by judges and the bar).¹⁵² Finally, paragraph and section numbers, features which are essential for it to serve as a cross-referenced source of law in later commentaries such as the *Institutes*, are late additions of Littleton's work, only making the first appearance in 1581—apparently, the forty-seventh published edition of the work.¹⁵³

2. Comparison with Immediate Predecessors-- Glanville, Bracton, Britton, and Plowden

private use as a “maker” of the *Institutes*, but which is “not altogether unserviceable to others.” COKE, *supra* note 137, at 395 (fol. verso).

¹⁵² 2 WESTMINSTER HALL OR PROFESSIONAL RELICS AND ANECDOTES OF THE BAR, BENCH, AND WOOLSACK 8 (London, John Knight & Henry Lacey 1825) (describing Roger North as the model law student). See also Gilbert J. Clark, 2 LIFE SKETCHES OF EMINENT LAWYERS: AMERICAN, ENGLISH, AND CANADIAN 101 (Kansas City, Lawyer' International Co. 1895); HICKS, *supra* note 33, at 95.

¹⁵³ See LITTLETON (1903), *supra* 149, lxxv (entry for “1581” edition) and *compare id.* lxix-lxxvii (twenty-eight editions in law French only occur prior to the 1581 edition) *with* lxxviii-lxxxi (eighteen editions in English only appear prior to the 1581 edition).

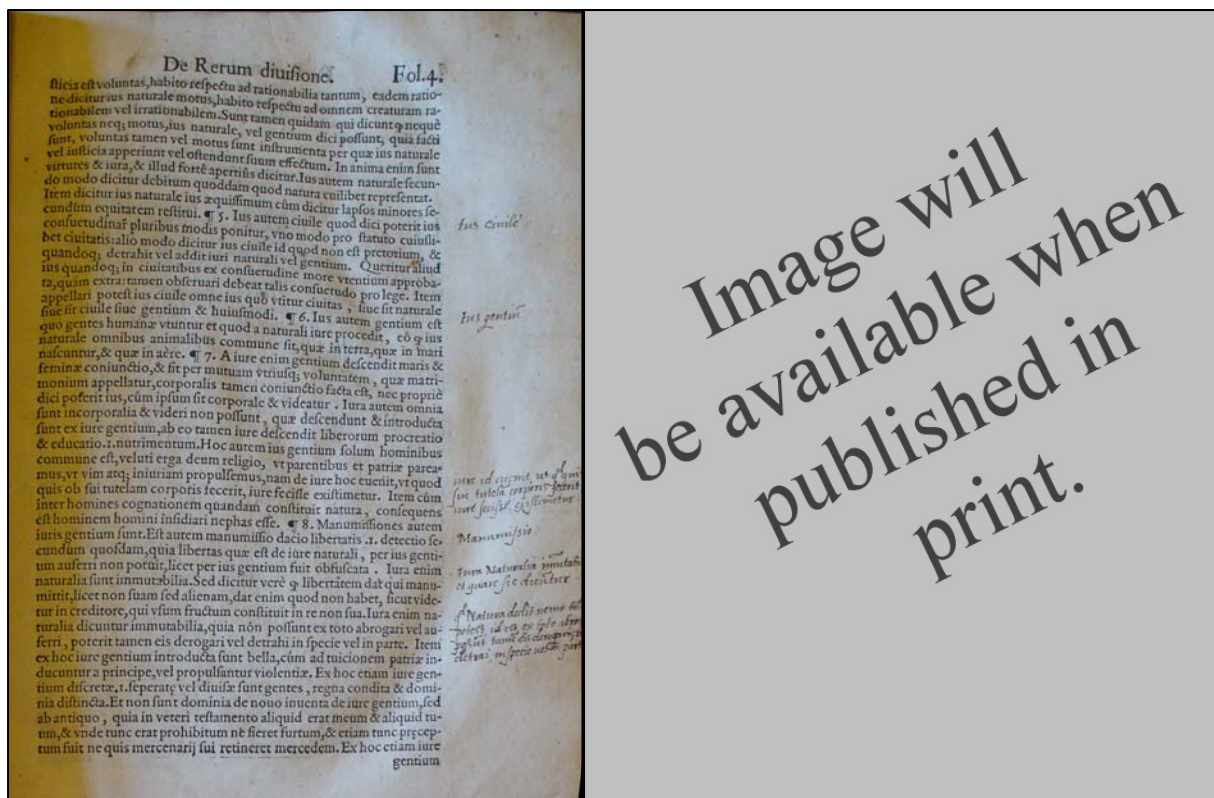


Figure 9—A page from Bracton's *Legibus* (1569) (note that marginal references are not to citations but subject notations). Source: Author's photograph taken at the Missouri Supreme Court Library

Figure 10--A page from Glanville's *Tractatus* (1604) (note references are to Year Books and internal). Source: Bodleian Library, Oxford University {Get Permission}

Like Littleton, the early treatises—Glanville, Bracton, and Britton—at least the versions Coke would have access to—differ significantly in form from his *Institutes*, perhaps most notably with respect to the lack of marginal cross-referencing. Examination of a 1604 edition of Glanville's *Tractatus de Legibus* (published contemporarily with Coke's *Reports*, but written in the twelfth century) reveals limited use of marginal cross references to internal cross-referencing and the Year Books, but not other legal commentary.¹⁵⁴ See Figure 10. An early

¹⁵⁴ See, e.g., RANVLPHO DE GLANVILLA, TRACTATVS DE LEGIBUS & CONFUETUDINIBUS REGNI ANGLIÆ, at fol. 1(b), 5(a) (1604). See also JOHN BEAMES, A TRANSLATION OF GLANVILLE, TO WHICH NOTES ARE ADDED (1812). The fact that footnotes, the only cross references, is a later development is born out by the title of the work which notes the addition of notes by the translator and by the translator's admission in his preface. See *id.* at xxiv. The translator notes that the *Regiam Majestatem*, which is frequently referenced in the annotations, is in fact a subsequent work. See

manuscript version from the fourteenth century makes it clear that cross-referenced citations were a later addition to Glanville.¹⁵⁵ The marginal references of a print version of Bracton's *Legibus* published in 1569 (but from the thirteenth century)¹⁵⁶ were not used to cite any authority or as internal cross-references, but as subject references.¹⁵⁷ See Figure 9.

id. at xxv. Additional references are added to the *Grand Customary of Normandy*, *Bracton*, *Fleta*, *Britton*, *Coke* and *Hale*. See *id.* at xxxi. Even a reference to the laws of Aethelbert (*Æthelbyrti*), is cited with reference to the marginal notes of a copy of Glanville owned by Justice Aland. Compare *id.* at 2 n.1 with *id.* at xxxiii. Thus, references in Glanville are annotations, and the innovation of later scholars and editors.

¹⁵⁵ See *Glanville* (circa. fourteenth century), in *Early Manuscripts at Oxford University*, Balliol College, MS. 350, fol. 43-72, <http://image.ox.ac.uk/> (follow "Balliol College" hyperlink, then follow "MS. 350" hyperlink, then follow "view all" hyperlink, then follow folios 43-72 hyperlinks) (last visited Feb. 15, 2008) (note uses of margin for reference clues to the body of the text but with very infrequent gloss and no apparent cross-referencing to other sections of the text or external references).

¹⁵⁶ See PERCY H. WINFIELD, *CHIEF SOURCES OF ENGLISH LEGAL HISTORY* 259 (1925) (Legibus was written 1248 to 1257).

¹⁵⁷ HENRICI DE BRACON, *DE LEGIBUS & CONSUEUDINIBUS ANGLIÆ LIBRI*, at fol. 4(a) (1569).

Britton is also a comprehensive work, updating *Bracton* and similar in breadth to Coke's *Institutes*, which preceded it most nearly in time, being written in about 1290, but first published in 1540.¹⁵⁸ The next published edition does not appear until after the *Institutes*, in 1640.¹⁵⁹ Examination of the 1533 edition of *Britton* does not reveal any footnotes or cross-references except to works published after the initial publication in 1540.¹⁶⁰ See Figure 11. Similarly, a manuscript of *Britton* also lacks such marginal cross-

references.¹⁶¹ Apparently, Coke's use of cross-referencing and indexing in the *Institutes* represents a new generation of scholarship, perhaps necessary to stand as sufficient authority to challenge royal prerogatives.

Coke's early use of marginal cross referencing in his *Institutes* is not the first, nor by any means the only form of citation. Plowden's case reports

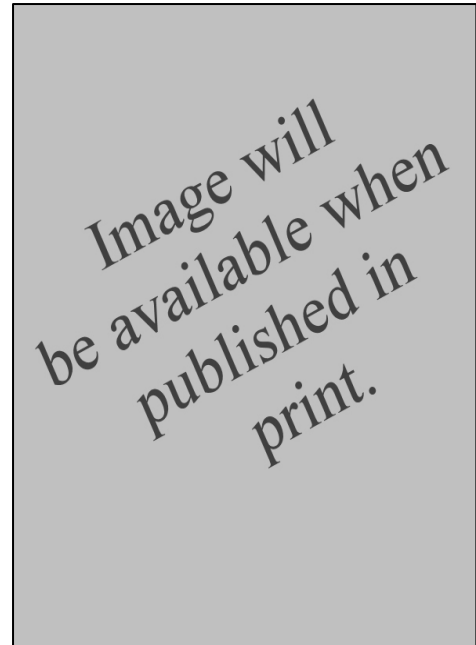


Figure 11 *Britton* (circa 1533) (note the lack of cross referencing), Source: Early English Books Online {Get Permission}

¹⁵⁸ See MAXWELL, *supra* note 136, at 38-39 (entry nos. 8-12). Compare *id.* with Simon E. Baldwin, *Introduction*, in FRANCIS MORGAN NICHOLS, *BRITTON: AN ENGLISH TRANSLATION AND NOTES*, at XX (1901) (Baldwin indicates the date of first publication was 1530, rather than the 1540 date listed by Maxwell).

¹⁵⁹ MAXWELL, *supra* note 136, at 38 (entry nos. 9).

¹⁶⁰ See, e.g., JOHN LE BRETON, *BRITTON: CUM PRIUILEGIO REGALI*, at fol. i(b) (1533), available at Early English Books Online (EEBO) STC 3803 (note that the catalog entry says 1533, but the EEBO image has a date of 1540).

¹⁶¹ See *Britton* (circa. 14th century), in Early Manuscripts at Oxford University, Balliol College, MS. 350, fol. 73-170, <http://image.ox.ac.uk/> (follow "Balliol College" hyperlink, then follow "MS. 350" hyperlink, then follow "view all" hyperlink, then follow folios 73-170 hyperlinks) (last visited Feb. 15, 2008) (note lack of marginal notes or gloss).

(published as “Commentaries” in 1571) make regular use of marginal cross-references, but only to Year Books or abridgments of cases or statutes such as Fitzherbert or Rastall,¹⁶² and occasional references to scriptural authority.¹⁶³ What is different is Coke’s increased use of reference and the fact that marginal references are pointing not just to the Year Books, but to other commentators such as *Britton*, *Fleta* and *Bracton*.¹⁶⁴ Coke’s stretching beyond sources of primary law—the abridgments and Year Books—reveals a broader notion of authority: that legal scholarship, and not simply those charged with issuing rulings or statute by decree or proclamation, has a role in defining what the law is. By appealing to other scholarship, Coke at the same time bolsters the authority of his own text and the underlying text by Littleton, which is the subject of the first part of the *Institutes*.

3. *Selden’s Titles of Honor*

John Selden’s work is most similar to Coke, in time and method, although attributed with much more accuracy, if not influence.¹⁶⁵ Whether Coke influenced Selden, or whether both scholars were moved by similar events, Selden also began using cross-referencing for authority about the same time as Coke’s *Institutes*. In particular, Selden’s revision in 1631 of his *Titles of Honor*, which was first published in 1614,¹⁶⁶ impresses one modern critic, Julia Crick:

¹⁶² See, e.g., *Ædibus Richardi Tottelli, Les Commentaries, ou les Reports de Edmund Plowden*, at fol. 6b, 7b (1571) (STC (2nd ed.), 20040).

¹⁶³ See *id.*, at fol. 7a.

¹⁶⁴ See, e.g., COKE, *supra* note 137, at fol. 1b. (cross-reference notes to *fee simple*).

¹⁶⁵ See Julia Crick, *The Art of the Unprinted: Transcription and English Antiquity in the of the Print*, in *THE USE OF SCRIPT AND PRINT, 1300-1700*, at 130 (Julia Crick & Alexander Walsham eds., 2004).

¹⁶⁶ *Id.*

The full extent of [Selden's] indebtedness to print in his charter citations in the first edition is only revealed in the second edition of 1631 in which he supplied detailed marginal references [in the same manner as Coke's *Institutes* published in 1628] Brimming with marginal references, it suggests Selden struck a new seam – he greatly expanded the number and range of his sources, multiplying several-fold his references to pre-Conquest charters.¹⁶⁷

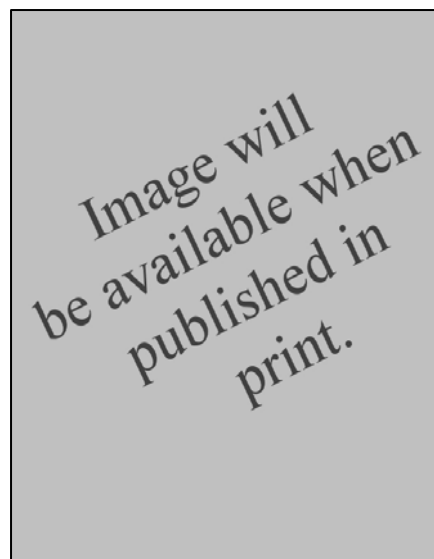


Figure 12--Page from Selden's *Titles of Honor* (1614) (note sidenotes). Source: Early English Books Online {Get Permission}

While the first edition of Selden's *Titles of Honor* in 1614 also includes numerous marginal citations,¹⁶⁸ it appears that the years between that edition and the second in 1631 led to increased usage and a richer range of cited authority. Interestingly, between Selden's two editions, Coke's *Institutes* appear "brim full" with cross references.

Indeed, Coke's *Reports*, first appearing in between 1600 and 1616, received their first indexing by Thomas Ashe in 1606 (for volumes I-V), who concluded the work in 1618,¹⁶⁹ and who had previously indexed the *Reports* of

¹⁶⁷ *Id.* at 130-131.

¹⁶⁸ See generally JOHN SELDEN, *TITLES OF HONOR* (1614) (cursory examination of the work indicates a different set of authority, less legal in nature, compared to those referenced in Coke's *Institutes*).

¹⁶⁹ See JOHN D. COWLEY, *BIBLIOGRAPHY OF ABRIDGEMENTS, DIGESTS, DICTIONARIES AND INDEXES OF ENGLISH LAW TO THE YEAR 1800*, at lxxi-lxxiii, 48, 49 (entry no. 104), 56-57 (entry no. 118) (Selden Society 1932) (Wm. W. Gaunt & Sons, reprinted 1979).

James Dyer in 1588.¹⁷⁰ Coke may have decided that indexing as well as cross-referencing were important to buttress and enhance his own works in the *Institutes*. Indexing first appeared in the second edition of his *Institutes*,¹⁷¹ but apparently the first edition may not have been authorized.¹⁷²

Besides the use of cross-referencing, Crick also points out the extensive use by both Coke and Selden of pre-conquest charters from both print and manuscript resources (probably the same source in many instances), and the similar aims of the two remarkable, but very different men.¹⁷³ The significant cross-referencing to charters goes to Coke's ultimate objective:

A vigorous champion of the Ancient Constitution, Coke brought within his purview all aspects of the working of government in the centuries before Norman encroachment and here charters provided, as they still provide, evidence of cardinal importance: they record royal decisions, royal titles, the names and styles of the king's entourage who witnessed the grants.

¹⁷⁰ See H.S. BENNETT, *ENGLISH BOOKS & READERS 1603 TO 1640*, at 122-23. See also MAXWELL, *supra* note 136, at 196 (entry nos. 14-16).

¹⁷¹ MAXWELL, *supra* note 136, at 286 (entry nos. 8-9).

¹⁷² See RICHARD ADAMIAK, *THE LAW BOOK PRICE GUIDE 130* (entry no. 37) (1983) (reprint of MEYER BOSWELL BOOKS, *RARE AND SCHOLARLY BOOKS ON THE LAW* (1980)). Maxwell also comments that the first edition was a "very incorrect edition." Also note that the first edition was printed by the "Stationers" rather than the individuals holding the patent for law publications, suggesting the possibility of a dispute as to who had authority to print Coke's *Institutes*. Although there is no evidence of any relationship to Coke's *Institutes*, the Crown had found it necessary in 1636 to bring suit to remind the Stationers Company, in connection with a holder of such patents, that it, not the Company, had the power to issue patents for publication. See COMPANION TO ARBER, *supra* note 101, at 339 no. 82 ("The Stationers of London having set themselves in a way (by entering in their Hall Register all books for their owne printing that come wthin their reach) to priudice his Mats present and future Graunts of privileges for printing, being as absolute a right of his Mats prrogative as that of Coyning . . ."). Thus, there may have been instances of overreaching by the Stationer's Company in publishing works such as Coke's *Institutes*.

¹⁷³ See generally Crick, *supra* note 165, at 125-34; MAXWELL, *supra* note 136, at 286 (entry nos. 8-9).

Through them, as through no other source, seventeenth-century readers might have hoped to view English royal government arrayed in its pristine state.¹⁷⁴

Coke is thus using referencing and citation, at least with respect to charters, as authority to support a positive interpretation of pre-conquest monarchy.

4. Responding to Cowell's Interpreter—Textual Style and Forms of Authority

Coke's authorship of the *Institutes*, at least the first part, is motivated with a desire to defend the common law from civil law critics. John Cowell's *Interpreter* had first appeared in 1607.¹⁷⁵ Cowell offended Coke on several accounts: proclaiming royal prerogative without qualification, comparing the common law unfavorably to civil traditions, and repeating in his dictionary derisive remarks about Littleton made by François Hotman, a noted French scholar of Roman Law.¹⁷⁶ With respect to royal prerogative,¹⁷⁷ Cowell's definition was tantamount to a declaration that "the people have given power to their prince to be a tyrant and tread them under foot at liberty."¹⁷⁸ Apparently Cowell, a distinguished civilian,¹⁷⁹ did not win fans among common law lawyers by referring

¹⁷⁴ Crick, *supra* note 165, at 126. Crick also indicates Coke's use of Charters to champion the imperial status of English kings and support English claims to Ireland. See *id.* at 127.

¹⁷⁵ See MAXWELL, *supra* note 136, at 4; COWLEY, *supra* note 169, at lxxxiv.

¹⁷⁶ Hotman, François. Encyclopædia Britannica Online at <http://www.search.eb.com/eb/article-9041170> (last visited Feb. 28, 2008).

¹⁷⁷ See COWLEY, *supra* note 169, at lxxxiv (Cowell's use of Hotman's disparaging remarks), lxxxvi (Cowell affirms "absolute sovereignty"). See also HICKS, *supra* note 33, at 58 ("But I hold it incontrowalable, that the king of England is absolute king.") (comparing the first edition of Cowley's *Interpreter* in 1607 with Manley's edition from 1684).

¹⁷⁸ Donald R. Kelly, *History, English Law and the Renaissance*, 65 PAST AND PRESENT 24, 37 (1974).

¹⁷⁹ HICKS, *supra* note 33, at 28-30. Cowell was the Regius Professor of Civil law at Cambridge. *Id.* at 28.

to the example of civilian scholars with “prospects toward beautifying this ancient palace [i.e., the common law],”¹⁸⁰ nor by his attempt to have the common law “‘digested in the method of the Imperial and Civil Institutes’ of Rome.”¹⁸¹ The latter of the offenses, suggesting disrespect for Littleton, was perhaps the greatest insult, inciting Coke to write the first part of the *Institutes*, what would become known as *Coke upon Littleton*. “When Hotman, after looking over a copy of Littleton on tenures loaned to him by Étienne Pasquier [another French Romanist], expressed an unfavorable opinion, Coke became almost speechless with anger. To Englishmen Littleton’s book was itself thought of as close to perfection as humanly possible.”¹⁸² Seeing that Coke in the *Institutes* was responding to the insults of a legal lexicographer, the incorporation of indexing and cross-referencing makes considerable sense,¹⁸³ even if the organization of the *Institutes* is unorthodox at best--“It is a legal encyclopædia arranged on no plan, except that suggested by the words and sentences of Littleton.”¹⁸⁴

Cowell’s Interpreter, to which Coke was responding as an attack upon the common law by a civil scholar,¹⁸⁵ was itself not short of legal citations, but it did lack marginal cross-references since all of its citations occurred within the text. For instance, in the entry for *Præogative of the King*, Cowell cites *Rescriptum*, Arnoldus Clapmarius, Fitzherbert (*Abridgment*), Britton, Dyer (*Reports*), Plowden

¹⁸⁰ COWLEY, *supra* note 169, at lxxxiv (the common law is also referred to as “but dark and melancholy.”). See also Cowell, *supra* note 105, fol. 3 (1607)

¹⁸¹ HICKS, *supra* note 33, at 30 (source of quotation unknown but appears to be from Cowell, himself).

¹⁸² Kelly, *supra* note 178, at 33. See also Pasquier, Étienne. Encyclædia Britannica Online at <http://www.search.eb.com/eb/article-9058644> (last visited Feb. 28, 2008).

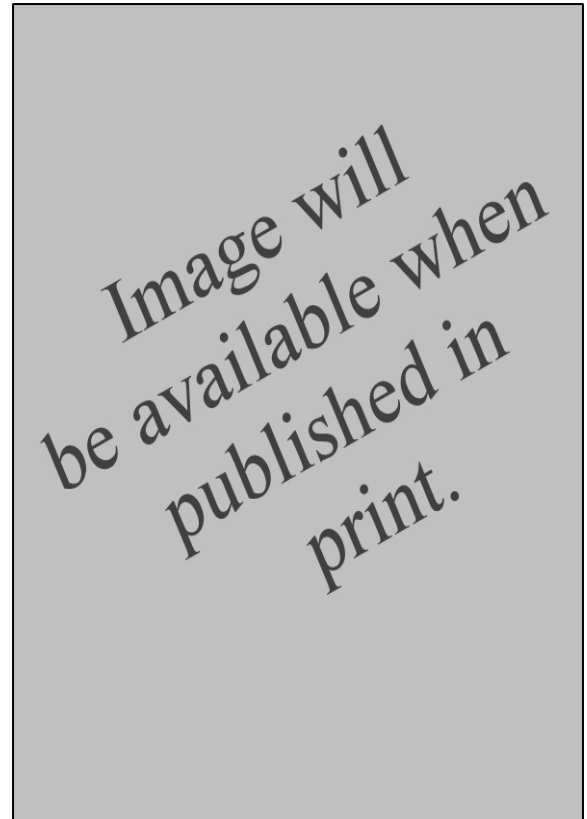
¹⁸³ Cowell also references others. See *id.* at lxxxiv (Cowell quoted “statutes and authorities” and civil authorities).

¹⁸⁴ HOLDSWORTH, *supra* note 205, at 467 (footnote omitted).

¹⁸⁵ See *infra* notes 175-184 and accompanying text.

(*Reports*), Coke (*Reports* and not the *Institutes*, which were published later), and others with pinpoint citation to section or folio.¹⁸⁶

Whether citations appear in the text proper or in margins or footnotes may seem an unimportant distinction, but by breaking citations from the flow of the text and setting them apart, Coke emphasizes legal authority as discrete from the legal propositions of the immediate text. In doing so, the citations' position as independent support is strengthened and contrasts sharply with the flowing disposition of the text, which may be more argumentative or



declarative in structure. By doing so, Coke, as author for a student audience,¹⁸⁷ takes the role of both primary author and glossator, thereby assuring that his text will be referenced for his students to the authority he intends, rather than as may be cross-referenced by some third-party. Indeed, glosses grew out of the practice of medieval masters perfecting texts for students,¹⁸⁸ a practice which Lord Coke, in his role as instructor for the *Institutes* would naturally have seized upon. Coke's

Figure 13--Edward Coke's Margin Notes for his copy of Littleton [get permission]

¹⁸⁶ See COWELL (1607), *supra* note 105, at fol. unnumbered (entry for *Prærogative of the King*).

¹⁸⁷ The *Institutes* were intended for students. See *supra* note 137, at unnumbered fol. iii (b) (of *Preface*) ("I have termed them Inftitutes, , becaufe my defire is, they fhould inftitute and infttruct the ftudious, and guide him in a ready way to the knowledge of the Nationall Lawes of England.", iv(a) ("This Worke we haue called The firft part of Inftitutes, for two causes: Firft, for that our Author is the firth booke that our Student taketh in hand.")).

¹⁸⁸ For discussion of how medieval scholars prepared or "perfected" texts by adding gloss for their students, see *supra* note 25.

own copy of *Littleton's* bear striking similarities to a glossed text (see Figure 13), which retains much of its form in the published version of the *Institutes* (see Figure 6). By acting as glossator of his own work (the first part of the *Institutes* is already a gloss on Littleton), Coke also adds further weight to the importance of his own writing by taking advantage of the former association of gloss with classical texts during medieval times. In essence, pinpoint citations to authority replace the marginal gloss from earlier, scribal culture as a way to expound and underscore the significance of a legal text.

5. ***Coke's Relationship to Authority—The Emergence of Modern Legal "Scholarship"***

Coke's objectives and indeed his whole relationship to authority contrasts with other early legal scholars. For instance, Cowell's 1607 edition is dedicated to the Archbishop of Canterbury and pleads for his "gracious protection toward this simple work."¹⁸⁹ Cowell, when venturing onto the controversial terrain of whether the monarch can make law, again is obsequious, "whether his power of making lawes be reftreined . . . , I leaue to the judgements of wifer men."¹⁹⁰ In stark contrast, Lord Coke, in the preface to the first part of his *Institutes*, defers to neither monarch nor archbishop, but Littleton's *Tenures*, upon which the work was written, and parliament, for support of introducing a legal treatise in English—"I am justified by the Wifdome of a Parliament."¹⁹¹ In fact, Coke's *Preface* asks the Reader (not monarch or Archbishop) "will not conceiue any opinion againft any part of this painfull and large Volume, vntill hee fhall haue aduisedly read ouer the whole, and diligently ferched out and well confidered of the feuerall Authorities, Proofes, and Reasfons which wee have cited and fet downe for warrant and confirmation of our opinions thorow out his whole

¹⁸⁹ COWELL (1607), *supra* note 105, at *2(a).

¹⁹⁰ *Id.* at entry for *Prærogative of the King* (second recto unnumbered folio from the entry).

¹⁹¹ COKE, *supra* note 137, at unnumbered folio iv (a)-(b) (of *Preface*).

work.”¹⁹² Coke appeals to the reader to search out cited authority before rendering judgment, rather than implying “protection” or authority from any government figurehead.

The stance of Britton (who nearest preceded Coke in time among the published authorities on the ancient common law) toward the monarchy is also fundamentally different than Coke, specifically with reference to the issue of royal prerogative. From the introduction of Nichol’s 1901 edition of Britton:

Throughout the whole of the treatise there is a steady endeavor to guard and magnify the royal prerogatives. The laws as they are set forth are to be obeyed because the king wills and commands it. He may take jurisdiction over all manner of actions. Holy Church shall “retain her liberties unimpaired” because the king so wills. If a royal charter is set up, whether it be allowable or false can be judged by the king¹⁹³

This sharply contrasts with Coke’s *Institutes*, particularly the later volumes, which challenged Royal prerogatives. “With it, lawyers fought the battle of the constitution against the Stewarts; historical research was their defense for national liberties.”¹⁹⁴ Indeed, Coke’s earlier *Reports* also contributed to the Chief Justice being removed from the King’s Bench in 1616.¹⁹⁵ The essence of Coke is to challenge the limits of royal authority: “Coke’s writings preserved for England the mediæval idea of the supremacy of the law, at a time when political speculation was tending in the direction of the supremacy of a sovereign person or body which was above the law. . . .”¹⁹⁶ A key to Coke’s success may have

¹⁹² *Id.* at unnumbered fol. v (b).

¹⁹³ Baldwin, *supra* note 158, at xv.

¹⁹⁴ PRINTING AND THE MIND OF MAN, *supra* note 31, at 76.

¹⁹⁵ See Damian Powell, Coke in Context: Early Modern Legal Observation and Sir Edward Coke’s Reports, 21 J. LEGAL HIST. 33, 44-47 (2000).

¹⁹⁶ WILLIAM HOLDSWORTH, 5 HISTORY OF ENGLISH LAW 480 (2nd ed. 1937). See also Charles F. Mullett, *Coke and the American Revolution*, 38 ECONOMICA 457, 466 (1932); W.S. Holdsworth,

been his heavy indulgence in cross-referencing and voluminous citation as new forms of authority, and to make up for what may have been a notable lack of royal sanction.

In contrasting Coke's *Institutes* with an even earlier work, Justinian's *Corpus Juris Civilis*, the relationship to supporting authority again could not be more different. Coke sought to interweave his work with the common law past and other authority, but Justinian sought to eliminate all other authority (both past and future) as unnecessary in relationship to his own canonized work.

On publication of the *Corpus Juris Civilis*, Justinian forbade any further reference to the works of juriconsults. Those of their works that he approved were included in the *Corpus Juris Civilis*, and henceforward reference was to be made to it, rather than to the original authorities. He also forbade the preparation of any commentaries on his compilation itself. In other words, he sought to abolish all prior law except that included in the *Corpus Juris Civilis*, and he took the view that what was in his compilation would be adequate for solution of legal problems without the aid of further interpretation or commentary by legal scholars. He was able to make his prohibition against citation of the original authorities more effective by having some of the manuscripts of their work that had been collected by Tribonian burned.¹⁹⁷

When the *Corpus Juris Civilis* was completed, it was designed by imperial decree to stand alone as a source of authority. It needed no cross-referenced citation. Coke, on the other hand, had no such imperial backing, and so the *Institutes* stand as the warp and woof of legal citation, both in relation of the unwritten common law and the early treatises and reporters on the subject. Consequently,

Influence of Coke on the Development of English Law, in *ESSAYS IN LEGAL HISTORY*, 297, 308-11 (Paul Vinogradoff ed., 1913)).

¹⁹⁷ JOHN HENRY MERRYMAN, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA* 8 (1969).

publishing a treatise with a hither-to-unprecedented level of cross-referencing to legal authority makes perfect sense.

6. Impact of Coke—“Piling Pelion on Ossa”

Coke’s completed first volume of the *Institutes* is described, referring to its origins in Littleton as “a virtual piling of Pelion on Ossa enabling the law students to scale the heights of legal learning.”¹⁹⁸ It is also seen as both the “repository of everything that is most interesting and useful in the legal learning of ancient times” and the “outlines of the principal doctrines of modern law and equity.”¹⁹⁹ So extensive is Coke’s influence that “it is useless to prove Coke mistaken on any given point. Coke’s mistakes, we are told, are the common law.”²⁰⁰ Coke’s mere act of putting the common law (previously defined as the “unwritten law”) in book form gave it added weight: “‘you cannot cross-examine a book’—a lawyer’s book least of all.”²⁰¹

Coke has been criticized for occasionally misapplying citation in his zeal to include every relevant argument.²⁰² However, the point is that the nature of comprehensive legal texts was changing—becoming intrinsically interwoven with cross-references:

Coke’s writings established himself as a fundamental legal voice – Hill claimed that Coke’s authority as an interpreter of law outstripped that of any Protestant theologian in interpreting Scripture – but his credentials as an antiquary have left more than a little to be desired. He gained notoriety for twisting English constitutional history into a continuous thread leading back to the Saxon forest A vigorous champion of the Ancient

¹⁹⁸ See Hicks, *supra* note 33, at 95.

¹⁹⁹ *Id.* at 96 (quoting Butler, *supra* note 35).

²⁰⁰ Radin, *supra* note 207, at 1125.

²⁰¹ Mullett, *supra* note 196, at 466 (attributed to Trevelyan).

²⁰² See Crick, *supra* note 165 at 126.

Constitution, Coke brought within his purview all aspects of the working government in the centuries before the Norman encroachment”²⁰³ In the end, Coke’s historical errors may have mattered less than the effect of his work, and his method: “the searching, finding, out, perusing, and digesting of authoritie in law, Rols of Parliament, Judiciall Records, Warrants in law, and other invisible works *tam laboris quam ingenii*.”²⁰⁴ Furthermore, the eminent legal historian, Sir William Holdsworth, has argued that Coke’s mistakes appear less ominous when taken within the context of the legal minds of his particular generation (noting that Coke’s contemporaries found little wrong with his work), and such mistakes as there were most likely reflected his zeal as an advocate when touching legal issues.²⁰⁵

Contrasting Lord Coke’s style of learning with modern scholarship (Coke never fares well when judged by current standards of scholarship, particularly in other disciplines),²⁰⁶ Max Radin notes:

The scholarship that consisted in the exhibition of a great deal of information of what was in books was highly characteristic of the Renaissance. In this respect the Renaissance continued the tradition of the medieval schoolmen [T]he more recondite and rare the citation was, the more eminent and demonstrable the learning become.”²⁰⁷

²⁰³ *Id.* (footnotes omitted). An omission from quote is also important in noting Coke’s failings: “[Coke] was once depicted as a historical clodhopper oblivious to the best practices of Continental method, charged with the propagation of myth, ‘bogus history’, ‘juridical nationalism’, even ‘anti-history’, although more recently his reputation, together with that of other common law lawyers, has been redeemed a little.” *Id.*

²⁰⁴ *Id.* at 126-27.

²⁰⁵ See HOLDSWORTH, 5 HISTORY OF ENGLISH LAW *supra* note 196, at 472-78.

²⁰⁶ See Radin, *supra* note 173, at 1131-1432 (“[I]f the modern tests are applied, Coke was a mediocre scholar since he wasn’t moderately interested in the truth and very much interested in overcoming his real or imaginary opponents. . . .”).

²⁰⁷ Radin, *supra* note 143, at 1127.

The point is particularly important to the ascendancy of the book as supreme authority. Coke's scholarship, which was to argue for limited authority of monarch, courts and even parliament,²⁰⁸ ultimately depended upon a stable web of interconnecting cross-references to printed editions of law books. Only a print environment, one that was not entirely new, could provide Lord Coke with a foundation stable enough to claim supremacy of the written word. "[T]he essence of authority was that it was quantitative and cumulative. 'Weight of authority,' an expression which was to become so fateful in the later common law, was taken almost in the sense of *avoir du poids*."²⁰⁹ Cross-referencing notes, made possible by standardized text, give published law its weight, conveniently for Coke, without the need for royal sanction.²¹⁰

VI. Conclusion: The End of Royal Absolutism and the Ascension of the Book

The information environment for legal institutions of the seventeenth century can be understood through application of the geopolitical, temporal, media, and technological facets of Deibert's model. As a theory, the model predicts that particular modes of jurisprudence, legal institutions, fashions of government and trends in legal thinking flourish according to their fitness with the information environment.

²⁰⁸ See, *Dr. Bonham's Case*, 77 ENG. REP. 638, 652 (C.P.) ("And it appears in our books, that in many cases, the common law will... control Acts of Parliament, and sometimes adjudge it to be utterly void: for when an Act of Parliament is against common right and reason, or impossible to be performed, the common law will control it, or adjudge such Act to be void. . . ."). *But see* Berman, *supra* note 42, at 1686, n.92 ("Coke's opinion is sometimes taken to stand for the proposition that the courts may annul an Act of Parliament if it is in contradiction to fundamental law. It seems, however, that the holding of the case, narrowly construed rests on an interpretation of statute rather than annulment of it.").

²⁰⁹ Radin, *supra* note 143, at 1128.

²¹⁰ For a typical example of how legal authors courted royal favor, see *supra* note 193 and accompanying quote.

In sixteenth-century Germany, the battle over access to the English Bible paved the way for the pamphlet revolution of the early seventeenth century. Seventeenth Century developments included the foreign publication of political tracts and accounts of trials. The fragmented geopolitics of Europe and dispersion of printing ensured safe havens for printers and press. Furthermore, the mere existence of such a network, external to England, made it possible for surreptitious printing within England. Such an evolution of events explains why King James I never attempted to ban Coke's *Reports*. King James I was the scholar King, who had brought forth an authorized edition of the Bible. Although he burned Cowell's *Interpreter* as a concession to Parliament, who found the work too favorable to the King, the futility of such a token act and any contemplated suppression of Coke's work would have been readily apparent to James I.

The Bible itself would also prove a political force with which to be reckoned:

"Few sources," as one historian notes, "are as rich as the Old Testament in undesirable kings who come to ends" while the New Testament is "full of libertarian ideas." The Protestant doctrine of the priesthood of all believers, of the supremacy of the individual conscience, encouraged many to read their destiny in such verses as: "Where the spirit of the Lord is, there is liberty." . . . They turned out tracts proclaiming themselves "free-born," and by the time Laud [Archbishop of Charles I] and his prelates attempted to inculcate passive obedience as a virtue of faith, scriptural notions of their obligation to righteous disobedience had taken hold.²¹¹

In short, the English Bible, with all that followed in its train, had sanctioned the right and capacity of the people to think for themselves.²¹² The effusive nature of

²¹¹ BROBRICK, *supra* note 15, at 279-80 (quoting, Hill, *supra* note 26, at 77).

²¹² While King James I sponsored his famous English Bible, he was also concerned about how kingship, as portrayed in the Bible, might be portrayed. In 1598, prior to publication of the King

printing and the diverse nature of European geopolitics combined with other factors to ensure that England was a fertile environment for revolution.

Lord Coke found an information environment favorable to publication and abundant in stabilized texts. Through unprecedented use of marginal cross-referencing to diverse sources in his *Institutes*, Coke created a web and appearance of authority sufficient to stand on his own, even without royal approval. In doing so, Coke ventured out alone, distinguishing himself from earlier authorities, such as Britton,²¹³ Cowell,²¹⁴ and Justinian.²¹⁵ Lord Coke eventually found himself on the road to unavoidable conflict with the monarchy.²¹⁶ Ultimately, the common law in printed form and parliamentary sovereignty triumphed over the theory of royal absolutism championed by James I.²¹⁷ Lord Coke's writings play a crucial role in the dispute between absolute monarchy and the rule of law as well as the basis for post-civil war government:

Coke relied on history not only as a check against the arbitrary exercise of power but also as a guide to determining the limits and channels of political and legal authority. He was concerned to find legal guidelines not only for the Crown but for all branches of government, including Parliament and the judiciary itself. . . .

Intended as a basis for peaceful change, Coke's recourse to history eventually provided a basis for violent overthrow of the existing order. History, Tradition, Precedent, became the slogans of revolution the seventeenth century sense of the word, and the struggle between Coke

James Bible, James I published the *True Law of Free Monarchies* with considerable attention to the biblical account of Samuel's reluctance to petition God for a King over Israel. See JAMES I, *supra* note 108, at 57-63; 1 *Samuel* 8:9-20.

²¹³ See *supra* note 193 and accompanying text.

²¹⁴ See *supra* note 105.

²¹⁵ See *supra* note 197 and accompanying text.

²¹⁶ See *supra* notes 42-44 and accompanying text.

²¹⁷ See *supra* note 108.

and James became a paradigm of the conflict which broke out a generation in civil war and which ultimately transformed English government, English law, and English Society as a whole.²¹⁸

As the basis for revolution and reform of English law, government, and society, Coke's writings assumed an unparalleled position of authority.

Not too many years after Lord Coke's death, an early political protestor, John Lilburne, would appear before parliament to appeal judgment of the King's Star Chamber "with the Bible in one hand and Coke's Reports in the other."²¹⁹ Lilburne, one of several prominent publishers of political tracts surrounding the English Civil War,²²⁰ is famous for his influential tract, *An Agreement of the Free People of England* (1649).²²¹ While the seventeenth century began with a firm commitment to monarchy and "little place for public opinion," it ended with public opinion assuming "a privileged place... in liberal-democratic conception of

²¹⁸ Berman, *supra* note 42, at 1689. See also Mullett, *supra* note 196, 466 (1932).

Coke's writings, though no swan-song, were the greatest and last universal collection of the common law. "They made it easier for the common law to fill the great position which it acquired as a result of the constitutional conflicts of the seventeenth century." The restatement of the common law by Coke made easier the adaptation of mediæval common law to the needs of the modern state, and at the same time aided the coming of parliamentary supremacy. According to Bacon, if it had not been for Coke's *Reports*, "the law by this time had been like a ship without a ballast."

Id. Bacon's praise is noteworthy, considering Bacon and Coke had been life-long adversaries. BOWEN, *supra* note 34, at 30 ("Between the two [Bacon and Coke] there was instinctive antagonism. Their outlooks on life and on the law were antipathetic . . . ; they were to aspire to the same offices, the same honors and the same wife.").

²¹⁹ BERMAN, *supra* note 1. See also HILL, *supra* note 26, at 200.

²²⁰ See for example the authors of tracts listed in Exhibits A and B below.

²²¹ See PRINTING AND THE MIND OF MAN *supra*, note 29, at 80-89 (item no. 136, *The Peoples Rights*).

political order.”²²² It was a veritable “information revolution.”²²³ It is in this sense that the Coke’s *Institutes* and *Reports*, the English Bible, and the political and religious tracts surrounding the English civil war constitute the “books above the throne,” which frustrated absolute monarchy and promoted an alternative basis for legal and political authority.

²²² DAVID ZARET, ORIGINS OF DEMOCRATIC CULTURE: PRINTING, PETITIONS, AND THE PUBLIC SPHERE IN EARLY MODERN ENGLAND 7 (2000).

²²³ See *supra* note 40 and accompanying text.

Exhibit A

Partial Listing of Works Published in English in Amsterdam (17th Century)

Year	Author(s)	Responsibility	Title	Subject Descriptor
1605	Bradshaw, William, puritan divine.	[by W. Bradshaw].	A protestation of the kings svpremacie : made in the name of the afflicted ministers, and opposed to the shameful calumniationes of the prelates /	
1605-1606 ?	Barrow, Henry, 1550?-1593. ; Greenwood, John,; d. 1593. ; Thorp, Giles, ; printer.	by Henry Barrovve ; here is furder inserted a brief refutation of M. Giff. supposed consimilitude betvixt the Donatistes & vs, vvherin is shevved hovv his arguments haue be[en] & may be by the papists more iustly retorted against himself & the prese[n]t estate of their church, by Io. Greenwood ...	A plaine refutation of M. Giffards booke intituled, Ashort treatise gainst the Donatistes of England : wherein is discovered 1. The forgery of the vvhole ministerie, 2. The confusion, 3. False vvorship, 4. And antichristian disorder of these parish assemblies, called the Church of England : here also is prefixed a summe of the causes of our separation, & of our purposes in practise, vvich M. Giffard hath tvise sought to confute, and hath novv tvise receiued ansvver /	Brownists -- Early works to 1800. Gifford, George, d. 1620. Short treatise against the Donatists of England, whome we call Brownists.
1604	Bradshaw, William, 1571-1618. ; Jacob, Henry,; 1563-1624.		A treatise of divin[e] worship : tending to prove that the ceremonies imposed vpon the ministers of the Gospell in England, in present controversei, are in their vse vnlawfull.	Church of England -- Customs and practices. Church of England -- Doctrinal and controversial works.
1608	Johnson, Francis, 1562-1618. ; Thorp, Giles, ; printer.		Certayne reasons and arguments proving that it is not lawfull to heare or to have any spirituall communion with the present ministerie of the Church of England.	Brownists -- Early works to 1800. Church of England -- Controversial literature.

Year	Author(s)	Responsibility	Title	Subject Descriptor
1608	Ainsworth, Henry, 1571-1622? ; Thorp, Giles, ; printer.	examined and answered by H.A.	Counterpoysion : considerations touching the points in difference between the godly ministers & people of the Church of England and the seduced brethren of the separation : arguments that the best assemblies of the present Church of England are true visible churches, that the preachers in the best assemblies of Engl. are true ministers of Christ : Mr. Bernards book, intituled, The Separatists schisme : Mr. Crashawes questions propounded in his sermon preached at the crosse /	Brownists -- Early works to 1800. Bernard, Richard, 1568-1641. Christian advertisements and counsels of peace. Crashaw, William, 1572-1626. Sermon preached at the crosse.
1608	Smyth, John, d. 1612.	by Iohn Smyth ...	The differences of the churches of the seperation [sic] : contayning, a description of the leitovrgie and ministerie of the visible church ... /	
1615	Ainsworth, John, fl. 1609-1613. ; Ainsworth, Henry.; 1571-1622? ; Thorp, Giles, ; printer.		The trying out of the truth : begunn and prosecuted in certayn letters or passages between Iohn Aynsworth and Henry Aynsworth, the one pleading for, the other against the present religion of the Church of Rome : the chief things here handled are 1. Of Gods Word and Scriptures, whither they be a sufficient rule of our faith, 2. Of the Scriptures expounded by the church, and of unwritten traditions, 3. Of the Church of Rome, whither it be the true Catholike Church, and her sentence to be received as the certayn truth.	Catholic Church -- Controversial literature -- Early works to 1800. Catholic Church -- Apologetic works -- Early works to 1800.
1615	Robinson, John, 1575?-1625.	by Iohn Robinson.	A manumission to a manuduction, or, Answer to a letter inferring publique communion in the parrish assemblies upon private with godly persons there /	Congregational churches -- Doctrines -- Early works to 1800.
1619	Staresmore, Sabine. ; Thorp, G., ; printer,; attributed name.; Mansell, Richard,; 17th cent.	by Sabine staresmore.	The vnclavvfvlnes of reading in prayer., or, The answer of Mr Richard Mavnsel preacher, vnto certain argvments, or reasons, drawne against the using, or communicating, in, or with the Booke of Common Prayer (imposed to be reade for prayer to God) in the parish assemblies of England. : With A defence of the same reasons, /	Christianity -- Prayer-books and devotions -- English. Parishes (Canon law) -- Great Britain -- Early works to 1800. Prayer-books -- Early works to 1800. Prayer -- Christianity -- Early works to 1800. Mansell, Richard, 17th cent. Church of England. Book of common prayer. Genre/Form: Devotional literatures -- Netherlands -- 17th century.

Year	Author(s)	Responsibility	Title	Subject Descriptor
1624	Calderwood, David, 1575-1650.		An epistle of a Christian brother exhorting an other to keepe himselfe vndefiled from the present corruptions brought in to the ministration of the Lords Supper.	Lord's Supper -- Church of Scotland. Posture in worship -- Early works to 1800.
1634	Canne, John, d. 1667? ; Bradshaw, William,; 1571-1618. ; Unreasonablenss of the separation.	by Iohn Canne, pastor of the ancient English church, in Amsterdam ...	A necessitie of separation from the Church of England : prooved by the Nonconformists principles : specially opposed unto Dr. Ames, his fresh suit against humane ceremonies, in the point of separation only : also Dr. Laiton, Mr. Dayrel, and Mr. Bradshaw are here answered, wherein they have written against us ... /	Congregationalism -- Early works to 1800. Church polity and Christian union -- Early works to 1800. Dissenters, Religious -- England -- Early works to 1800. Ames, William, 1576-1633. Fresh suit against human ceremonies in God's worship. Church of England -- Relations -- Dissenters, Religious -- Early works to 1800. Church of England -- Controversial literature -- Early works to 1800.
1628	Lambe, John,; d. 1628.	[Anon.]	A briefe description of the notorious life of John Lambe ... together with his ignominious death.	
1631	Puckell, Steven.	published by Stephen Puckell, and sent as a love token for his countryes good.	A trve table of all svch fees as are due to the Bishop of London, and all his depending officers ... as hath been given in to his Majestyes commissioners in Starchamber under their own hands in the month of November M.DC.XXX. : whereto is added a true discovery of such fees ordinarily exacted by them upon his Majestyes good subjects contrary to this their own table and the statute laws of the land /	Church of England. Diocese of London. Consistory Court.
1630	Darcie, Abraham,; fl. 1625. ; Ofwod, Stephen. ; Casaubon, Isaac,; 1559-1614.		The originall of popish idolatrie, or The birth of heresies : Published under the name of Causabon [sic], and called-in the same yeare, upon misinformation. But now upon better consideration reprinted with allowance. Being a true and exacte description of such sacred signes, sacrifices and sacraments as have bene instituted and ordained of God since Adam. With a newe source and anatomie of the Masse, first gathered out of sundrie Greeke and Latine authors, as also out of diuerse learned fathers. Published by S.O.	Sacraments -- Early works to 1800.

Year	Author(s)	Responsibility	Title	Subject Descriptor
1633	Ames, William, 1576-1633. ; Thorp, Giles, ; printer.		A fresh suit against human ceremonies in God's vvorship, or, A triplication unto D. Burgesse his rejoinder for D. Morton. The first part.	Burges, John, 1561?-1635. Ansvver reioyned to that much applauded pamphlet of a namelesse author, bearing this title: viz. A reply to Dr. Morton's generall defence of three nocent ceremonies, &c. Morton, Thomas, 1564-1659.Church of England -- Controversial literature -- Early works to 1800. Church of England -- Customs and practices -- Early works to 1800.
1628	Leighton, Alexander, 1568-1649.	printed in the year & moneth wherein Rochell was lost.	An Appeal To the Parliament : or Sions Plea against the Prelacie. The summe whereoff is delivered in a Decade of Positions. In the handling whereoff, the Lord Bishops, and their appurtenances are manifestlie proved, both by divine and humane Lawes, to be intruders upon the Priviledges of Christ, of the King, and of the Common-vveal: and therefore upon good evidence given, she hartelie desireth a ludgement and execution ... /	Episcopacy -- Early works to 1800.Church of England -- Doctrinal and controversial works.
1630s	Leighton, Alexander, 1568-1649.	By Dr. Layton ...	An appeal to the Parliament; or, Sions plea against the prelacy. The summe vvhereof is delivered in a dacade of positions. In the handling whereof, the lord bishops, and their appurtenances are manifestly proved, both by divine and humane lawes, to be intruders upon the priviledges of Christ, of the king, and of the commonweal: and therefore upon good evidence given, she heartily desireth a judgement and execution.	Episcopacy.
1634	Davenport, John, 1597-1670.		A ivst complaint against an vnivst doer : wherein is declared the miserable slaverie & bondage that the English church of Amsterdam is now in, by reason of the tirannicall government and corrupt doctrine, of Mr. Iohn Pagett, their present minister : the which things are plainly manifested in two certain letters, the one written by Mr. Iohn Davenport ... the other given vp to the English consistorie by some of the brethren ...	

Year	Author(s)	Responsibility	Title	Subject Descriptor
1637	Prynne, William, 1600-1669.	published by W. Huntley, Esquier.	A breviat of the prelates intollerable usurpations : both upon the Kings prerogative royall, and the subjects liberties ... /	Prerogative, Royal -- Great Britain.Church of England - - Bishops -- Temporal power.Great Britain -- History -- Charles I, 1625-1649 -- Sources.
1640	Hughes, Lewes, fl. 1620.		Certaine grievances well worthy the serious consideration of the Right Honourable, and High Court of Parliament.	Church of England -- Controversial literature. Church of England. Book of common prayer.
1637			A Briefe relation of certain special and most materiall passages and speeches in the Starre-Chamber, occasioned and delivered lunc the 14th, 1637, at the censure of those three worthy gentlemen, Dr. Bastwicke, Mr. Burton and Mr. Prynne, as it hath beene truely and faithfully gathered from their owne mouthes by one present at the sayd censure.	Trials (Seditious libel) -- England -- London.Bastwick, John, 1593-1654 -- Trials, litigation, etc. Burton, Henry, 1578-1648 -- Trials, litigation, etc. Prynne, William, 1600-1669 -- Trials, litigation, etc.
1636	Prynne, William, 1600-1669. ; Stam, Jan Fredericksz.; d. 1667, ; printer.	by a wellwisher to Gods truth and people.	The unbishoping of Timothy and Titus, or, A briefe elaborate discourse : proving Timothy to be no bishop (much lesse any sole, or diocaesan bishop) of Ephesus, nor Titus of Crete, and that the power of ordination, or imposition of hands, belongs iure divino to presbyters, as well as to bishops, and not to bishops onely : wherein all objections and pretences to the contrary are fully answered, and the pretended superiority of bishops over other ministers and presbyters iure divino, (now much contended for) utterly subverted in a most perspicuous maner /	Episcopacy.Timothy, Saint. Titus, Saint.Church of England -- Bishops. Church of England -- Government. Church of England -- Controversial literature -- Puritan authors.
1640	Leighton, Alexander, 1568-1649.	by Dr Layton.	An appeal to the Parliament, or Sions plea against the prelacy /	
1640			Ovr demands of the English lords manifested : being at Rippon, Octob. 8. 1640 : with answers to the complaints and grievances given in by the Bishop of Durham, Northumberland, and some of Newcastle, said to be committed by our Army.	Scotland -- History -- Charles I, 1625-1649 -- Early works to 1800. Durham (England : County) -- History -- Early works to 1800. Northumberland (England) -- History -- Early works to 1800.
1638	Lilburne, John, 1614?-1657.		A light for the ignorant or A treatise shewing, that in the New Testament, is set forth three kingly states or governments, that is, the civill state, the true ecclesiasticall-state, and the	Authority -- Religious aspects -- Early works to 1800. Church polity -- Early works to 1800.

Year	Author(s)	Responsibility	Title	Subject Descriptor
			false ecclesiasticall state.	
1638	Wickins, Nathaniel, fl. 1638-1641.	by Nathaniel Wickins.	Woodstreet-compters-plea, for its prisoner. : Or the sixteen reasons, which induce mee Nathaniel Wickins, late servant to Mr. William Prynne; but now prisoner in the sayd compter. To refuse to take the oath ex officio; wherein it is plainly proved, that it is unlawfull when it is given only to the searching out either of a crime against our selves, or pretended against our brethren, with the objections to the sayd reasons fully answered ... /	Puritans -- Great Britain.Prynne, William, 1600-1669.
1636	Prynne, William, 1600-1669.		Certaine questions propounded to archbishops, bishops, archdeacons, commissaries, chauncellors, officialls and other audacious usurpers upon His Majesties royall prerogative, lawes, and his loyall sunjects lawfull liberties ...	Church and state -- Great Britain.
1640	Bradshaw, William, 1571-1618. ; Johnson, Francis,; 1562-1618. ; Canne, John,; d. 1667?	by a freind of the deceased.	The unreasonablnes of the separation : made apparent, in an examination of, and answere to certaine reasons of Maister Francis Johnson; whereby he laboureth to justifie his schisme from the church-assemblies of England; by Maister William Bradshaw deceased. Together with a rejoinder, in defence of the said answere against the late reply of Maister Iohn Canne thereunto /	Brownists -- Early works to 1800.

Year	Author(s)	Responsibility	Title	Subject Descriptor
1637	Prynne, William, 1600-1669.		A quench-coale, or, A briefe disquisition and inquirie, in what place of the church or chancell the Lords-table ought to be situated, especially vvhen the Sacrament is administered? : VVherein is evidently proved, that the Lords-table ought to be placed in the midst of the church, chancell, or quire north and south, not altar-wise, with one side against the wall : that it neither is nor ought to be stiled an altar : that Christians have no other Altar but Christ alone, who hath abolished all other altars, which are either heathenish, Jewish, or Popish, and not tollerable among Christians : All the pretences, authorities, arguments of Mr. Richard Shelford, Edmond Reeve, Dr. John Pocklington, and a late coale from the altar, to the contrary in defence of altars, calling the Lords-table an altar, or placing it altarwise, are here likewise fully answered and proved to be vaine or forged / by a well-wisher to the truth of God, and the Church of England ...	
1641			A patterne of the tabernacle : beeing a humble motion to the king and state, to root out the plants of Antichrist : & to set up the ordinances of the gospel in the land.	
1641		By a well-wisher to the truth ...	Syons prerogatyve royal. Or, a Treatise tending to prove that every particular congregation hath from Christ absolute & entyre power ... and is an independent body, not standing under any other ecclesiasticall authoritie out of it selfe.	Church. Christianity.
1642	Ainsworth, Henry, 1571-1622?	examined and answered by Henry Ainsworth.	Covnterpoyson considerations touching the poynts indifferrence between the godly ministers and people of the Church of England, and the seduced brethren of the separation : argvments that the best assemblies of the present Church of England, are true visible churches : that the preachers in the best assemblies of Engl. are true ministers of Christ : Mr. Bernards book intituled The separatists schisme Mr. Crashawes questions propounded in his sermon preached at the Crosse /	

Year	Author(s)	Responsibility	Title	Subject Descriptor
1641	Walker, George,; 1581?-1651.		A Sermon preached in London by a faithfull minister of Christ, and perfected by him : and now set forth to the publike view of all, for the iustification of the truth, and clearing the innocencie of his long suffering for it.	
1643			Some speciall arguments which warranted the Scottish subiects lawfully to take up armes in defence of their religion and liberty ... Very usefull and necessary for these present times. ...	Scotland -- Politics and government -- 1625-1649 -- Early works to 1800.
1675	Shaftesbury, Anthony Ashley Cooper, Earl of, 1621-1683. ; Shaftesbury, Anthony Ashley Cooper,; Earl of,; 1621-1683. ; Speech in the House of Lords the 20th of October 1675.; Buckingham, George Villiers,; Duke of,; 1628-1687. ; Speech in the House of Lords the 16th of November 1675.		Two speeches : I. The Earl of Shaftesbury's speech in the House of Lords the 20th. of October, 1675. II. The D. of Buckinghams speech in the House of Lords the 16th. of November 1675. Together with the protestation, and reasons of several Lords for the dissolution of this Parliament; entred [sic] in the Lords journal the day the Parliament was prorogued, Nov. 22d. 1675.	Dissenters, Religious -- Great Britain.Sherley, Thomas, 1638-1678.Great Britain -- Politics and government -- 1660-1688. Great Britain -- History -- Charles II, 1660-1685.
1647		Written by Tho. Tel-troth, Clerk to the long-abused Commons in England, Scotland and Ireland.	The true character of an ordinance of Parliament in generall.	Great Britain -- History -- Civil War, 1642-1649.
1670	Carr, William, fl. 1676.		Carr's case being a brief relation of the cause & sufferings of Mr. William Carre humbly tendred to the consideration of the honble House of Commons, who are the representatives of all the commons of England. Together with a plea against the pretended jurisdictions, & irregular proceedings of the House of Lords; in which may be seen the just rights of every commoner & free-born subject of England ...	Great Britain. Parliament. House of Lords -- Jurisdiction.

Year	Author(s)	Responsibility	Title	Subject Descriptor
1671	McWard, Robert, 1633?-1687.	by a lover of truth ...	The true non-conformist in answer to the modest and free conference betwixt a conformist and a non-conformist about the present distempers of Scotland /	Dissenters, Religious -- Scotland. Ritualism -- Early works to 1800. Reformed Church -- Scotland -- Liturgy. Presbyterian Church -- Scotland -- Liturgy. Anglican Communion -- Relations -- Presbyterian Church. Presbyterian Church -- Relations -- Anglican Communion. Anglican Communion -- Controversial literature. Burnet, Gilbert, 1643-1715. Modest and free conference betwixt a conformist and a non-conformist. Church of Scotland -- Liturgy -- Early works to 1800. Church of Scotland -- Government -- Early works to 1800. Church of England -- Controversial literature -- Early works to 1800. Church of England -- Relations -- Church of Scotland. Church of Scotland -- Relations -- Church of England.
1663	Muggleton, Lodowick, 1609-1698.	written by Lodowick Muggleton.	The neck of the Quakers broken, or, cut in sunder by the two-edged sword of the spirit which is put into my mouth : first, in a letter to Edward Bourne a Quaker, secondly, in answer to a letter to Samuel Hooton and W.S., thirdly, in a letter to Richard Farnsworth, Quaker, fourthly, in an answer to a printed pamphlet of the said Richard Farnsworth, entituled, Truth ascended, or, The annointed and sealed of the Lord defended, & c /	R. F. (Richard Farnworth), d. 1666. Hooton, Samuel. Bourne, Edward, d. 1708. Society of Friends -- Controversial literature.
1678	Marvell, Andrew, 1621-1678.	by Andrew Marvel, Esq.	An account of the growth of popery : and arbitrary government in England : more particularly from the long propogation, of November, 1675, ending the 15th. of February, 1676, till the last meeting of Parliament, the 16th. of July, 1677 /	Church and state -- England -- 17th century. Great Britain -- Politics and government -- 1660-1688.
1677	J. E.		A Narrative of the cause and manner of the imprisonment of the lords: now close prisoners in the Tower of	Brit Tracts -- 1677.

Year	Author(s)	Responsibility	Title	Subject Descriptor
			London ...	
1682			The root of Romish rites and ceremonies : shewing that the Church of Rome hath borrowed the most part of her ceremonies fo the Jews, and ancient pagans, and that from this spring proceeded the Jubilee.	Judaism and other religions -- Early works to 1800. Paganism -- Rituals -- Early works to 1800. Catholic Church -- Liturgy -- Criticism, interpretation, etc.
1677	Marvell, Andrew, 1621-1678.		A seasonable argument to perswade all the grand juries in England, to petition for a new Parliament : Or, a list of the principal labourers in the great design of popery and arbitrary power; ...	Catholics -- Government policy -- Great Britain. England and Wales. Parliament. Great Britain -- Politics and government -- 1660-1688.
1685	Gaunt, Elizabeth, d. 1685.		Mrs. Elizabeth Gaunt's last speech, who was burnt at London, Oct. 23, 1685 as it was written by her own hand ... (De laatite Woorden van ... E.G.).	
1680-1691	Seller, Abednego,; 1646?-1705.		[A collection of 17 pamphlets on passive obedience and non-jurors].	Church and state. Church and state in Great Britain. Government, Resistance to. Great Britain -- History -- Modern period, 1485-
1692	Milton, John, 1608-1674. ; Washington, Joseph,; d. 1694.	by John Milton.	A defence of the people of England : in answer to Salmasius's Defence of the king /	Saumaise, Claude, 1588-1653. Defensio regia pro Carlo I. Charles I, King of England, 1600-1649.
1690	Milton, John, 1608-1674.	By John Milton ...	Eikonoklastes [Greek transliterated], in answer to a book intitul'd Eikon basilike [Greek transliterated], the portrature of His sacred Majesty King Charles the First in his solitudes and sufferings.	Charles I, King of England, 1600-1649. Title Subject: Eikon basilike.
1688	Burnet, Gilbert, 1643-1715.		An apology for the Church of England, with relation to the spirit of persecution : for which she is accused.	Religious tolerance -- Church of England. Church of England -- Apologetic works.
1688			The true test of the Jesuits : or, The spirit of that Society, disloyal to God, their king, and neighbour.	Jesuits -- Controversial literature.
1691	Ludlow, Edmund,; 1617?-1672.		A Letter from Major General Ludlow to Sir E.S. [i.e. Edward Seymour] comparing the tyranny of the first four years of King Charles the Martyr, with the tyranny of the four years reign of the late abdicated king : Occasioned by the reading Doctor Pelling's lewd harangues upon the 30th. of January, being the anniversary or general madding-day. ...	Pelling, Edward, d. 1718. Charles I, King of England, 1600-1649. James II, King of England, 1633-1701. Seymour, Edward, Sir, 1633-1708. Great Britain -- History -- James II, 1685-1688 -- Pamphlets. Great Britain -- History -- Charles I, 1625-1649 -- Pamphlets.

Year	Author(s)	Responsibility	Title	Subject Descriptor
1689	Seller, Abednego, 1646?-1705. ; Seller, Abednego,; 1646?-1705. ; History of passive obedience since the Reformation.		The history of passive obedience since the reformation.	Church and state. Church and state in Great Britain. Government, Resistance to. Great Britain -- History -- Modern period, 1485-
1690	Seller, Abednego, 1646?-1705. ; Seller, Abednego,; 1646?-1705. ; History of passive obedience since the Reformation.		A continuation of the History of passive obedience since the Reformation.	Church and state. Church and state -- Great Britain. Government, Resistance to. Obedience. Great Britain -- History -- Modern period, 1485-
1692	Ludlow, Edmund, 1617?-1692. ; Bethel, Slingsby,; 1617-1697.		Ludlow no lyar; or, a detection of Dr. Hollingworth's disingenuity in his Second defence of King Charles I. and a futher vindication of the Parliament of the 3d of Novemb. 1640. With exact copies of the pope's letter to K. Charles the First, and of his answer to the pope. In a letter from General Ludlow to Dr. Hollingsworth. Together with a reply to the false and malicious assertions in the doctor's lews pamphlet, entituled, His defence of the king's holy and divine book, against the rude and undutiful assaults of the late Dr. Walker of Essex.	Charles I, King of England, 1600-1649. Hollingworth, Richard, 1639?-1701. Second defence of King Charles I. Hollingworth, Richard, 1639?-1701. Dr. Hollingworth's defence of K. Charles the First's holy book. Great Britain -- History -- Stuarts, 1603-1714.
1690		By the author of the Secret history of King Charles II. and K. James II.	The pagan prince: or A comical history of the heroick atchievements of the Palatine of Eboracum.	James II, King of England, 1633-1701.
1688	Shower, John, 1657-1715.		An exhortation to repentance, and union among Protestants, or, A discourse upon the burden of Dumah ...	Devotional literature, English -- Early works to 1800. Repentance -- Protestantism. Title Subject: Bible. O.T. Isaiah XXI, 11-12 -- Criticism, interpretation, etc.
1688	Burnet, Gilbert, 1643-1715.	By G. Burnet, D.D.	A letter to a lord upon his happy conversion from Popery to the Protestant religion.	

Year	Author(s)	Responsibility	Title	Subject Descriptor
1698	Ludlow Redivivus.	by Ludlow Redivivus.	Æsop at Amsterdam, balancing the Æsops at Tunbridg, Bathe, Whitehal, & c /	Monarchy, British -- Anecdotes, facetiae, satire, etc. -- Early works to 1800. Great Britain -- Politics and government -- 1660-1714 -- Anecdotes, facetiae, satire, etc.
1687	Burnet, Gilbert, 1643-1715.		Reasons against the repealing the acts of Parliament concerning the Test : humbly offered to the consideration of the members of both Houses, at their next meeting.	Great Britain -- Politics and government -- 1660-1688.
1694	Milton, John,; 1608-1674.		Four tracts : published in the years 1649 and 1650.	Divine right of kings. Charles I, King of England, 1600-1649. Saumaise, Claude, 1588-1653. Defensio regia pro Carlo I. Great Britain -- History -- Civil War, 1642-1649 -- Pamphlets. Great Britain -- History -- Charles I, 1625-1649. Great Britain -- Constitutional law. Ireland -- History -- Rebellion of 1641. Title Subject: Eikon basilike.

Exhibit B

Works with False Imprints or Otherwise Attributed to Amsterdam (17th Century)

Year	Author(s)	Title	Notes	Publication	Subject Descriptor
1604	Bradshaw, William, 1571-1618.	A shorte treatise, of the crosse in baptisme : contracted into this syllogisme. No humane ordinance becomming an idoll, may lawfully be vsed in the seruice of God. But the signe of the crosse being a humane ordinance is become an idoll: ergo08 The signe of the crosse may not lawfully be vsed in the seruice of God.	Anonymous. By William Bradshaw./ The imprint is false; printed in London by William Jones' secret press (STC)./ Reproduction of the original in Cambridge University Library.	Amsterdam [i.e. London : Printed by I.H. i.e. William Jones' secret Press],	Cross, Sign of the -- Controversial literature -- Puritan authors -- Early works to 1800.
1628		A brieft description of the notorious life of Iohn Lambe : otherwise called Doctor Lambe. Together with his ignominious death.	Imprint is false; actual place of publication and suggested printer's name from STC./ Reproduction of the original in the British Library./ Reprint.	Printed in Amsterdam [i.e. London : G. Miller?],	Witchcraft -- England -- Early works to 1800.
1628, 1900s	Rawlidge, Richard.	A monster lately found out and discovered : or the scourging of tiplers, the ruine of Bacchus, and the bane of tapsters ... /	Reproduction of original in the Henry E. Huntington Library and Art Gallery./ STC 20766./ Reproduction: Photocopy./ Ann Arbor, Mich. :/ University Microfilms,/ [19--]/ 19 cm.	Amsterdam [i.e. London],	Drinking of alcoholic beverages -- England. Liquor laws -- England.
1631, 1979	Weever, John, 1576-1632.	Ancient funerall [sic] monuments, London, 1631 /		Amsterdam ; Norwood, N.J. : T.O. Terrarum : W.J. Johnson,	Monuments -- England. Epitaphs -- England. England -- Biography.
1645	Hopkins, John,; d. 1570. ; Sternhold, Thomas,; d. 1549.	The whole book of Psalmes /	The words 'According to the copie' are in very small type./ Includes index./ Includes music./ With book plate: Private Music Library, Theodore M. Finney--fly leaf./ Bound with: Church of England. The book of common prayer and administration of the sacrament. London :	[Amsterdam ?] : according to the copie, printed by Roger Daniel, printer to the Universitie of Cambridge,	Psalters. Title Subject: Bible. O.T. Psalms -- Paraphrases, English.

Year	Author(s)	Title	Notes	Publication	Subject Descriptor
			printed by Robert Barker... assigns of John Bill, 1641. Bible. English. Authorized. 1645. The Holy Bible, containing the Old Testament and the New. Amsterdam? : Printed by Roger Daniel, printer to the Universitie of Cambridge, 1645.		
1642	Birchley, William, 1613-1669. ; Burton, John,; 1696-1771.	A zealous sermon, preached at Amsterdam, by a Jew, whose name is Not-rub, it being a Hebrew word, you must read his name backward ...	A satire on John Burton and his companions./ Birchley also used pseud. John Austin.	Amsterdam [London]	
1650	Scot, Philip.	A treatise of the schism of England. : Wherein particularly Mr. Hales and Mr. Hobbs are modestly accosted. /	Wing and BLC give London as actual place of publication./ Signatures: A6(-A1,2)B-M12N6(-N6)./ Initials./ Errata.: On p. [1] at end.	Amsterdam. [i.e. London : s.n.],	Church and state -- England. Schism.Hales, John, 1584-1656. Tract concerning schisme and schismatiques. Hobbes, Thomas, 1588-1679.Great Britain -- History -- Civil War, 1642-1649.
1667	Muggleton, Lodowick, 1609-1698.	The neck of the Quakers broken: or, cut in sunder by the two-edged sword of the spirit which is put into my mouth. First, in a letter to Edward Bourne a Quaker. Secondly, in answer to a letter to [i.e. by] Samuel Hooton and W.S. Thirdly, in a letter to Richard Farnsworth, Quaker. Fourthly, in an answer to a printed pamphlet of the said Richard Farnsworth, entituled, Truth ascended ...	Includes the text of the letters by Hooton and W.S. and by Farnsworth./ Bound in brown marbled boards.	Amsterdam [i.e. London?] Are to be had in Great Trinity-Lane,	Bourne, Edward, d. 1708. Hooton, Samuel. R. F. (Richard Farnsworth), d. 1666. R. F. (Richard Farnsworth), d. 1666. Truth ascended.
1678	Blount, Charles, 1654-1693.	Anima mundi: or, An historical narration of the opinions of the ancients concerning mans soul after this life: according to unenlightned nature ...		Amsterdam, anno mundi [i.e. London?	Soul. Immortality.

Year	Author(s)	Title	Notes	Publication	Subject Descriptor
1698	Milton, John, 1608-1674.	A complete collection of the historical, political, and miscellaneous works of John Milton, both English and Latin, with some papers never before publish'd. To which is prefix'd the life of the author, containing, besides the history of his works, several extraordinary characters of men and books, sects parties, and opinions.	Half-title: Historical and political works. Fictitious imprint: printed in London. Cf. BM. Imprint date varies: special title-pages to certain parts dated 1694./ The life of John Milton in a separately paged section in front of t.-p. to vol. 1 is by John Tolland.	Amsterdam,	