"He Creditted More the Printed Booke": Common Lawyers' Receptivity to Print, c.1550–1640

IAN WILLIAMS

The printing press was recognized by early modern commentators, just as it has been by historians, as an important invention that had profound effects on the arts and sciences.[1] Legal historians have not missed the potentially transformative effects of printing—not only might lawyers found heterodox arguments upon the precise words of printed texts, rather than relying upon the "common learning," but the absence of texts from the "common learning" in the printed canon meant legal historians themselves labored for many years under a misapprehension as to the nature of medieval

1. For early modern comments on the effects of the printing press, see E. L. Eisenstein, *The Printing Press as an Agent of Change* (Cambridge: Cambridge University Press, 1979), 20–21. A. D. S. Johns has suggested that this view of the press was not universally accepted in early modern Europe. For a summary of his views, see A. D. S. Johns, "How to Acknowledge a Revolution," *American Historical Review* 107 (2002): 121–22, http://www.historycooperative.org/journals/ahr/107.1/ah0102000106.html (accessed February 26, 2009).

Ian Williams is a Lecturer in the Faculty of Laws, University College London <i.s.williams@ucl.ac.uk>. He is grateful to Richard J. Ross, David Seipp, and Emily Kadens for their comments on an earlier draft of this article and to all the participants in the Cambridge History of the Book Seminar where the article was first presented. The perspicacious comments of the anonymous referees for the *Law and History Review* were extremely helpful and much appreciated. This research was funded by a Francis Bacon Foundation Fellowship at the Henry E. Huntington Library, and part of the research was undertaken during a doctorate funded by the British Arts and Humanities Research Council. Unless otherwise noted, translations are by the author. Spelling has been modernized (except in the title).

Law and History Review February 2010, Vol. 28, No. 1

doi:10.1017/S0738248009990034

English law.[2] However, little work has been undertaken on the precise impact of printing upon the English legal profession, particularly in the shorter term. Common lawyers, particularly in the sixteenth century, were a group who increasingly relied upon, and cited, textual material as the foundation of their arguments on all points of law. Over the course of the sixteenth century, lawyers came increasingly to rely upon prior cases, and particularly prior judged cases, as the basis of legal arguments and of the correctness of those arguments.[3] Advocates and judges were all faced with a large, and still growing, body of manuscript material, and a sizeable collection of printed works. Attitudes towards printed material is an important topic for historians of early modern law for suggesting which sources of legal ideas were given more prominence in the period.

This article is concerned with common-law attitudes towards printed and manuscript texts used in legal argument until 1640, contributing to a wide historical debate on the impact of printing, although the article concentrates on the decades around 1600 as the period when discussion is most common.[4] The majority of the ideas enunciated by common lawyers in the period do not seem to have had any roots in a specifically legal tradition, so the common-law attitudes may reflect views held more widely in society, while the role of the Inns of Court in providing some education to many young men who did not pursue legal careers suggests that any common-law ideas could have been formative of wider public attitudes.[5]

2. D. J. Ibbetson, "Legal Printing and Legal Doctrine," *Irish Jurist (N.S.)* 35 (2000): 346; and D. J. Ibbetson, "Case-Law and Doctrine: A Historical Perspective on the English Common Law," in *Richterrecht und Rechtsfortbildung in der Europäischen Rechtsgemeinschaft*, ed. R. Schulze and U. Seif (Tübingen: Mohr Siebeck, 2003), 32.

3. See I. S. Williams, "Legal Reasoning and Legal Culture, c.1528–c.1642" (PhD thesis, University of Cambridge, 2008), 69–78.

4. The literature is vast. General discussions of the topic include: Eisenstein, *Printing Press*; E. L. Eisenstein, "An Unacknowledged Revolution Revisited," *American Historical Review* 107 (2002): 87–105, http://www.historycooperative.org/journals/ahr/107.1/ah0102000087.html (accessed February 26, 2009); L. Febvre and H.-J. Martin, *The Coming of the Book* (London: NLB, 1976); A. D. S. Johns, *The Nature of the Book: Print and Knowledge in the Making* (Chicago: University of Chicago Press, 1998); Johns, "How to Acknowledge a Revolution"; H. Love, *Scribal Publication in Seventeenth-Century England* (Oxford: Clarendon, 1993); D. McKitterick, *Print, Manuscript and the Search for Order, 1450–1830* (Cambridge: Cambridge University Press, 2003). Ross has produced a study of the attitude of common lawyers towards the printing of legal materials and the concomitant risk that nonspecialists would obtain access to them (R. J. Ross, "The Commoning of the Common Law: The Renaissance Debate over Printing English Law, 1520–1640," *University of Pennsylvania Law Review* 146 [1998]: 323–461). That is a very different issue to that under discussion here, which is concerned only about the role of print within the common law and between common lawyers.

5. A. Cromartie has recently discussed the importance of legal ideas for an understanding of political debate before 1642 (A. Cromartie, *The Constitutionalist Revolution* (Cambridge:

A number of the justifications provided for relying upon printed material have close links with ideas of proof.[6] B. J. Shapiro has made much of the formative attitude of the common law in developing the concepts of proof in early modern England, and it may be that the common law also shaped attitudes towards print.[7] However, the concepts of proof in the common law also have very close links with early modern rhetoric, and R. J. Serjeantson has suggested rhetoric as another vehicle for the development of concepts of proof.[8] Given the thorough education in rhetoric of many Englishmen in the second half of the sixteenth century, this is a strong argument. If the importance of print was related to concepts of proof from rhetoric, then common lawyers' attitudes may be reflective of more widely held views.

After a brief historical introduction, I will present the evidence suggesting a growing preference for the use of printed material in argument and then consider possible reasons for that. Although individual common lawyers made a number of arguments concerning the merits of print, there was no clear consensus as to the principled basis for the ever stronger reliance upon it. In fact, many of the arguments used to enhance the "credit" of printed texts were also applied to manuscripts.

Historical Background

In the fifteenth century, lawyers did not learn what they described as "their law" from texts. Aside from a few treatises produced in preceding centuries, the main common-law texts were the year books—reports of discussions, typically in the Court of Common Pleas, by judges and senior practitioners on often quite abstruse questions. As one legal historian has observed, "[o]nly blind faith could persuade anyone who has tried to

Cambridge University Press, 2006), and A. Zurcher has examined the use of legal language in the works of Spenser to suggest new, more historically accurate, interpretations of those texts (A. Zurcher, *Spenser's Legal Language: Law and Poetry in Early Modern England* (Cambridge: D. S. Brewer, 2007).

6. See, especially, notes 84–102 and text, below.

7. For example, in B. J. Shapiro, *A Culture of Fact, England, 1550–1720* (Ithaca, N.Y.: Cornell University Press, 2000).

8. R. J. Serjeantson, *Testimony, Authority and Proof in Seventeenth-Century England* (PhD thesis, University of Cambridge, 1997). Shapiro acknowledges the overlap between ideas of proof in the common law and the rhetorical tradition in B. J. Shapiro, "Classical Rhetoric and the English Law of Evidence," in *Rhetoric and Law in Early Modern Europe*, ed. V. Kahn and L. Hutson (New Haven, Conn.: Yale University Press, 2001).

read the year books that the medieval common law was somehow derived from their contents."[9] The year books were not the principal means of learning the medieval law, however. The material in the year books was read by men who had undergone training at the Inns of Court and who had been initiated into the mysteries of the legal profession. Of central importance to lawyers was what was called "common learning" or "our learning"—indeed, the common law itself was sometimes known as "our law."[10] This consisted of assumptions and ideas about the law held in common by most lawyers. Much of this common learning was acquired through the oral traditions of the Inns of Court, whether by participation in the formal learning exercises or simply through a process of socialization in the course of communal activities. Observation of practice also contributed to lawyers' sense of their law. After their thorough immersion in the common learning, lawyers came to understand the assumptions behind the year books, rendering the texts more readily comprehensible. The common learning tradition declined for various reasons in the later sixteenth century.[11]

In medieval law, legal argument in court was premised upon the common assumptions and ideas that came from the Inns.[12] Arguments in court could make reference to legal works, but a vague reference to "our

9. J. H. Baker, "Why the History of English Law Has Not Been Finished," *Cambridge Law Journal* 59 (2000): 79, http://journals.cambridge.org/action/displayIssue?jid=CLJ&volumeId=59&issueId=01&iid=1442 (accessed February 26, 2009).

10. The rediscovery of the common learning has been almost entirely the work of Baker, with some early work by Thorne. See, for example, J. H. Baker, *The Oxford History of the Laws of England. Vol. VI, 1483–1558* (Oxford: Oxford University Press, 2003): 467–72.

11. On the decline in education at the Inns of Court, and the change in the nature of the readings see, for example, W. R. Prest, *The Inns of Court under Elizabeth and the Early Stuarts 1590–1640* (London: Longmans, 1972), 119–21; J. H. Baker, ed., *Readers and Readings in the Inns of Court and Chancery*, *Publications of the Selden Society Supplementary Series* 13 (2000): 236–37; and D. J. Ibbetson, "Common Law and *Ius Commune*," in *The Selden Society Lectures, 1952–2001* (Buffalo, N.Y.: W. S. Hein, 2003), 693–94. Some writers, such as Mirow, suggest that the education at the Inns of Court was still of high quality—the readings on recent statutes provided information on current law at a sophisticated level (M. C. Mirow, "The Ascent of the Readings: Some Evidence from Readings on Wills," in *Learning the Law: Teaching and the Transmission of Law in England, 1150–1900*, ed J. A. Bush and A. Wijffels (London: Hambledon, 1999)). This may be true, but by moving away from the fifteenth-century canon of readings, and towards a freer choice, the system of truly "common" learning declined. Although the Inns may have still served a useful educational function, the education was no longer directed to providing a core knowledge and understanding among all students. On the core readings, see S. E. Thorne's introduction to *Readings and Moots at the Inns of Court in the Fifteenth Century*, ed. S. E. Thorne, *Publications of the Selden Society* 71 (1952): lxvii–lxviii.

12. See Ibbetson, "Case-Law and Doctrine," 32.

books" is all that a reader normally can find.[13] This tradition of argument continued until the middle of the sixteenth century, with the reports from the reign of Henry VIII showing few references to law books.[14] As lawyers came to focus more on individual cases for their expositions of the law there is a corresponding increase in the references to precise points based around texts.[15]

Legal printing began early. Aside from statutes, Littleton's *New Tenures*, an elementary student primer, was first printed in 1482. The book clearly enjoyed a high reputation by the middle of the sixteenth century, with one judge describing it as "the true and most sure register of the foundations and principles of our law."[16] Whatever its value as a basic work, there is no evidence of it being cited in argument between lawyers until around the middle of the sixteenth century. Most early legal printing was of works that already circulated in manuscript—the year books and registers of writs. However, printing did lead to some quite early innovations: a legal dictionary and the first abridgements.[17] These abridgements were material extracted from both printed and manuscript texts and arranged under headings, providing a relatively easy reference tool for lawyers. Nevertheless, there is little evidence of legal argument in the first half of the sixteenth century becoming especially reliant on these texts.

The printing of common-law texts became subject to a royal patent, a Crown-granted monopoly, in 1553.[18] This patent remained in force until the collapse of authority in the 1640s, although it changed hands on a number of occasions, ultimately belonging to the Stationers' Company itself.

13. On this medieval tradition, see L. W. Abbott, *Law Reporting in England, 1485–1585* (London: Athlone, 1973), 19. References to the "books" continued but seem to have meant exclusively printed books. See notes 41–51 below and text.

14. One collection of moot cases from the 1520s (Bodleian Library Rawlinson Manuscript C.707 (unfoliated)) does contain marginal references to what are probably printed law books (see, e.g., cases 14, 33, 69 and 75). The volume is exceptional when compared to other volumes of moots from the same period (such as British Library Additional manuscript (hereafter BL.MS.Add.) 35939) and it is possible that the cases were a later addition to the text.

15. J. H. Baker, *An Introduction to English Legal History*, 4th edition (London: Butterworths, 2002), 198.

16. *Wimbish v. Tailbois* 1 Plowden 58-58^{v} (1550).

17. The dictionary is J. Rastell, *Exposiciones terminorum legum anglorum* (London: John Rastell, 1523). Abridgements were produced by Statham (N. Statham, *Abridgment des libres annales* [Rouen: Guillaume le Talleur for Richard Pynson, 1490]) and, more successfully, by Fitzherbert (A. Fitzherbert, *La graunde abridgement* [London: John Rastell and Wynkyn de Worde, 1516]).

18. On the grant of the patent see J. H. Baker "The Books of the Common Law," in *The Cambridge History of the Book in Britain: Volume III, 1400–1557*, ed. L. Hellinga and J. B. Trapp (Cambridge: Cambridge University Press, 1999), 427–29.

Although there is no evidence of the monopoly having any particular effect on law printing, it is an important context that should be borne in mind. After the grant of the patent, legal printing was relatively conservative, tending to reprint older works rather than produce new texts.[19] Even books printed for the first time were often not novel. Aside from printing medieval works, some of the newer texts, such as Staunford's on the royal prerogative, were printed several years, or even decades, after their completion.[20] Nevertheless, lawyers did want information about more recent developments. M. C. Mirow's study of the readings (lectures in the Inns of Court) upon the Statute of Wills 1540 shows that readers provided exposition and analysis of recent cases, presumably reflecting audiences' demands or expectations.[21] We might characterize this conservatism as the responsibility of the printer—with a relatively safe monopoly and continuing demand for the older texts, why would a businessman go to the expense of seeking out and acquiring new works?

However, conservatism was not necessarily the responsibility solely of the printer. Richard Tottell printed Littleton's *Tenures* in 1557 in an edition "conferred with diverse true written copies, and purged of sundry cases, having in some places more than the author wrote, and less in other some."[22] The next printing, in 1567, instead proclaimed that the work contained "certain cases added by others of later time . . . they were lately removed from this book and so once more admitted at the request of the gentlemen students in the law of England."[23] The lawyers evidently wanted, and expected, their books to remain constant: Material that had been added after a book was written but was not the work of the author

19. Tottell, the first patentee, was not a lawyer. Some of the more innovatory of the early printed law books had been produced by the Rastells, who combined legal training with printing. Baker has observed that law printers reprinted the same printed works, rather than different manuscripts. In some instances, this led to texts that were unusual in the manuscript tradition becoming the standard printed edition (Baker, *Oxford History of the Laws of England*, 494 and 507).

20. W. Staunford, *An Exposicion of the Kinges Prerogative* (London: Richard Tottell, 1567) is dated by D. E. Yale as having been written in 1548 (D. E. Yale, "'Of No Mean Authority': Some Later Uses of Bracton," in *On the Laws and Customs of England, Essays in Honor of Samuel E. Thorne*, ed. M. S. Arnold, T. A. Green, S. A. Scully, and S. D. White (Chapel Hill: University of North Carolina Press, 1981), 383n14.

21. Mirow, "Ascent of the Readings," 242–46.

22. T. Littleton, *Litletons Tenures* (London: Richard Tottell, 1557), title page. This proclamation is missing from some of the surviving copies. A copy in the British Library includes this information, but those available through Early English Books Online do not. See Bennett, *English Books and Readers, 1475–1557* (Cambridge: Cambridge University Press, 1952), 79–80, for the text.

23. T. Littleton, *Les tenures de Monsieur Littelton* (London: Richard Tottell, 1567), title page.

was to be included if it was part of the familiar printed edition. An attempt to change one of the standard printed legal texts had been decisively rejected. Consistency was prized more than humanistic textual purity.

Before considering the material any further, the outline here can be used as the basis of a very important caveat for my conclusions: In comparison to print in other contexts, that of common-law printed books was unusual. Common-law printing developed to serve the needs of a particular culture within early modern England within which manuscripts also circulated. These manuscripts were often more current, sometimes decades more current, than the output of the printing press. Although at least some common lawyers clearly did have knowledge of legal material from outside England, such material was rarely cited in court, and no instances have been discovered where the textual source of such knowledge was an issue.[24] As such, the market for common-law books was always subject to a relatively conservative monopoly printer, and all of the printed material discussed here emerged from that monopoly. Finally, a focus upon references to the status of print and manuscript made in court means that only a very few individuals were involved. The same names recur in the reported cases of the late sixteenth and early seventeenth century, even in the court of King's Bench, where advocacy rights were less restricted than in the court of Common Pleas. From the evidence consulted here, there is no way of determining if the views of these common lawyers were shared by other barristers, let alone the growing mass of attorneys.[25]

Common lawyers came to recognize the importance of printing for their work. Francis Bacon made much of the significance to the law of the printing of Edward Coke's *Reports*, which commenced in 1600. According to Bacon, "had it not been for Sir Edward Coke's *Reports* . . . yet the law by this time had been almost like a ship without ballast," clearly recognizing the importance of print as a stabilizing influence.[26] By contrast, Edward Coke himself was more circumspect. Coke did recognize the importance of ensuring material was available to lawyers, although his initial

24. On references to civilian material in argument in the period under discussion here, see Williams, *Legal Reasoning and Legal Culture*, 115–33.

25. On attorneys in early modern England, see C. W. Brooks, *The Pettyfoggers and Vipers of the Commonwealth* (Cambridge: Cambridge University Press, 1986). It seems probable that attorneys would have relied more upon printed texts than manuscripts: Attorneys were not typically members of the group(s) within which manuscripts circulated, although this would not have prevented them obtaining copies of the manuscripts produced by professional scribes.

26. F. Bacon, "Proposition Touching Amendment of Laws," in *The Works of Francis Bacon*, vol.13, ed. J. Spedding, R. L. Ellis, and D. D. Heath (London: Longmans, 1857–74), 65.

justification for printing was the same as an earlier justification he gave for distributing a manuscript text, that without written copies of cases, memory would be lost or flawed, with the unwelcome consequence that for "want of a true and certain report . . . the right reason and rule of the Judges [is] utterly mistaken."[27] Coke, however, also recognized that printed texts could lead to unusual developments, undermining the stability Bacon attributed to print. In his report of *Mary Portington's Case*, Coke noted that an (unwelcome and apparently unorthodox) argument had not been made until an earlier report of his had been printed.[28] As will become apparent, although print certainly could lead to changes in perspective, and may have supported unusual arguments, it was also valued by some lawyers for its relative certainty in a time of change, change often reflected in manuscript material before it was printed (if it ever was).[29]

The Emerging Preference for Print

The last year for which the year books were printed was 1535. Until the printing of Plowden's *Commentaries* in 1571, common lawyers had no printed literature addressing their contemporary law.[30] If the law had remained stable and unchanging, this would not have been a difficulty,

27. E. Coke, *Les Reports de Edward Coke* (London: Thomas Wight, 1601), sig.iii-iii^{v} and Coke's letter dedicatory to Lord Buckhurst accompanying a manuscript report of *Shelley's Case* (1581), Cambridge University Library Manuscript (hereafter CUL.MS.) Dd.13.24, f.51. The only difference between the earlier manuscript and the later printed text is that the manuscript has the word "case" instead of "Judges." Coke echoed his concern about the fallibility of human memory in the context of the proof of facts in legal disputes in *The Countess of Rutland v. The Earl of Rutland* 5 Co.Rep. 26^{v} (1604), where he made it clear that written evidence would generally be overcome by the "uncertain testimony of slippery memory." Shapiro considers there to have been a general preference for written records over witness testimony because of the perceived fallibility of human memory (Shapiro, *Culture of Fact*, 12), although the only evidence provided is from the Restoration.

28. *Mary Portington's Case* 10 Co.Rep. 37 (1613). Ibbetson has also raised the possibility of print enabling lawyers to rely upon text, rather than shared knowledge, thereby enabling heterodox ideas to develop (Ibbetson, "Legal Printing and Legal Doctrine," 346). Evidently this discussion relates to Eisenstein's rejection of an earlier view that print merely reproduced (and thereby reinforced) earlier ideas (Eisenstein, *Printing Press*, 35 and 71). As will be seen below, at least some lawyers quite clearly used print in just such a conservative manner.

29. For evidence that common-law books were unusually reliable for the period, see notes 75–80 below and text.

30. Bennett suggests that competition between the early law printers led to updating of works to reflect new developments (Bennett, *English Books and Readers*, 77). However, the discussion only considers statutory material, which was subject to a different patent and was updated throughout the sixteenth century.

but the law was not static. Even Plowden's work could not remedy this deficiency as Plowden provided reports of a small number of cases in great detail, with those cases not addressing many of the changes underway. The posthumous reports of James Dyer, printed in 1585, were a further supplement, but still left many questions unaddressed or unresolved. To take an example, the common law of defamation emerged through the sixteenth century.[31] There are no defamation cases reported in Plowden and only eight in Dyer.[32] Common lawyers in defamation litigation therefore frequently made use of unprinted cases, some of which seem to have been widely circulated and known by many lawyers.[33] As such, "substantial collections of manuscript law reports were still part of the ordinary working law library in the middle of the seventeenth century."[34]

After 1550 we begin to see more references to textual material, whether print or manuscript, although it is only in the last decades of the sixteenth century that referencing becomes common practice. The fullest reports of legal discussion from 1550 to 1570 are those of Edward Plowden, subsequently printed as the *Commentaries* (1571). The reports are very full and contain a number of references to texts. The first 154 folio sides of legal argument in the volume cover the first years of the 1550s and contain 151 references to printed cases and 171 references to unattributed cases (which may have been hypothetical, from the common learning, taken from memory or manuscript, or simply unreferenced). The proportions are similar for the second volume of Plowden's *Commentaries*, covering cases in the first half of the 1570s. D. J. Ibbetson's survey of all the reports of Michaelmas term in 1595 counts 463 references to printed reports, 80 clear manuscript references, and an undisclosed number of references to cases that cannot be attributed to either print or manuscript.[35] A slightly

31. On the development of the tort of defamation, see R. H. Helmholz's introduction to *Select Cases on Defamation to 1600*, ed. R. H. Helmholz, *Publications of the Selden Society* 101 (1985): xi–cxi.

32. See J. Dyer, *Les Reports des Divers Select Matters & Resolutions* (London: W. Rawlins, S. Roycroft, and M. Flesher, 1688), "La Table al Reportes del le Seigneur Dyer," sub. *Action sur le Case*. These cases total 109 lines of text, equivalent to around two and a half folio sides in a volume of 377 folios!

33. For example, *Sir William Waldegrave v. Agas* Cro.Eliz. 192 (1590), where Thomas Egerton relied upon *Broughton v. Bishop of Coventry and Lichfield* (1584), a case that survives in a number of manuscripts (see D. J. Ibbetson, *A Historical Introduction to the Law of Obligations* [Oxford: Oxford University Press, 1999], 119n140).

34. J. H. Baker, "English Law Books and Legal Publishing," in *The Cambridge History of the Book in Britain: Volume IV, 1557–1695*, ed. J. Barnard and D. F. McKenzie (Cambridge: Cambridge University Press, 2002), 475.

35. D. J. Ibbetson, "Report and Record in Early-Modern Common Law," in *Case Law in the Making, the Techniques and Methods of Judicial Records and Law Reports*, vol. 1, ed.

smaller sample compared to the survey of Plowden, of reported cases from 1630 to 1635, contains 390 references to printed cases, but only 108 to unprinted cases.[36] There is both an increase in the rate of citation in the period 1550–1635 and a marked shift towards references to identifiable printed texts. The movement in favor of printed material is evident by the mid-1590s.

These statistics suggesting an increased use of printed texts in relation to manuscript are indicative, but they may simply reflect the convenience of making use of printed material over manuscripts, or even memory. However, there is some other evidence suggesting that printed material was actively preferred by common lawyers. This evidence is harder to discern, as one needs to find situations in which print and manuscript were used as alternatives, rather than the much more typical complementary references. Most of this evidence emerges from the fact of considerable, and dramatic, legal change over the course of the sixteenth century.

Such evidence goes much further than simply showing common lawyers citing more printed material than unprinted. It indicates that some lawyers consciously sought to rely upon printed material, seemingly due to its printed status. This development is not seen until the end of the sixteenth century. Ibbetson has observed that although common lawyers clearly did continue to use manuscripts, in some contexts quite the contrary is seen. Using two cases from the last decade of the sixteenth century as his examples, he observes that the litigation concerned questions that simply did not exist in 1535. However, the lawyers in those cases sought to make use of the available printed matter as the basis of their arguments, despite the fact that there was a large body of considerably more pertinent manuscript material in existence.[37] Given that at least some manuscripts

---

A. Wijffels (Berlin: Duncker & Humblot, 1997), 64. Ibbetson's statistics do not include any indication of the size of the sample, making direct comparisons difficult.

36. The material consulted was taken from CUL.MS.Gg.ii.19 and covered 109 folio sides. In addition to the reduced length in comparison to the sample from Plowden's *Commentaries*, the hand in the manuscript is much larger than the printed text in Plowden. The slightly lower ratio of printed material to unprinted in the 1630s is a function of the research methodology: Ibbetson counted references to printed cases and identifiable manuscript references (such as the reports of Bendlowes), but provides no statistics on casuistic material that cannot be attributed to either print or manuscript sources (for example, references to a lawyer's memory). My survey distinguished only between cases associated with a printed text and those that cannot be so attributed, thereby grouping the references to identifiable manuscript sources with material of unknown or nontextual provenance.

37. D. J. Ibbetson, "Law Reporting in the 1590s," in *Law Reporting in Britain, Proceedings of the Eleventh British Legal History Conference*, ed. C. Stebbings (London: Hambledon, 1995), 84–85.

certainly did circulate among lawyers,[38] the fact that lawyers chose to rely upon less relevant printed material suggests a preference for the printed text in legal argument. This could be attributed simply to the convenience of using printed sources, but it may be one piece of evidence suggesting that lawyers considered printed material to be preferable to manuscript.

Some lawyers pushed this approach further. Rather than simply using print instead of manuscript, they expressed views that it was better to use printed material, sometimes going so far as to challenge the use of manuscript material. The simplest example is from *Sir Edward Dimmocke's Case* (1609). There was a conflict between the printed report of a case in Dyer's reports and a manuscript version. Walter simply observed "that he credited more the printed book."[39] Walter makes it clear that he does prefer printed material over manuscript. His use of the language of "credit" is important and will be addressed below.[40]

A little earlier, in the defamation case of *Holwood v. Hopkins* in 1600, Thomas Walmesley responded to Chief Justice Anderson's desire to view the record of the court of King's Bench by remarking that "our books are good precedents to guide us."[41] The records of the courts are unwieldy documents, in both physical and intellectual senses, and all were handwritten.[42] Within legal argument, however, such admittedly difficult material seems to have had much greater force than mere references to reports of prior cases, although it was much less frequently used.[43] Lawyers would use the record, referred to often as "precedents," to confirm the accuracy of reports of cases, whether from print, manuscript, or personal memory. At times, reference was made to the record, and such references would

38. Dodderidge provides some evidence of manuscript circulation. He references a *Corbett's Case* (1595) in his commonplace, British Library Hargrave Manuscript (hereafter BL.MS.Harg.) 407, f.53, noting that "the report of this case was given to me by Master Coke Attorney General of the Queen out of the book of the reports."

39. *Sir Edward Dimmocke's Case* (1609) BL.MS.Harg. 33, f.22^{v}.

40. See note 70 below.

41. *Holwood v. Hopkins* (1600) in Helmholz, *Select Cases on Defamation*, 91.

42. The difficulties in understanding the record were recognized by Edward Coke, who described it as of "less perspicuity" than law reports (E. Coke, *Le Tierce Part des Reports de Edward Coke* (London: Company of Stationers, 1610), sig.Cii^{v}). On the continuing difficulties in using the record see Baker, "History of English Law," 70–73 (the record contains "thousands of miles of abbreviated Latin … their enormous bulk is counterbalanced by severe verbal economy," which "studiously bypassed the debates, the compromises and the intellectual processes which governed the moves or the decisions," observing that "[o]ur plea roll scholar needs a strong arm, a flexible neck and back, an immunity to dust and soot, working knowledge of Victorian knots, an ability to speed-read abbreviated Latin (if possible, upside-down), and above all a due sense that that not every word of a record is true or factually meaningful.").

43. See Williams, *English Legal Reasoning*, 82–86.

cause a judge to change his mind as to the appropriate legal outcome in a case, an early example of binding precedent.[44] The manuscript record was consequently of considerable importance in legal argument. Nevertheless, Walmesley sought to challenge its status. Crucially, Walmesley's argument makes it clear that the "books" to which he referred were the printed year books, as the only cases he brings into the discussion are from the printed canon. This suggests an important change in legal language. In the year books, references to the "books" are evidently references to manuscript texts (and perhaps only to a lawyer's imprecise recollection of those manuscripts), but Walmesley instead focuses exclusively on print. Walmesley's language is the first example we see of two important trends. The first is to use the language of "our books" in a context that shows that the "books" concerned were printed books only.[45] The second is the use of print as a device for conservatism in the substantive law.

Walmesley seems to have decided his approach, though a failure, was worthwhile since he tried something similar in 1602. In the important contract litigation known as *Slade's Case*, when Francis Bacon made his argument and used printed cases in support of it, Chief Justice Popham asserted "[t]hat is not law," to which Walmesley retorted, "[b]ut still the books are thus."[46] Walmesley sought to use the cases in the printed books as the sole determinant of what was, or was not, the law. The approach did not work in either of these cases: In *Slade's Case* Popham simply rejected Walmesley's approach with the curt response that "the books are against the law."[47] This rejection of cases was possible throughout the period discussed here.[48] Both of these attempts to regulate legal argument so as to be limited to printed material were clearly conservative in their purpose—Walmesley was, in both cases, seeking to prevent changes being introduced into the law as understood by the Court of Common Pleas, in both instances an understanding different from that in the King's Bench.

The changed language of the "book" was not exclusive to Walmesley, although he provides the first evidence of it. After Walmesley, the language

44. See I. Williams, "Early Modern Judges and the Practice of Precedent" in *Judges and Judging in the History of the Common and Civil Law, Proceedings of the 18th British Legal History Conference*, ed. J. Getzler and P. Brand (forthcoming).

45. Walmesley's remark does not just utilize the medieval language of the "books" to refer to print, it is also the first occasion where the medieval language of "precedent" (which was otherwise confined to references to the record) was applied to law reports (for more detail see Williams, "Early Modern Judges").

46. J. H. Baker, "New Light on *Slade's Case*," *Cambridge Law Journal* 29 (1971): 65.

47. Ibid.

48. For an example of a manuscript report being similarly rejected, see *Pillesworth v. Feake* (1602) BL.MS.Add. 25203, f.480, where Anderson CJ claimed that a King's Bench case was not law.

of the "books" is used in precise references to printed texts, not manuscripts. The change is perhaps a consequence of the fact that lawyers referred to "our books," the common property of the profession. By 1600 or so, only printed books were truly common to the whole profession. We can see the change to the idea of the "books" in the language of James I in 1609 and in the reign of Charles I.[49] In *James v. Hayward* in 1630, Justice Croke argued that unless a point was included in the "books," it was invalid.[50] From the material cited in the argument, the "books" seem only to be printed. If this is correct, we have a suggestion that the printed corpus of common-law literature was becoming an exclusive canon. The approach put forward was rejected by the other judges in their arguments, but Croke at least thought that it was plausible. If this change in legal language was widespread in the profession, it means that the directions given to newly appointed judges in the early 1630s by Lord Keeper Thomas Coventry are another example of this exclusive role for print. Coventry made it clear that the judges were to judge according to the "book cases," rather than any "novelties" put forward by lawyers.[51]

A final example of a special role for print comes from one of the most controversial legal issues of the late sixteenth and early seventeenth centuries. In that period, the common-law courts, in particular the Common Pleas, were in jurisdictional dispute with various other courts in England, such as the ecclesiastical courts and the Court of Admiralty. The common-law courts could, and did, issue writs of prohibition to regulate proceedings in these other courts. Whether, and in what circumstances, the common-law courts were entitled to issue such writs became a conflict into which, ultimately, James I himself was compelled to intervene.[52]

49. For James, see note 58 below.

50. *James v. Hayward* CUL.MS. Gg.ii.19, ff.152^{v} and 153 (1630). The case concerned whether a gate across the highway was a nuisance or not, and therefore whether the defendant could abate the nuisance by dismantling the gate or would be liable in trespass for so doing. Croke was of the view that the gate was not a nuisance. He is reported as saying that "I am confident that there is no book in law that an open gate is a nuisance" (f.152^{v}) and that a passerby could open the gate, but not dismantle it as "it does not appear by the said book or any other" that this could be done (f.153).

51. *The Diary of Sir Richard Hutton, 1614–1639*, ed. W. R. Prest, *Publications of the Selden Society Supplementary Series* 9 (1991): 89 and 93. Thomas Coventry had been a prolific manuscript reporter around 1600. There are many surviving copies of his reports, which are some of the fullest for the period; see D. J. Ibbetson, "Coventry's Reports," *Journal of Legal History* 16 (1995): 281–303, http://www.informaworld.com/smpp/content-content=a780937374db=allorder=page (accessed February 26, 2009).

52. C. M. Gray has produced a lengthy study on the writ of prohibition in early modern England, C. M. Gray, *The Writ of Prohibition: Jurisdiction in Early Modern English Law*

Much of the dispute concerned the fact that the common-law courts had begun to grant prohibitions in situations where, apparently, no writs had been issued before. Evidently the printed common-law material, with its focus on the law before 1535, therefore contained no such writs. By contrast, once the common-law courts had issued a writ, it became part of the record of the court. The common-law courts defended their claims by references to their own records, material that would usually be determinative. Papers in the Ellesmere collection at the Huntington Library cast light on this dispute. Most of the argument was couched in simple terms—disputes over whether there were earlier precedents favoring one side or another. Hobart, the attorney general, produced a list of precedents on this point, as did Julius Caesar on behalf of the Court of Requests.[53]

However, another argument, more pertinent for present purposes, was put forward on a number of occasions. The anonymous "Observations" on the topic were express that they would be limited to the law as "may be demonstrated and proved by book cases *in print*" [emphasis added].[54] As did Walmesley and Croke, it was asserted that printed material was the only appropriate source for legal argument. This approach was copied by other participants in the debate. A letter from James Montagu, the bishop of Bath and Wells, to the lord chancellor, Thomas Egerton, informed Egerton that the king desired him to ask the judges of the King's Bench as to whether the position taken by the Common Pleas was "warranted by diverse of your *printed* law books" [emphasis added].[55] The judges of the King's Bench complied with this limitation in their reply.[56] A 1609 letter from Thomas Walmesley on this issue responded to certain specific questions that had arisen in the dispute, and Walmesley, as before, limited his reply to what could be warranted by "book cases."[57] In fact, the approach seems to have been accepted by the king himself. During the 1609 debates, James made it very clear that he preferred the printed cases cited by Egerton to the "precedents" put in argument by Coke.[58] James evidently found this distinction useful

(New York: Oceana, 1994), http://www.lib.uchicago.edu/e/law/gray/ (accessed February 26, 2009).

53. For Hobart, see Henry E. Huntington Library Ellesmere Manuscript (hereafter HEH. MS.El.) 2007 and for Julius Caesar HEH MS.El. 2924.

54. HEH.MS.El. 2011, f.3^{v}. I hope to address the role of these arguments in the extrajudicial debates over prohibitions in a forthcoming article.

55. HEH.MS.El. 2008, f.2.

56. HEH.MS.El. 2008, slip between ff.1 and 2.

57. HEH.MS.El. 2010.

58. British Library Lansdowne Manuscript 160, f.414 ("my lord Chancellor's books are to be preferred before the lord Cokes precedents").

since he relied upon it again in 1616. In the process of suspending Edward Coke from his post as chief justice of the King's Bench, an action stimulated, at least in part, by the dispute over prohibitions and the contents of Coke's printed *Reports*, James I spoke in Star Chamber against judges making "new laws" or bringing in "new tricks." James required the judges to "follow the old precedents and Plowden"; significantly, James sought to restore orthodoxy through references to the old records (rather than the recent entries) and Plowden's printed reports, excluding Coke's printed reports (the content of which was one of the reasons for Coke's dismissal) and any manuscript law reports.[59] Once again we see a conscious reliance upon print as a means of restricting innovation, in this case in contrast to the use of manuscript reports or the manuscript record by the judges.[60]

The dispute over prohibitions brings out the issue most clearly. Most of the references to "the books" could simply be an expression of a preference for older legal ideas that happened to be contained in print. However, in the prohibitions dispute, the justification given for relying upon older law was not that old law is better law, but that the law found in printed texts is to be preferred, seemingly by virtue of the fact that the material is printed. This is a critical distinction, showing that at least some common lawyers were willing to distinguish between legal texts based solely upon the means of production. Since lawyers would not have advanced an argument favoring print unless they considered it potentially acceptable to other lawyers, we must consider the fact that perhaps the other references to the exclusive role of the (printed) books are further examples of this normative role for printing.

Evidently this evidence raises a serious challenge to E. L. Eisenstein's thesis that print led to the reading of a wider range of texts, a development with important consequences for intellectual history.[61] It is possible to

59. Prest, *Diary of Sir Richard Hutton*, 12.

60. Such distaste for the use (or abuse) of the manuscript record is also evident in Richard Hutton's obituary for William Noy where Hutton observed that Noy had introduced novelties "pretended to be grounded upon ancient records" (Prest, *Diary of Sir Richard Hutton*, 98). Unlike the other examples here, Hutton distrusted Noy's use of manuscripts to support royal policy, rather than (as in the case of prohibitions) to frustrate it.

61. Eisenstein, *Printing Press*, 71–80. Eisenstein suggests that even where printing merely reproduced old works, this could still lead to new ideas. The attempts by lawyers here to utilize the printing of old works as the basis for preventing the success of new ideas would indicate that the proposed effect of the press was not inevitable or necessarily universal. Febvre and Martin's argument that printing did not necessarily hasten the transmission of new knowledge, and instead could give "authority to seductive fallacies" is more pertinent, but still not directly relevant (Febvre and Martin, *Coming of the Book*, 278) as there is still no recognition that the fact of printed status was used as a justification for the "authority" of older ideas as seems to be the case in the common law.

dismiss this conservative use of print as a simple product of the relatively unique circumstances of the common law compared to other legal systems and intellectual fields. The common law experienced rapid and widely recognized change with which the printing press did not keep pace. There was certainly a degree of opportunism in these attempts to limit legal argument to printed texts—those propounding such a view were well aware that the printed material available to lawyers was limited and often too old to be of use in modern disputes. Bacon himself later admitted that without Edward Coke's printed *Reports*, the common law would have been in difficulty.[62] In such an environment, it would be easy to utilize the inertia of the press as an agent of "unchange."[63]

Justifications for the Role of Print

The limited nature of legal literature may explain why lawyers sought to restrict argument to the printed sources. However, it does not explain how such a change could be justified (either expressly or impliedly). The position was not uncontested. If it had been, the suggestions in 1609 that one should rely solely upon printed texts would have meant that Hobart's simultaneous work to support the ecclesiastical jurisdiction by using the records of the court would have been superfluous. Lawyers did seek consciously to manipulate the distinction between print and manuscript tests, but they were not assured of success. In fact, the claims that legal argument should rely solely upon printed texts were never successful. This is important, but it does not detract from the fact that the argument was made. Minority views have the potential to become orthodoxy,

62. Bacon, "Proposition Touching Amendment of Laws," 65.

63. The idea of law printers as agents of "unchange" (albeit in the eighteenth-century context) has been put forward by T. A. Baloch, "Law Booksellers and Printers as Agents of Unchange," *Cambridge Law Journal* 66 (2007): 389–421, http://journals.cambridge.org/action/displayIssue?jid=CLJ&volumeId=66&issueId=02&iid=1183592 (accessed February 26, 2009). Baloch's concern is with the conservatism of the legal printers and booksellers, particularly with regard to matters of arrangement and classification, with lawyers developing novel ideas beyond the printed material. The focus is therefore different from the argument presented here, which is instead concerned with the users of printed texts, rather than their manufacturers. The attitude towards print was certainly different for some lawyers in mainland Europe. In the early modern *ius commune*, texts from one territory could be used in another, leading to an (over)abundance of sources that caused some lawyers to suggest a preference for locally produced materials, even a ban on the importation of law books (See Ibbetson, "Common Law and *Ius Commune*," 690–91 and 698–99). In Europe, therefore, lawyers sought to restrict the use of printed materials due to the massive supply.

particularly with royal backing or approval, such as that shown by James towards a focus on print.[64] Furthermore, "lawyers are retained to present arguments which have a chance of success."[65] Although the assertions of an exclusive role appear to be tactical, even opportunistic, lawyers could only seize an opportunity that existed. The lawyers suggesting a special role for print were probably relying upon a more widespread attitude in the profession (and perhaps more generally) that printed material was to be preferred and sought to push the practical preference into a normative exclusivity. There are a number of possible justifications for both the preference for print and the assertions of its exclusivity.

The first possible reason for preferring printed texts over manuscript was that of reliability. This contrasts with Johns's approach, who argued that printed texts were recognized as unreliable,[66] an attitude supported by Francis Bacon's scheme to establish official law reporting in England. According to Bacon, misprintings "many times confound the students."[67] As with the manuscript tradition, printed texts had difficulties associated with their use and were certainly not invariably uniform or reliable. The best evidence comes from situations where a printed report was dismissed because the content was considered to be incorrect. We have already seen Chief Justice Anderson rejecting a printed text as wrong, which would suggest an idea that printed texts were certainly not recognized as automatically acceptable or accurate. This rejection of any special status was not unique to Anderson: Other judges also rejected cases found in print. Printed cases seem to have been no different than manuscript material or pure memory, all of which could be rejected on this basis.[68] The crucial concern is whether printed material could be rejected because of its printed status. Following Johns's analysis, this would be to attribute the inaccuracy to flaws in the printing process rather than to the author or reporter. Aside

64. The most notorious example of this in the sixteenth century is the changing attitude to uses in the 1520s. The common lawyers had seen uses as part of the common law, but a minority of lawyers (such as Thomas Audley) suggested an alternative position, which was ultimately accepted by the judges after direct royal intervention (see Baker, *Oxford History of the Laws of England*, 665–72). For James's approval of the focus on print in the prohibitions dispute, see above note 58 and text. Noy's subsequent use of manuscript material (see note 60 above) to provide legal justification for Crown policies perhaps explains why the preference for print was not pushed further—the Crown was able to work successfully within the existing norms of common law argument and so did not need to change them.

65. Baker, *Introduction to English Legal History*, 334.

66. Johns, *Nature of the Book*, 30–31.

67. Bacon, "Proposition Touching Amendment of Laws," 69.

68. *Browne v. Meredith* (1600) BL.MS.Add. 25203, f.283^{v} is an example of a case from memory being rejected. See above, nn.47–48 and text, for other cases being rejected.

from Bacon's remark, only one case has been found where a judge, instead of simply announcing that the material was incorrect as a statement of the law, expressly criticized the text because of its printed status. In *Dumpor's Case* (1603), Chief Justice Popham made it clear that a case printed in Dyer was incorrect, "and for this the chief justice said that he thought the case was falsely imprinted, for he held clearly that this was not the law."[69]

Popham's rejection of Dyer's reports may have simply been Popham taking advantage of the recognized unreliability of the printing process to reject otherwise persuasive material in a more politic manner rather than an assertion that the substance of the material was wrong. However, a few years later, *Sir Edward Dimmocke's Case* (1609) featured a conflict between the printed and manuscript versions of a case in Dyer's reports. Walter resolved the conflict by stating "that he credited more the printed book."[70] Why was Popham able to reject a case because of the unreliability of print, but the same printed work was later considered to have more "credit" than a manuscript?

There is an easy answer: Popham and Walter were not discussing the same thing. Popham was concerned with the individual report that he compared to an external standard (his personal legal knowledge) and found the printed report inconsistent, so probably inaccurate. Walter was instead comparing two texts and argued in the more general terms that the printed book was to be preferred to a manuscript. This resolves the seeming conflict, but it merely clarifies the real question: Why was Walter able to simply assert that a printed book had more "credit" than a manuscript? This becomes more problematic if we accept Eisenstein's point that "the idea that simply printing a text could make it more accurate or credible strikes me as absurd."[71]

Walter does not give any justification for his preference for a printed text, but one is implicit in his language of "credit." The language of "credit" is found in early modern sources when assessing the reliability of, and weight to be given to, the testimony of witnesses.[72] Johns shows that the language of credit was also used as a means of overcoming the apparent indeterminacy of the printed text.[73] The function of credit was to answer a seemingly simple question: "Could a printed book be trusted

69. *Dumpor's Case* 4 Co.Rep. 120 (1603).

70. *Sir Edward Dimmocke's Case* (1609) BL.MS.Harg. 33, f.22^{v}.

71. Eisenstein, "Unacknowledged Revolution Revisited," 92.

72. See a proclamation for jurors drafted by Francis Bacon, where it is stated that "the discerning and credit of testimony" is left "wholly to the juries' consciences and understanding" (cited in W. S. Holdsworth, *A History of English Law*, vol.1 (London: Methuen, 1938): 333n6.

73. Johns, *Nature of the Book*, 36.

to be what it claimed?"[74] In the legal context, could a printed law report be trusted to be an accurate statement of what had occurred in court from which lawyers could ascertain the law? Johns has made it clear that early modern readers developed various techniques by which they attributed "credit" to printed texts. I will be discussing the various means by which readers may have attributed credit to printed texts. Some come from the efforts of the printers, but others reflect broader ideas of credit current in legal discourse that could have particular application to printed texts.

On a rather simplistic measure, printed common-law books do not look especially unreliable, which would aid their "credit," at least in comparison to manuscripts. Although it is very difficult to assess reliability without considerable research, a proxy measure has been used here. Once the patent system was established, the same books were reprinted and their pagination or foliation remained more or less constant. There are occasional variations of one or two words at the start and ends of pages, but that is all. Even when Jane Yetsweirt reprinted year books in a different format, she inserted marks indicating the earlier foliation.[75] Although the law printer also made much of the improvements and enlargements made between printings, these were invariably limited to marginalia, typically expanded references and cross-references, rather than any changes to the texts themselves.[76] Lawyers may, therefore, have become accustomed to legal texts that were not prone to change. The fact of relative stability in the books may have led to an impression of reliability, certainly compared to the

74. Ibid., 30. The language of credit had a wider meaning of reliability in relation to all witnesses, whether textual or not.

75. On Yetsweirt in this regard, see Twemlow, "Note on a Manuscript of Year-Books, Edward II and III, in the Bibliothèque Nationale," *English Historical Review* 13 (1898): 80n2, http://ehr.oxfordjournals.org/content/volXIII/issueXLIX/index.dtl (accessed February 26 2009). Yetsweirt did the same for her printing of the year books of Edward V through Henry VIII in 1597 (*Anni, Regum, Edwardi Quinti, Richardi Tertii, Henrici Septimi, et Henrici Octaui* [London: Jane Yetsweirt, 1597]). See Ibbetson, "Legal Printing and Legal Doctrine," 345–46, for some possible ramifications of standardization in the books. Johns observes that credit could not be attributed to a book on the basis of appearance alone, but his point is concerned with the variants found in even "the most lavishly produced volumes" (Johns, "How to Acknowledge a Revolution," 120–21) rather than elements of the appearance of printed volumes which might suggest reliability.

76. An immediate example of the lack of change in the year books is found in Twemlow, "Note on a Manuscript of Year-Books," 80n2, where it is observed that Yetsweirt's claim to have improved the text is undermined by it being identical to a prior printing! The year book of Henry VII, printed by Tottell in 1555, 1559, and 1563 has identical foliation in all printings, but the 1599 printing of Plowden used the title page to state that the sole difference to the earlier printing was the expanded marginal notes.

acknowledged problems with many other printed works.[77] The less stable manuscript tradition would then generally appear less reliable in this regard, even if the substance of the text was no different. It is perhaps noteworthy that Thomas Walmesley, whose name appeared with some regularity when discussing attempts to limit legal argument to print for conservative purposes, was also a collector of legal manuscripts, who may consequently have been more aware of the difficulties inherent in their use.[78]

These efforts of the printers may have been complemented by the claims the printers made about their products. Many of the year books printed by Richard Tottell included claims on their title pages that the edition had been compiled in conjunction with manuscript copies, rather than merely earlier printings.[79] Although this was evidently done for commercial reasons, it may have had an impact upon readers in suggesting that there was no benefit from examining manuscripts because the work of comparison had already been completed.[80]

77. On the recognized problems with errors in printed texts around this period, see McKitterick, *Print, Manuscript*, 97–151. Readers of the first printed edition of *Bracton* would have been aware of just such difficulties because the printer drew them to their attention! To my knowledge it is the first common-law book to include a list of errata (H. de Bracton, *De Legibus & Consuetendibus Angliae* (London: Richard Tottell, 1569), sig. qiii^{v}-qiv).

78. Information supplied by J. H. Baker.

79. For example, the title pages to the year books of Henry IV printed in 1553, 1563, and 1576, and the 1562 printing of the year book of Edward III. See Bennett, *English Books and Readers*, 78, for an indication that the early law printers, when operating in competition with each other, would not only seek to praise their own work but also actively disparage that of others. Tottell's printing of *Magna Carta* in 1556 is perhaps the last example of this, where Tottell praises his own output in comparison with all his predecessors. H. J. Byrom notes that this was probably a deliberate marketing strategy against a competing edition produced only a few months earlier; see H. J. Byrom, "Richard Tottell—His Life and Work," *The Library* (4th Series) 8 (1927): 206–9, http://library.oxfordjournals.org/cgi/reprint/s4-VIII/2/199 (accessed February 26, 2009). Such disparagement would condemn the earlier law books, but it disappears once Tottell's monopoly was firmly established, leaving readers to find only the praise.

80. Johns observes that "when people did refer to enhanced reliability, it was often in the face of direct evidence to the contrary" (Johns, *Nature of the Book*, 31). Although printed texts may not have been especially reliable, the concern here is what effect assertions of reliability may have had upon readers and their assessment of the text, not whether or not the statements were accurate. Tottell's placing of the claims about manuscripts on the title page was unusually prominent; Thomas Smith's *De Republica Anglorum* refers to the "contrariety and corruption" of the manuscript copies, implying that the printed version was compiled from the best of them, but this claim appears only in the printer's preface (T. Smith, *De Republica Anglorum* (London: Henry Middleton, 1584), sig.A2-A2^{v}).

Beyond the world of the printing house, lawyers seem to have devised strategies for the award of credit to both printed books and manuscripts, all of which could justify a role for printed texts. Although the techniques were applied to all texts, many of them would have benefited printed texts more than the type of manuscripts lawyers used in argument. The first of these techniques depends upon the fact that the printed reports of Plowden and some of those from Coke, but not the earlier reports from the year books, were prefaced by references to the record. The strength of the record in legal argument, and its importance, has been described above.[81] In *Pinchon's Case* (1611), Coke explained why the record was so important, stating that he "reported out of the record itself at length, to the intent the reader may be assured of the truth of the said case."[82] Although Plowden included the full record, Coke included merely the pleadings, not the entry of judgment into the record. Nevertheless, Coke's *Reports* did at least give the reference to the record in a given case, enabling easier verification. This use of the record was not limited to printed material. Thomas Egerton linked his citations of the manuscript reports of Bendlowes to references to the record of the cases reported, and Ibbetson has shown that this was a more general, although not universal, practice in the late sixteenth century.[83] Lawyers associated both printed and manuscript reports with the record, presumably for precisely the reason Coke gave—to attest to the reliability of the report. The form of printed reports in itself began to provide a means for assuming the reliability of the report—including the text of the record acting as a verification of the report itself, an advantage shared by only a few manuscripts.

Printed reports also had an important advantage over manuscript texts. The new printed law reports produced after 1550, rather than reprints, featured prefaces. With certain notable exceptions, such as Coke's unusual circulation of his argument in *Shelley's Case* with a letter dedicatory, manuscript reports did not.[84] The preface provided a space in which the authors of reports could assert the reliability and accuracy of an entire volume. Any claims in the preface would then apply to the whole work. Plowden, for example, made much of the fact that the content of his reports, when he was collecting them for purely personal use, had been

81. See notes 43–44 above and text.

82. *Pinchon's Case* 9 Co.Rep. 89^{v} (1611).

83. *The Dean and Chapter of Chester's Case* (1578) HEH.MS.El. 482, ff.40^{v}-41 and Ibbetson, "Report and Record in Early-Modern Common Law," 65–66.

84. For an example of Coke's Letter Dedicatory, see CUL.MS. Dd.13.24, f.51. Even those volumes of manuscript reports that seem to have been commercially produced by scribes lack such features. For an example of scribally produced reports, see Thomas Coventry's reports, discussed by Ibbetson, "Coventry's Reports," 281–303.

approved by the participants in the cases, implying that the best witnesses had corroborated the reports.[85] Coke's assertion that he "was of counsel, and acquainted with the state of the question" for all the cases in his first volume of *Reports* is another attempt to demonstrate their reliability through his status as an eyewitness, as is Coke's remark in his report of *Chudleigh's Case* that he had observed most of the judicial arguments personally and otherwise he relied upon "credible relation of others."[86] These claims to being an eyewitness to the events reported was a means of a first-hand witness ensuring the reliability of texts—and is found in other early modern disciplines. Shapiro draws attention to the fact that "perfect history" required the author to be just such an eyewitness, in fact, ideally a participant, and that "the rhetorical critique of hearsay was well known."[87] Coke and Plowden made use of these common cultural ideas to establish the "credit" of their reports. It is quite possible that the "credit" given to reports by Dyer was similarly based upon his status as a participant-observer in many of the cases he reported.

One criticism of early modern reports, made by Coke presumably in relation to manuscripts, was that they were "masterless," by which Coke seems to mean they lacked an identified individual with responsibility for the text.[88] Manuscripts were often anonymous, and lawyers would have been well aware that many manuscript reports were produced by students as part of their education. To bolster the acceptability of references to manuscript reports, lawyers sought to associate the manuscript with lawyers who were well-known, and well-reputed, law reporters: The reports of Carrill and Bendlowes were particularly prominent.[89] Aside from these common examples, the same approach lay behind Serjeant Hele's use of a manuscript report in *Holwood v. Hopkins* (1600). Hele claimed that the report was in the hand of Popham CJ.[90] Although this did

85. E. Plowden, *Les Commentaries* (London: Richard Tottell, 1571), sig.qiii^{v}.

86. Coke, *Les Reports de Edward Coke*, sig.iii^{v} and *Chudleigh's Case* 1 Co.Rep. 132 (1589).

87. Shapiro, *Culture of Fact*, 37, 47–48, and 15.

88. Coke, *Les Reports de Edward Coke*, sig.iii^{v}. Johns's thesis builds heavily upon this focus on the person as central to the credit of printed texts (especially Johns, *Nature of the Book*, 31–32).

89. For Carrill's reports and the association with Keilwey, see A. W. B. Simpson, "Keilwey's Reports, temp. Henry VII and Henry VIII," *Law Quarterly Review* 73 (1957): 89–105. For Bendlowes's reports see Abbott, *Law Reporting in England*, 62–103. Coke referred to Bendlowes's reports in *Sir William Pelham's Case* (1590) 1 Co.Rep. 15 (1590) and in *Henry Peytoe's Case* 9 Co.Rep. 78^{v} (1609). Thomas Egerton referred to Bendlowes in *The Dean and Chapter of Chester's Case*, ff.40^{v}-41.

90. *Holwood v. Hopkins*, 90. Yelverton, as opposing counsel, did not seek to challenge the case, but rather distinguished it. Anderson CJ asked to see the record.

not satisfy Anderson CJ, who asked to see the record of the case, Hele's assertion of the author of the manuscript was an attempt to improve its standing in argument, presumably through the prestige associated with its author.[91]

Exactly the same approach can be seen with regard to printed texts. The printed common-law works cited in argument were not anonymous; in fact, many of them were referenced simply by the author's name. Many claims to the reliability of printed works are made by reference to the personal characteristics of authors.[92] In *Penyngton v. Hunte* (1544), an earlier discussion than others, the solicitor-general, Henry Bradshaw, asserted that the text of a writ found in Fitzherbert's printed *Novel Natura Brevium* was to be preferred over that found in "various old registers," because Fitzherbert "was a learned and discreet man, and doubtless before making his book he had perused many of the registers and based the form of writ in his book on the most perfect of them."[93] The same point was made about Fitzherbert in 1602, that he had "very great industry in the perusing of precedents and records . . . his authority is to be preferred."[94] In both these cases it is the reliability of a printed text, and from reliability its acceptability, that were determined by the personal qualities of the author of the text. Similarly, Edward Coke in 1602 made it clear that the unknown authors of the (printed) year books were "discreet and learned professors of law," but Bacon's recommended scheme for law reporting also stressed that reporters should be "most learned counsel" and "grave and sound

91. Lawyers asserting their memory of cases in which they themselves had been counsel presumably also relate to this approach (for examples, see *Browne v. Strode*, f.3^{v} per Hide J; *Johnson v. Beatson* (1633) CUL.MS. Gg.ii.19, f.372 per Bancks). Although the lawyers so doing may not have possessed particular skill or erudition in the law, it would have been at least discourteous for the judges to note that fact in open court! Verification of the source of a document, as in the case of Hele's manuscript report, was also important in relation to official documents. In *Dighton v. Bartholmew* (1602) BL.MS.Add. 25203, f.488, a copy of the record was produced that had been "certified" by the second prothonotary (one of the clerks of the court), but in *Andrewes v. Lord Cromwell* (1602) BL.MS.Add. 25203, f.493^{v}, an example of an earlier writs was not in the hand of any cursitor, "and for this the court did not take much regard of them," presumably due to a lack of reliability. These approaches to official documents have similarities to ideas in the romano-canonical and common-law traditions concerning proof by written documents, ideas also applied in the equity jurisdictions in which common lawyers appeared as counsel (see M. R. T. Macnair, *The Law of Proof in Early Modern Equity* (Berlin: Duncker & Humblot, 1999), 91–130, especially 114–128).

92. The absence of anonymous works is perhaps another unusual feature of common-law printed books in this period.

93. *Penyngton v. Hunte* (1544) in *Reports of Cases in the Time of Henry VIII, Vol.II*, ed. J. H. Baker, *Publications of the Selden Society* 121 (2004): 458.

94. *Andrewes v. Lord Cromwell*, f.508 per Yelverton J.

lawyers."[95] All these descriptions implied the reliability of the text through the work of the author. Posthumous publications of law reports featured similar techniques. The preface to the printed edition of Carrill's reports, known as *Keilwey*, commenced with a list of Robert Keilwey's praiseworthy qualities. These focused upon his hard work and erudition, implying that the reports that were considered to be his work would be of high quality.[96] Dyer's reports were prefaced with a claim that "grave and learned judgments" by men of "greater countenance" than those making the decision to print had induced the publication of the work.[97] These claims therefore asserted that the text was worthy of recognition and could be used profitably.

Some references to the author are not concerned with the reliability of the text, but rather simply the credit of the author in a vaguer sense. When Coke disagreed with a printed case in his report of *Mary Portington's Case* (1613), he made it very clear that he still regarded the author very highly, suggesting that had it not been for other factors, the author's personal reputation would have seen the case accepted.[98] In *Norwood v. Read* (1558), printed in Plowden's *Commentaries*, there is a reference to the rejection of a case from a year book in one of Fitzherbert's printed works. Counsel urged Fitzherbert's position to be accepted as "Fitzherbert was a judge of great fame," clearly intending to obtain credit for the view by relying upon the personal prestige of Fitzherbert as author, but with no express assertion that Fitzherbert's office would ensure the reliability of the text.[99] Evidently any such assertions as to the quality of the known authors of printed texts would aid in demonstrating the credit of the work as a record of past events.

Coke's remark about the year books, however, suggests that the characteristics of authors were not necessarily based upon any clear knowledge, because the authors of the year books were, and remain, largely unknown.[100] Coke's attribution of quality to the year books through their authors was therefore fictitious, at most a presumption he used to assert the quality of the text, although the myth of the four appointed

95. Coke, *Le Tierce Part des Reports*, sig. Ciii^{v}, F. Bacon *De Augmentis Scientiarum*, in *The Works of Francis Bacon*, vol.5, 104, Aphorism 75, and Bacon, "Proposition Touching Amendment of Laws," 69.

96. R. Keilwey, *Relationes quorundam casuum selectorum ex libris Roberti Keilwey* (London: Thomas Wight, 1602), sig.qii.

97. J. Dyer, *Cy ensuont ascuns nouel cases, collectes per le iades tresreuerend iudge, Mounsieur Iasques Dyer* (London: Richard Tottell, 1585), sig. *2^{v}.

98. *Mary Portington's Case*, 40.

99. *Norwood v. Read* 1 Plowden 182–182^{v} (1558).

100. See, for example, Baker, *Introduction to English Legal History*, 179–80.

reporters upon which Coke's assumption was based had been made decades earlier in the preface to Plowden's *Commentaries*.[101] The characteristics of authors highlighted by those seeking to support a reference to a printed text were also important in early modern common-law practice in assessing the credibility of witnesses. References to the learning, education, office, and fame of witnesses, which can be seen in claims about printed books, are also all found in both the rhetorical tradition and early modern justice of the peace manuals.[102] The crucial role of these ad hominem arguments in establishing the credibility of both witnesses and texts in early modern England explains Coke's concern to establish the authorship of the year books. Although lawyers used the same technique for attributing credit to printed and manuscript texts, the difference in authorship, and particularly the knowledge as to the author of the printed common-law texts, would raise the status of printed texts against many of the manuscripts in circulation.

The personal characteristics of authors of printed texts could also mix with other arguments in favor of print. Most obviously, Coke asserted that the year book writers had been appointed by the Crown, and Bacon thought the king should do just that for the future.[103] This idea of official status may have contributed to ideas of print as being in some way sanctioned and therefore to be preferred. Certainly the record was an unquestionably official manuscript and seems to have been the most authoritative source of legal argument. Although manuscript texts were not condemned by any particular importance attached to official status, authorized texts (such as printed material and the record) would have been relatively stronger in argument. Johns has suggested that an official warrant may have contributed to ideas of the "credit" of printed books, even going so far as to suggest that books printed under the patents granted by royal prerogative may have been viewed as the work of the Crown itself.[104] The argument is interesting, but no trace of it has been found in common-law argument before 1640. Edward Plowden had a different claim to some form of official status—although his reports were collected for his personal use, various friends, including judges, had been the agents persuading him to print.[105] In effect, Plowden asserted an imprimatur for

101. Plowden, *Les Commentaries*, sig. qii.

102. For references to the personal characteristics of witnesses, see Shapiro, "Classical Rhetoric and the English Law of Evidence," 56, 62, 64–65, and 67, and Shapiro, *Culture of Fact*, 9, 14, and 16.

103. Coke, *Le Tierce Part des Reports*, sig. Ciii^{v} and Bacon, "Proposition Touching Amendment of Laws," 69.

104. Johns, *Nature of the Book*, 250–51.

105. Plowden, *Les Commentaries*, sig.qii-qiii.

the content of his material from the judges, themselves Crown servants. Edward Coke was unable to do so, but Coke's subsequent appointment to the judiciary meant that at least the later volumes of his *Reports* merged the recognized status of the author with the fact that he could give himself judicial authorization to print.

There was official regulation of the press in early modern England, regulation which did, at least in theory, affect the law press. Elizabeth imposed a prepublication review procedure in 1559, and in 1586 common law books were required to be licensed by the two chief justices, amended in 1637 to a sole chief justice.[106] In 1622, Serjeant Hendon sought to rely upon Dalison's reports, which had been printed as an appendix to another work by Thomas Ashe. One of the judges, Hobart, "demanded of him by what warrant those reports of Dalisons came in print."[107] Hendon promptly changed his argument to continue without further reference to the case he cited. Hobart's challenge indicates that unless reports had a "warrant" they might not be readily accepted in argument. The obvious warrant would be from the licensing system. The difficulty with this is that there is no evidence of any law books being licensed before around 1650. The licensing requirement was only triggered if books were entered into the registers of the Stationers' Company when printed. Common-law books (including those of Ashe) were only entered into the register on two very exceptional occasions, when they were entered as a group, although in neither case is there any evidence of licenses being awarded as a consequence.[108] Any

106. Ross, "Commoning of the Common Law," 418n270, observes that a Star Chamber decree of 1586 required common-law books to be licensed by two chief justices, amended in 1637 to a sole chief justice or his appointee. This was a continuation from a prepublication review mechanism imposed by Elizabeth in 1559 (420).

107. *Wade's Case* (1622) CUL.MS. Ii.5.34, f.123.

108. The reason for nonregistration is probably that the registration of works acted as a "copyright that protected the work against infringement" (Ross, "Commoning of the Common Law," 422). The monopoly on printing common-law works discussed by Baker (Baker, "Books of the Common Law," 429, and Baker, "English Law Books and Legal Publishing," 492) explains why protection for individual works provided by the Stationers' Register was not required for common-law books before the Civil War: Irrespective of registration only the common law patentee could print common-law works, and was probably better protected by his (or her, in the case of Jane Yetsweirt) monopoly than by registration (the patent could be enforced through the common-law courts, whereas protection by registration was regulated internally by the Stationers' Company). Nonregistration seems to have been fairly common: "estimates vary widely, but it seems that perhaps a third of printed titles were never entered [in the Register]" (Johns, *Nature of the Book*, 220). Roger Norton, the patentee for "grammars and accidences" only registered his books published under the patent when he considered that patent under threat from parliamentary activity in the 1640s (Johns, *Nature of the Book*, 337), and it seems probable that the common-law patentees similarly considered their patent sufficient protection in itself.

assertion of the need for a "warrant" for the acceptability of printed law books therefore could not stem from the official licensing procedure. Perhaps more important was an informal system of preprinting review. When Ferdinando Pulton sought to produce his edition of the statutes in the early seventeenth century, he not only communicated with Lord Chancellor Ellesmere but was also advised by Ellesmere to contact several judges.[109] Although not a formal system of licensing, it may be that judges expected works to have been approved by senior practitioners before publication, and that a failure to obtain such approval may have cast doubt upon a book. The response of Hobart may, however, have been limited to the peculiar circumstances surrounding Ashe's book in which the reports were found. Ashe's work included reports from both Bendlowes and Dalison. There is some evidence that permission had been sought from the judges by Bendlowes's son to print the reports of Bendlowes. This permission was denied.[110] Rather than indicating a general rejection of material for which there was no "warrant," it may rather be that Ashe's printing of Dalison associated those reports with the work of Bendlowes, which the judges had prohibited from being printed. Hobart's rejection of the text may be a reaction to Ashe ignoring the judges' views, rather than any evidence of a general idea that printed texts needed to be in some sense "official" if they were to be acceptable in argument.

The final rationale for the increased importance of print relates to Renaissance traditions of discourse, but it also has links with European legal theory and some uniquely common law ideas. It is also a justification for the role of print that was independent from any judgment as to the "credit" of individual works. Simply put, printed texts provided a common, and widely known, store of materials from which lawyers could draw their arguments. The commonplacing tradition of the sixteenth and seventeenth centuries was one in which people sought to find ideas and materials

---

There were two mass registrations of legal titles in the register: the first to Richard Tottell on February 18, 1583, and the second listed common-law titles included within the "English Stock" of the Stationers' Company on March 5, 1620 (Arber, *A Transcript of the Register of the Company of Stationers of London, 1554–1640 A.D.* (privately printed, 1875–1894), 2:419 and 3:668–69). The first of these registrations may have been just such a precautionary registration as that by Norton, as 1582–83 was a period of considerable ferment and discord both within the Stationers' Company and without concerning the patents (Arber, 2:19–21). Criticism of the law patent was made to Lord Burghley (Arber, 1:111 and 1:116). Tottell was described by other printers as selling law books "at excessive prices, to the hindrance of a great number of poor students" (Arber, 1:111).

109. HEH.MS.El. 1964, repr. V. B. Heltzel, "Ferdinando Pulton, Elizabethan Legal Editor," *Huntington Library Quarterly* 11 (1947): 77–79, http://www.jstor.org/stable/3816033 (accessed February 26, 2009).

110. Abbott, *Law Reporting in England*, 97.

common to all from which to construct arguments.[111] This would suggest a rationale for print coming to predominate over manuscript in all fields of discussion. Certainly lawyers, and other people closely connected with the Inns of Court, recognized this fact generally during the reign of Charles I; Selden advised others to rely upon "familiar" material when making arguments, and John Donne condemned the use of manuscripts, apparently using an argument from "the School."[112] Manuscript material, even if it circulated, could not be assumed to be known by all lawyers. Even the records of the court, though technically accessible to all (upon suitable payment being made), were difficult to obtain. The record was stored in a cellar whose qualities can be inferred from it being known to lawyers simply as "Hell."[113] Pure memory, not clearly associated with any text, was even more vulnerable to challenge as unknown. Judges did dismiss cases put in argument on the basis that no one in court could remember them, although on other occasions they were willing to rely upon their own memory of cases from thirty years earlier![114]

However, the matter is not as simple as might be believed. Even though all lawyers had access to printed books, there is some evidence that no lawyers had access to the texts themselves when making their arguments in court. In the vast majority of instances this has no effect on legal argument—printed material was generally accepted and disputes focussed upon substantive issues. However, when lawyers made points that were either unusual or controversial, the accessibility of print may have been preferred. According to Plowden, in 1553 Chomley and Gerard made a point they accepted might be controversial, so had brought the relevant

111. K. Sharpe, *Reading Revolutions: The Politics of Reading in Early Modern England* (New Haven, Conn.: Yale University Press, 2000), 190–91.

112. "In quoting of Books; quote such Authors; as are usually read; others you may read for your own satisfaction but not name them" (J. Selden, *Table Talk of John Selden*, ed. F. Pollock [London: Quaritch, 1927], 24). John Donne, former law student (1592–94 or 96) and reader in divinity at Lincoln's Inn (1616–21) preached a sermon in 1628 in which he said that "if it be well said in the School, *Absurdum est disputare, ex manuscriptis*, it is an unjust thing in Controversies and Disputations, to press arguments out of Manuscripts, that cannot be seen by every man" (*The Sermons of John Donne*, vol. 8, ed. G. R. Potter and E. M. Simpson (Berkeley: University of California Press, 1953–62), 348). Donne's remark suggests that ideas about manuscripts being unacceptable due to their unavailability had wider currency in Caroline England. My thanks to Jacqueline Rose of Newnham College, Cambridge, for bringing this quote to my attention.

113. See Baker, "History of English Law," 70.

114. As an example of an unreported case being rejected for being unknown, see *Miller and Jones v. Manwaring* (1634) CUL.MS. Gg.ii.19, f.609, where Rolle put a case that was rejected by the court ("and the court said that it did not remember such a case"). For Popham's reliance on his long-term memory, see *Payne v. Mallory* (1601) BL.MS.Add. 25203, f.360^{v}.

text to court to show to the judges.[115] In this regard the shared nature of print is associated with reliability—assertions from a printed text could be verified by presenting a widely known book with all the benefits outlined above. By contrast, unknown texts were vulnerable to insinuations of impropriety. Serjeant Hele once asserted a case in argument:

> And it was said by him that someone had reported to him that a judgment was given in the King's Bench directly on the point and was concluded (but he could not vouch the names of the parties in the action nor the action which had been adjudged nor the party who had reported it to him. Therefore query whether there had been such a case or not for as I understand there had never been such a judgment but that the case was vouched with the intent to stay the opinions of the justices in the case suspecting that they would give judgment against him).[116]

The reporter here was therefore skeptical about unknown material. Although most lawyers were probably not deliberately misleading in references to unknown material, it would always be a possibility with manuscripts.

The idea of printed material being generally available may have possessed greater force for lawyers than a simple acknowledgement of the utility of widely known material, possessing instead a degree of normative force. The first reason for this idea is found in the sermon of Donne quoted above and in a remark by Dyer. This argument was similar to, perhaps based on, the Thomist position that for a *lex* to be effective law it had to be promulgated, a view occasionally enunciated in the medieval common law, but never applied.[117] The use of Thomist arguments to privilege print would give a theoretical foundation to a preference for print, indeed for an exclusive role for print. Although Donne was familiar with legal ideas from his time at the Inns, his sermon did not concern the common law, but it did concern legalistic matters, and Donne's associations with the Inns of Court give it more significance than it might otherwise have. Donne explained that the Final Judgment is an exercise of God's Law and emphasized that condemnation by a secret law would not be just, but that God's law had been published.[118] This public law of God was contrasted with the secrecy and unknown status of manuscript. Dyer's invocation of the Thomist idea is more clear. In *Wood v. Dallison* (1579–90), Dyer sought

115. *Woodland v. Mantel and Redsole* 1 Plowden 96 (1553). See Baker, *Oxford History of the Laws of England*, 487.

116. *Lashford v. Saunders* (1599), Yale Law School Manuscript G.R.29.13, ff.34^{v}-35.

117. See N. Doe, *Fundamental Authority in Late Medieval English Law* (Cambridge: Cambridge University Press, 1990), 38–39.

118. *Sermons of John Donne*, 345–46.

to mitigate the consequences of a statute due to its unprinted status. Dyer observed that "this statute . . . is a private statute not printed therefore a man shall not be compelled to take conusance of this so easily *as if it was in print*" [emphasis added].[119] In the second half of the sixteenth century, a "public" statute was one that had been officially printed.[120] Dyer therefore argued that because a statute (a *lex* in European and theological terms) was unprinted it had less force as law.

The second reason why the use of printed material may have possessed normative force is unique to the common law. The author of the "Observations" on the granting of prohibitions by the Common Pleas justified relying solely upon printed books as it is "[o]ut of which books, students of the common law learn their knowledge, and do or should, direct their counsel and advice to their client."[121] Students of the law "learn *their* knowledge" [emphasis added] from print. This language is crucial. As discussed earlier, common lawyers were a professional group who defined themselves by their learning, and had done so for generations.[122] The author of the "Observations" in effect acknowledges that the "common learning" of the common lawyers was no longer obtained through oral instruction in the Inns of Court, but by reading.[123] Other sources of legal knowledge were not, or were becoming less, common. Manuscripts were inevitably unknown to at least some of the profession, and access to Hell was restricted, even for lawyers.

The common lawyers' notion of common learning carried with it connotations of approved doctrine. The author of the "Observations" even went so far as to compare the judges' reliance upon their own prior proceedings to determine their powers and jurisdiction, rather than on print, as differing "not much from the Pope's proof of his supremacy by citing the opinion and judgments of former Popes and their parasites."[124] The argument was directed against the citation of a court's own precedents to justify its jurisdiction. However, in the "Observations" this inappropriate use of a

119. *Wood v. Dallison* (1579–80) BL.MS.Harg. 4, f.72. The reliance upon the printed status of the statute seems to be an opportunistic argument by Dyer: The other judges (Meade and Windham) simply relied upon a presumption that the facts accorded with the statute.

120. G. R. Elton, "The Sessional Printing of Statutes, 1484–1547," in *Wealth and Power in Tudor England: Essays Presented to S. T. Bindoff*, ed. E. W. Ives, R. J. Knecht, and J. J. Scarisbrick (London: Athlone, 1978), 81–82.

121. HEH.MS.El. 2011, f.3^{v}.

122. See notes above 9–11 and text.

123. The focus upon reading as the core of a law student's studies had already been recognized by Fulbeck in his *Direction*, where his discussion focussed upon the books to be read, and the manner in which to do it, rather than attendance at the Inns (W. Fulbeck, *A Direction or Preparative to the Study of the Lawe* (London: Thomas Wight, 1600), 26^{v}-38).

124. HEH.MS.El 2011, f.7.

court's own precedents was expressly linked with the use of unprinted material, linking the reliance upon unprinted precedents with discredited modes of Catholic reasoning, rendering such arguments un-Protestant and associating them with a church widely seen as subversive.[125] The notion of approval and correctness is also seen in James I's speech to all the judges and the directions to new judges given by the Lord Keeper in the 1630s. Good judges would rely upon printed texts, bad judges on "novelties," impliedly not those found in print.[126] These views all suggest another context in which Love's claim that manuscript came to be seen as subversive can be borne out.[127] For these lawyers, manuscripts could be subverted, but the common knowledge found in print would ensure correct reasoning.

More interesting is that just as Thomas Walmesley and others relied upon the medieval language of "our books" to stress an exclusive role for print, the author of the "Observations" still relied upon ideas from the medieval common law of common lawyers defining themselves by "their learning" and their books. In both cases, these lawyers proposed radical changes to the existing norms of legal argument, but did so by relying upon old ideas. These old ideas were then applied in the changed context of a world where printing enabled greater access to texts. It is no coincidence that it is around 1600 that we begin to see common lawyers asserting that "their law" is written law (*lex scripta*) rather than unwritten law.[128] Thomas Egerton even made it clear that the common law was not originally *lex scripta*, but it had become such by 1609, resolving a theoretical conundrum that first perplexed lawyers in the twelfth century.[129]

Conclusions

There are numerous indications that by the middle of the seventeenth century print was coming to predominate over manuscript when lawyers

125. I am grateful to Hilary Larkin of St. John's College, Cambridge, for advice on this point.

126. See notes 51 and 59 above and text.

127. Love, *Scribal Publication in Seventeenth-Century England*, 188–90.

128. Coke asserted that the common law was *lex scripta* in *Andrewes v. Lord Cromwell*, f.507^{v}. Bacon in that case sought to deny the status of the common law as written law, seemingly for tactical reasons.

129. T. Egerton, *The Speech of the Lord Chancellor of England, in the Eschequer Chamber, Touching the Post-Nati* (London: Society of Stationers, 1609), 33. On the medieval concern over the common law's unwritten status see M. Lobban, *A History of the Philosophy of Law in the Common Law World, 1600–1900* (Dordrecht: Springer, 2007), 1–3.

sought to determine the law, and a number of interesting justifications for that development.[130] Lawyers used a variety of techniques for attributing credit to a work, many of which were also applied to manuscript texts, but which had a great force when considered in the context of common law printing. Although lawyers' techniques did not presuppose any clear distinction between print and manuscript, some common lawyers did seek to give an exclusive role for printed texts, based entirely upon their printed status, albeit through a creative use of ideas older than the printing press itself.

130. This preference for print, especially if the normative role of print discussed here was more widely accepted, may mean that legal historians should not always give equal weight to print and manuscript when determining how contemporary lawyers viewed "the law," although manuscript sources do, of course, still provide much of the best evidence for what actually occurred in legal practice in the early modern period. In this regard, perhaps the "Manuscript Tradition" of legal historians needs to be subject to greater contextualization; on the "Manuscript Tradition," see D. J. Seipp, "The Law's Many Bodies, and the Manuscript Tradition in English Legal History" *Journal of Legal History* 25 (2004): 74–83, http://www.informaworld.com/smpp/section?content=a713947190&fulltext=713240928 (accessed February 26, 2009).