

A MEDIEVAL BOOK AND EARLY-MODERN LAW:
BRACTON'S AUTHORITY AND APPLICATION IN THE COMMON LAW

c.1550-1640

Ian Williams*,**

The thirteenth-century book known as *Bracton* was first printed in 1569, fifteen years after *Glanvill* and three decades after *Britton*¹. Despite its relatively late arrival into the list of printed common law books, of all the older common-law books it is *Bracton* which has tended to occupy the interest of historians. In no small part, this is due to Edward Coke's later use of *Bracton* in disputes with James I². However, much less interest is shown in *Bracton's* use in early-modern England more generally, certainly compared to *Bracton's* use as a source for thirteenth century law³. This article seeks to correct that imbalance by showing that *Bracton* was an important source for some early-modern common lawyers, particularly in certain fields. There were a number of impediments to the use of *Bracton* in the early-modern common law which may have inhibited its reception. The most recent work has suggested that *Bracton's* popularity in early-modern England stemmed from Coke's popularisation of the book by his references to it in his *Reports*⁴. In fact, some of the impediments to *Bracton's* use were overcome, or overlooked, in the sixteenth and early-seventeenth centuries. *Bracton* came to have an assured place in the common-law canon even before Coke's use of the text, although it never became a standard reference work.

* Lecturer, University College London; Faculty of Laws, Bentham House, Endsleigh Gardens, London WC1H 0EG, UK; i.s.williams@ucl.ac.uk.

** Elements of this article have been presented at the Cambridge Legal History Colloquium, Oxford Legal History Forum and London Legal History Seminar. My thanks to the organisers and all participants for their helpful comments and to Mr Henry Mares and Professor Andrew Lewis for comments on earlier drafts. My thanks to all those who assisted by consulting volumes for annotations or arranging access to material. Particular thanks to Ms Laura Anne Bedard, Special Collections Librarian of the Edward Bennett Williams Law Library, Georgetown University, who put considerable effort into facilitating my visit to consult Coke's *Bracton*. This research was undertaken with support from the F.W. Maitland Memorial Fund. Original spelling has been retained in all quotations.

¹ Glanvill, *Tractatus de legibus et consuetudinibus regni Anglie*, London 1554 and *Britton*, London undated (but printed by Robert Redman). Redman died in 1540, indicating that *Britton* must have been printed before then. Early-modern readers considered Henry de Bratton to be the author of the eponymous book and this fact was sometimes of significance in discussing its place in legal argument (see *infra*, nn. 88-92 and text). His authorship is now in dispute (for a recent contribution and references to other views, see J.L. Barton, *The Authorship of Bracton: Again*, *Journal of Legal History*, 30 (2009), p. 117-174).

² See R.G. Usher, *James I and Sir Edward Coke*, *English Historical Review*, 18 (1903), p. 664-675.

³ Only one article has been written about the later use of *Bracton* (D.E.C. 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. by M.S. Arnold, et al., Chapel Hill 1981, p. 383-396), compared to the many articles on *Bracton* in medieval law (for a non-exhaustive list, see, e.g., J. Getzler, *A History of Water Rights at Common Law*, Oxford 2004, p. 50 n.13).

⁴ Yale, "Of No Mean Authority" (*supra*, n. 3), p. 387-388.

This article will consider the impediments to the use of *Bracton*, the printing of the first edition, the text's place in the early-modern common-law canon and some topics in *Bracton* which seem to have been of particular interest for common lawyers before the reprinting of the book in 1640.⁵ A wide range of evidence will be used, including all of the surviving copies of that edition available in publicly accessible libraries in Britain⁶. This use of the surviving copies and particularly the annotations found within them is to apply one of the standard methods of the history of reading to legal history⁷. In the history of reading, annotations are typically used in two ways⁸: the first is to use annotations and other information to glean further insights into existing historical questions; the second is to use the available evidence to try and understand how texts were read in the past. This article demonstrates that these two different concerns are interrelated; the practice of, and the assumptions behind, standard early-modern reading techniques ensured and secured *Bracton's* place in the common-law canon.

For early-modern historians, understanding how texts were read in the past is an important concern. An awareness that texts are susceptible to multiple different readings is not an innovation of post-modernist historians, but was a central element in some early-modern debates, most obviously in the theological sphere. For example, the English divine Richard Hooker thought that puritans believed that 'the word of God runs currently on [their] side' because 'their minds are forestalled and their conceits

⁵ Bracton, *Henrici de Bracton de legibus et consuetudinibus angliae*, London 1640. This second printing survives in greater numbers than the first printing. After 1640, *Bracton's* place in the common-law canon seems to have been assured. Furthermore, *Bracton* came to be of importance in a wide range of contexts, including the constitutional debates of the 1640s. *Bracton* was used by Edward Coke in matters of political controversy (*supra*, n.2), but became more important during the reign of Charles I, even being cited at the trial of the king (see Yale, "Of No Mean Authority" (*supra*, n. 3), p. 391) as the idea of the 'ancient constitution' became ever more important. It seems plausible that the 1640 printing of *Bracton* was a response to the text's political role. Certainly law books could be printed for that purpose: when *Glanville* was reprinted in 1604, it was made clear that this was as a contribution to the controversial debate on Anglo-Scottish legal unification (see Glanville, *Tractatus de legibus & consuetudinibus regni Angliae*, London 1604, titlepage and sig.*iii^v).

⁶ Meaning the British Library, university and college libraries and the libraries of the Inns of Court.

⁷ For an accessible recent introduction to the history of reading see H.J. Jackson, *Marginalia: Readers Writing in Books*, New Haven 2001. The use of history of reading approaches for English legal historians is not unprecedented. Like Moliere's unwitting speaker of prose, Knafla's study of Thomas Egerton's writings and books is an exercise in what would now be considered the history of reading, but never describes itself to be such (L.A. Knafla, *The Law Studies of an Elizabethan Student*, Huntington Library Quarterly, 32 (1969), p. 221-240 and L.A. Knafla, *Law and Politics in Jacobean England, the tracts of Lord Chancellor Ellesmere*, Cambridge 1977). Osler's examination of the dispersal of law books throughout Europe is another method which is now claimed to be part of the history of reading (D.J. Osler, *The Fantasy Men*, *Rechtsgeschichte*, 10 (2007), p. 181-185). Certain strands in European legal historiography relate to issues in the history of reading. Most obviously, the legal humanist change from ahistorical to historical interpretation of the *Corpus Iuris Civilis* is a change in the assumptions underlying the reading of the Roman texts.

⁸ See A. Grafton, *Is the History of Reading a Marginal Enterprise?*, *Papers of the Bibliographical Society of America*, 91 (1997), p. 141-142.

perverted beforehand' through the teaching of their preachers in explaining the meaning of particular words⁹. The (erroneous) way in which puritans read and interpreted their texts necessarily led to their (erroneous) conclusions. Without such teaching, Hooker thought that an unprejudiced reading of the Bible would lead to the scriptural underpinnings of the puritan arguments falling away, enabling reconciliation. For legal historians, it is just such a concern which underlay the arguments against the printing of legal material in English. As Ferdinando Pulton observed, the concern was that laws, like the Scriptures, might be subject to 'depraving, misconstruing, or wresting of the laws of God, or man, out of their true meaning, & proper sense', and countered that the actions of ignorant people do not 'impeach the credit of the same laws'¹⁰. This article will use reader annotations to show how common lawyers construed (and arguably misconstrued) *Bracton* centuries after the book was written.

There are twenty five surviving annotated copies in Britain; a further two annotated copies from the United States have also been consulted¹¹. These annotations provide much of the source material for this article. There are a further seven unannotated copies which have been identified in Britain¹². One of the difficulties in assessing the place of *Bracton* in early-modern law has been that references to *Bracton* were always exceptional in legal argument. The evidence from the annotated copies provides a valuable supplement to the more traditional legal history sources of law reports and legal literature.

IMPEDIMENTS TO THE USE OF *BRACTON*

⁹ Richard Hooker, *Of the Lawes of Ecclesiasticall Politie*, Preface.3.9 in: The Folger Library Edition of the Works of Richard Hooker, ed. by W. Speed Hill, 7 vols., Cambridge MA 1977, vol.1, p. 16-17.

¹⁰ Ferdinando Pulton, *De Pace Regis et Regni*, London 1609, sig.Av. For the arguments against printing English law, particularly in English, see 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), p. 323-461.

¹¹ For the annotated copies, see the table of copies in the Appendix. Copies of *Bracton* have been given a code included in the table, and all references will be to title and then the individual codes (for example, *Bracton* AL fo.192 is a reference to fo.192 of the copy of *Bracton* now in the Advocates' Library). Where a reference is to *Bracton* generally, no library code is given and references are simply to the 1569 printing. Many annotations are underlinings which cannot be dated reliably. Underlinings have therefore generally been ignored as evidence unless they can be associated with other evidence providing an indication of their date. The two American copies are *Bracton* GUL and *Bracton* HEH, both of which were consulted before this project took shape. There are doubtless further annotated copies in North America. Copies of the 1569 printing are also held by the Max Planck Institut für Rechtsgeschichte in Frankfurt, the Bibliothèque Nationale de France in Paris and the Biblioteca Nazionale Centrale Vittorio Emanuele II in Rome. These European copies have not been consulted.

¹² What proportion of the printing survives is unclear. See *infra*, n. 42. The evidence of reading has been combined with evidence from other sources in an attempt to produce a well-rounded understanding of the reading of *Bracton*.

As Yale notes, Fitzherbert's *Graunde Abridgement* included a statement that *Bracton* was not an author in 'our law'. Yale argues that this stopped the use of *Bracton* in legal argument for much of the sixteenth century, until Coke's popularisation at the end of it¹³. Fitzherbert's books (both the *Natura Brevium* and his *Abridgement*) were widely-read and well-respected¹⁴, and it is legitimate to infer that this rejection of *Bracton* was likely to have significant consequences, although there is evidence that Fitzherbert's remarks did not have a strong exclusionary effect¹⁵.

In addition to this objection, other considerations may have restricted the use of *Bracton*. The 1569 printed edition runs to over 900 printed pages. Such a large volume must have been extremely expensive if obtained in manuscript and would have been too large for lawyers to copy themselves. In print, *Bracton* was an unusually large and well-crafted common-law book, described by Plucknett as 'a stately volume, perhaps the best printed law book we have ever had'¹⁶. However, such features would have made the work expensive. There is little evidence for the price of *Bracton*, but one copy shows that Henry Boughton (admitted to the Inner Temple in 1606¹⁷) purchased his copy for fifteen shillings¹⁸. It seems likely that the purchase was in the first few decades of the seventeenth century, making it more or less contemporary to a list of law book prices available in manuscript. According to that list (probably from the period 1615-1628) this would make *Bracton* more expensive than all but a few other law books at that time¹⁹. This list may also indicate that *Bracton* was not widely available, even second-hand, in the seventeenth century. While *Bracton* is included in the list of books to be acquired, it has no price, suggesting that the compiler could not establish a market price²⁰. Unlike the

¹³ Yale, "Of No Mean Authority" (*supra*, n. 3), p. 383-8, citing Anthony Fitzherbert, *La Graunde Abridgement*, London 1516, fo.clix, tit.Gard., pl.71.

¹⁴ In *Pennington v Hunte* (1544) in: Reports of Cases in the Time of Henry VIII, ed. by J.H. Baker, [Selden Society vol. 121], 2 vols., London 2004, vol.II, p. 458, Bradshaw SG cited Fitzherbert's views in court, with the justification that Fitzherbert was a 'learned and discreet man' and in *Andrewes v Lord Cromwell* ((1602) British Library (BL) MS Additional 25203, fos.508 and 509) both Yelverton and Popham made it clear that they relied upon Fitzherbert because of his personal characteristics leading to a presumption of accuracy.

¹⁵ See *infra*, nn. 68-74 and text.

¹⁶ T.F.T. Plucknett, *Concise History of the Common Law*, 5th ed., Boston MA 1956, p. 263. Such considerations may explain the use of *Bracton* as a gift. Thomas Egerton received his copy of *Bracton* as a gift from Thomas Owen, sometime justice of the Common Pleas (*Bracton* HEH, titlepage) and William Ravenscroft donated a copy to Lincoln's Inn library (*Bracton* LIL1, titlepage).

¹⁷ See *infra*, n. 45 and text.

¹⁸ *Bracton* ASC, titlepage.

¹⁹ BL MS Harleian 160 (*The Price of the law in quiers or as it is to be bought at the second hand which may direct allsoe what to give for new bookees unless the scarcitey of some bookee doe alter the price*), fo.233. Only three books were given prices more expensive than fifteen shillings: Thomas Ashe, *Epieikeia et table generall a les annales del ley*, London 1609, cost £1 6s 8d; and two books of entries by John Rastall were recording as costing £1 10s (for an 'old one') and £1 6s 8d (for that 'last printed').

²⁰ The compiler did not include prices for other old works (such as Britton and Statham's *Abridgment*), but the absence of prices for some collections of statutes and the standard abridgments of Fitzherbert and

yearbooks, early-modern printed reports or Littleton's *Tenures*, *Bracton* was clearly not an essential common-law work, explaining why the book was not reprinted until 1640.

Bracton's non-essential status is corroborated by evidence from lawyers' use of the text. John Dodderidge is unusual in including references to *Bracton* in his student and early-career commonplace book²¹. Other lawyers seem to have consulted *Bracton* only late in their careers. Edward Coke only incorporated references to *Bracton* into his commonplace book at some point between 1585 and 1592, despite having been called to the bar in 1578²². John Savile only acquired his copy of *Bracton* in 1590, four years before he became a serjeant²³ and Thomas Egerton does not seem to have used *Bracton* until around 1600, when he was already Lord Keeper²⁴.

Students may have avoided *Bracton* not simply for economic reasons. The length of *Bracton* may have discouraged casual use. It is unusual to see annotations through the entire printed volume²⁵. One of the unusual readers who did read the whole book, John Savile, ended his reading with a simple, but one imagines heartfelt, '*laus deo*'²⁶! Furthermore, there was active discouragement from using *Bracton*. Lawyers recognised that *Bracton* was not always an accurate guide to the law. Thomas Norton spent much of his editor's preface to the printed edition explaining why *Bracton* was still fit to be read, despite the book having been written in a time of religious ignorance²⁷, while other lawyers warned about the fact of legal change. Coke's report of *Paine's Case* makes it clear that *Bracton* was not to be used where it may 'impugn the common experience and

Brooke is more surprising.

²¹ BL MS Hargrave 407, e.g. fos.74^v, 95^v, 111^v, 242^v, 375. Dodderidge's commonplace is exceptional in other ways, such as mixing civilian and common law material (see *infra*, n. 120 and text), suggesting Dodderidge was an atypical student.

²² I. Williams, *The Tudor Genesis of Edward Coke's Immemorial Common Law*, *Sixteenth Century Journal*, forthcoming, n. 69-70 and text.

²³ *Bracton* TCC, titlepage.

²⁴ Thomas Egerton's surviving papers and copy of *Bracton* (*Bracton* HEH) provide no evidence for reading before around 1600, but good evidence for reading after that date (see *infra*, n. 107). Egerton received his copy as a gift from Thomas Owen (*supra*, n. 16), who died in 1598. However, Owen did not make any bequests to Egerton in his will, so the gift must have been *inter vivos* and we therefore cannot assume that Egerton did not receive his copy until almost 1600. My thanks to Professor David Ibbetson for supplying this information.

²⁵ Grafton, *Is the History of Reading* (*supra*, n. 8), p. 153 considers this to be typical of early-modern annotators generally. However, for common lawyers it seems that rather than 'tailing off', readers were instead selective. See *infra*, nn. 93-125 and text.

²⁶ *Bracton* TCC1, fo. 444^v.

²⁷ *Bracton*, sig. 1[¶]ii. Norton's role as editor is not stated in the printed text, which identifies the editor only as 'T.N.' (*Bracton*, sig. 1[¶]ii). Yale suspected Norton's role, but could not prove it (Yale, "*Of No Mean Authority*" (*supra*, n. 3), p. 386 n. 16). William Lambarde expands the initials in his copy of *Bracton* to 'Thomas Norton', providing the only evidence that Norton was, or was at least reputed to be, the editor of *Bracton*. Lambarde received his copy of *Bracton* as a gift from the printer, so he appears well-placed to identify the editor (*Bracton* SUL, titlepage).

allowance in judicial proceedings at this day'²⁸, and, perhaps more importantly, William Fulbeck's *Direction* to prospective law students linked *Bracton* with *Glanvill* and *Britton* as books upon which it was 'dangerous' to rely because 'most of that which they do give forth for law, is now antiquated, and abolished'²⁹. These warnings were not unheeded; readers of *Bracton* can be seen marking where the law had changed³⁰. However, such an approach was only available to more experienced lawyers - for students such warnings must have had some deterrent effect.

Such difficulties led Knafla to suggest that *Bracton* was not of interest of common lawyers concerned about contemporary law in the sixteenth century, but rather to historically-minded individuals (lawyers or otherwise) interested in thirteenth century law³¹. The ownership of a copy of *Bracton* by Archbishop Matthew Parker would support this view³², as do many of the annotations in William Lambarde's copy of *Bracton*³³. However, Lambarde's copy also contains annotations which suggest a concern with more contemporary problems³⁴. As will become apparent, in this Lambarde was not unrepresentative.

THE 1569 PRINTING OF *BRACTON*

Despite the problems with using the text, the editor to the first printed edition stressed the long-standing demand for the book to be printed³⁵. We should certainly expect Richard Tottell, the law-printer, to base his decision on commercial self-interest. Tottell's output seems to have been printed in cycles. The monopoly over common-law printing gave Tottell unique access to a relatively stable (but slowly growing) market³⁶. Figure 1

²⁸ *Paine's Case* (1587) 8 Co.Rep. 34, at p. 34^v-35. Such views are not typical of Coke, but it seems likely that the report was not originally Coke's own. Coke provides a plea roll reference for the date of the case, not the date of decision. As Baker observes generally, a simple plea roll reference indicates that Coke reported a case second hand (J.H. Baker, *Coke's Note-Books and the Sources of his Reports*, Cambridge Law Journal, 30 (1972), p. 68). That seems to be the case here: the case is included in the manuscript of Coke's *Reports* under Michaelmas term 1609 (Cambridge University Library (CUL) MS Ii.5.21, fo.77^v), indicating that either the case took an extremely long time to be resolved or (more likely) that Coke was repeating another's report.

²⁹ William Fulbeck, *A Direction or Preparative to the study of the Lawe*, London 1600, fo. 27.

³⁰ E.g. *Bracton* THL, fos. 28^v and 63; KCL fo. 12^v and SLL fo. 139. An anonymous reader in one of the Inns of Court in the time of Henry VIII made the same point (J.H. Baker, *Oxford History of the Laws of England*, vol.VI, 1483-1558, Oxford 2003, p. 23 n.89, citing BL MS Harg. 87, fo. 374).

³¹ Knafla, *Law Studies* (*supra*, n. 7), 232.

³² *Bracton* CCL. Parker did not annotate his copy.

³³ *Bracton* SUL, fos. 86 and 128^v (annotations in Anglo-Saxon). For Edward Coke's use of *Bracton* as a historical source, see Williams, *The Tudor Genesis* (*supra*, n. 22), n. 66-106 and text.

³⁴ See *infra*, n. 94.

³⁵ *Bracton*, sig. 1qii.

³⁶ For the increasing size of the legal profession in early-modern England, see Christopher Brooks, *Lawyers, Litigation and English Society since 1450*, London 1998, p. 182.

shows Tottell's output over his career³⁷. Evidently there are pronounced peaks and troughs. The peaks are periods in which Tottell reprinted large numbers of yearbooks, which were typically rather short, as individual works. Tottell seems to have built up stock which he gradually dissipated over a period of around seven to ten years³⁸. In fact, Tottell developed a practice of mixing pages from old printings with more recent ones, so he actually built up a stock of pages, rather than books³⁹. However, while stock was dissipated Tottell would need to use his equipment and workers. During the low-points of production Tottell therefore produced what have been termed 'extraordinary publications': law-books which were not part of Tottell's established stock. This category includes *Glanville* and *Bracton*, but also works such as Staunford's *Plees del Coron*⁴⁰. Staunford's *Prerogative del Roy* suggests that these books may have had small initial print runs; that work was printed in 1567 but Tottell needed to reprint in 1568⁴¹. From the cyclical nature of Tottell's output, the production of *Bracton* may therefore have been a commercial gamble, something to keep his presses and workers busy while existing stock was dissipated. However, other evidence suggests that while *Bracton* was used to fill a gap in Tottell's production schedule, Tottell did not consider the production of *Bracton* a gamble.

Although it is unclear how many copies of *Bracton* were produced⁴², *Bracton* seems to have taken almost all of Tottell's energy in 1569. Tottell printed relatively few other law books in that year, and his other principal output in 1569 was Richard Grafton's *Chronicle at Large*, a work of over 1400 pages. In fact, Tottell had to appoint another printer, Henry Denham, to print Grafton's *Chronicle*, despite the fact that Grafton was

³⁷ The chart amalgamates Tottell's legal and non-legal output. Non-legal printing is not a large proportion of Tottell's total output, but as a non-legal text is relevant for the discussion that follows, it is appropriate to include non-legal material in the figures.

³⁸ Presumably it is not a coincidence that seven years was around the normal duration of a practicing lawyer's education at the Inns of Court. Tottell's most productive period was 1553-1558, the period in which he first received his patent and could not have been sure that it would outlive Elizabeth's two predecessors. Once Elizabeth confirmed Tottell's patent his position must have seemed more secure and his rate of production slowed.

³⁹ J.H. Baker, *English Law Books and Legal Publishing*, in: *The Cambridge History of the Book in Britain: Volume IV, 1557-1695*, ed. by J. Barnard and D.F. McKenzie, Cambridge 2002, p. 480. As Baker outlines, this practice makes it difficult to be certain quite when particular works were produced.

⁴⁰ Some books (Plowden, *Commentaries*; Staunford, *Prerogative del Roy*; Brooke, *Graund Abridgement* and Dyer, *Ascun Novel Cases*) are initially included in this category, but subsequent printings are classified as 'ordinary publications'.

⁴¹ The same may be true of Brooke's *Graund Abridgement*, first printed in 1573 and reprinted in 1576. For that volume it is quite possible that Tottell was unsure whether Brooke would displace Fitzherbert as the abridgment of choice.

⁴² A typical early-modern printing was of 1000-1500 copies (D.R. Woolf, *Reading History in Early-Modern England*, Cambridge 2000, p. 207-208), but this seems an improbably large figure for a work of *Bracton's* size and for the relatively limited market of common lawyers and learned readers interested in *Bracton's* subject matter.

Tottell's father-in-law⁴³! In 1569 it seems that Tottell made arrangements to keep his presses busy and then in fact discovered that they were too busy, leading to him send work elsewhere. Although Tottell could not have sent the printing of *Bracton* to another (as he had the monopoly printing right), Tottell could have chosen to delay the printing of *Bracton* until after Grafton's *Chronicle* had been completed. The fact that Tottell did not suggests a belief that printing *Bracton* may have been the more profitable of the two works, corroborating the claim in the editor's preface about long-standing demand.

READING BRACTON

The majority of the annotated copies have no evidence identifying their early-modern owners. However, eleven copies do have identifiable owners. From those annotated copies of *Bracton*, the majority of owners (nine of eleven) were common lawyers. Copies can be identified which belonged to Edward Coke, Thomas Egerton (who received it from Thomas Owen, a justice of the Common Pleas)⁴⁴, John Savile (Baron of the Exchequer), William Lambarde, Henry Boughton (admitted to the Inner Temple in 1606), Philip Stone (admitted to the Middle Temple in 1603), Edward Goldynge (admitted to Gray's Inn in 1588) and Edmund Godfrey (admitted to Gray's Inn in 1640)⁴⁵. William Ravenscroft also donated a copy to Lincoln's Inn Library⁴⁶.

There were other owners and readers who were not common lawyers, but these represent a small portion of the surviving copies. There are no identified civilian owners⁴⁷. Some civilians, such as Cowell, did read *Bracton*⁴⁸, and a collection of early-modern

⁴³ Richard Grafton, *A chronicle at large and meere history of the affayres of Englande and kinges of the same deduced from the Creation of the worlde*, London 1569, final page. Tottell had printed Grafton's *Abridgement of the chronicles of England* from 1562 and continued to do so after 1569 (e.g. in 1572), but that is a much shorter work. For Tottell's family ties to Grafton, see Anna Greening, *Richard Tottell*, in: *The Oxford Dictionary of National Biography* : from the earliest years to the year 2000, 61 vols., ed. by H.C.G. Matthew and Brian Harrison, Oxford 2004, vol. 55, p. 74.

⁴⁴ See *supra*, n. 16.

⁴⁵ *Bracton* GLL, HEH, SUL, ASC, DCC and BL3. All information about admission to the Inns has been taken from Foster's manuscript alphabetical register of admissions to the Inns of Court (CUL MSs Additional 6694-6698).

⁴⁶ *Bracton* LIL1, titlepage. One wonders whether this was a replacement for the manuscript copy the library used to own, but which was lost (see Baker, *Oxford History* (*supra*, n. 30), p. 27).

⁴⁷ There are no copies of *Bracton* listed in either the probate inventories of scholars of the University of Cambridge or more generally in catalogues of private libraries of the period. See E.S. Leedham-Green, *Books in Cambridge Inventories: book-lists from Vice-Chancellor's Court probate inventories in the Tudor and Stuart periods*, Cambridge 1986 and R.J. Fehrenbach, E.S. Leedham-Green and J.L. Black eds., *Private Libraries in Renaissance England*, Binghamton NY 1992-2009, 7 volumes. The only possible civilian whose inventory reveals possible ownership of *Bracton* is Benedict Thorowgood (died 1596), who had a wide range of common-law works in his collection. *Bracton* is not mentioned, but his inventory included some unidentified common-law books to the value of 20 shillings (Leedham-Green, *Books in Cambridge*, pp. 531-5). Given the cost of a second-hand copy of *Bracton* in the early-seventeenth century (see *supra*, n. 18 and text), it is possible that *Bracton* was included in this group.

⁴⁸ John Cowell, *Institutiones Iuris Anglicani*, Cambridge 1605, has references to *Bracton* throughout.

material in the British Library refers to *Bracton* as evidence that the civil law was part of the study of English law in the reign of Henry III⁴⁹. However, there is little evidence of such civilian readers from the surviving copies. Two copies of *Bracton* provide evidence of civilian knowledge mixed with common law annotations by Elizabethan and Jacobean readers. In each case, the common law and civilian annotations are in the same hands⁵⁰. Other copies feature common-law and civilian material, but were clearly annotated by different people, and most civilian annotations cannot be clearly dated to the period before 1640.⁵¹

Non-lawyers are also known to have owned or read *Bracton*. Archbishop Parker owned a copy but does not seem to have annotated it. Another senior ecclesiastic, bishop Thomas Barlow, annotated his copy in the early-mid seventeenth century, after *Bracton* has entered into political discourse⁵². Finally, Richard Hooker read *Bracton*, excerpted quotes from it and even cited it in book VIII of his *Laws of Ecclesiastical Polity*⁵³. Hooker's use of *Bracton* in the realm of political theory therefore precedes Coke's use of the same passage in his debates with James I⁵⁴.

⁴⁹ BL MS Stowe 423, fos. 37-37^v. The collection is anonymous, but the subject matter focuses on ecclesiastical matters, seemingly from a civilian perspective.

⁵⁰ *Bracton* NUL, fos. 2 and 5^v feature references to civilian material, fo.55 has a reference to the yearbooks in the same hand. Both civilian references seem to be to works attributed to Minsinger. The latter is a reference to Minsinger's work on the *Institutes*, but the former seems to refer to a set of institutes on the '*iuris canonici*'. Minsinger did not produce such a work, the reference may be to Joannes Paulus Lancellotus, *Institutiones iuris canonici* (Perusia, first printed 1560 and widely reprinted). The content is similar to that in Lancellotus, but not identical. However, it is possible that the annotator was working from memory. My thanks to Professor Andrew Lewis for this suggestion. It seems that both these authors were well-known in late-sixteenth century England: for a common lawyer citing Minsinger's work on the *Institutes* see Serjeant Williams' argument in *Zangis v Whiskard* (1595) BL MS Additional 25211, fo. 124, at fo. 124^v; Helmholz shows that even a proctor in the ecclesiastical courts could refer to Minsinger in 1595 (R.H. Helmholz, *Oxford History of the Laws of England, vol.I: the canon law and ecclesiastical jurisdiction from 597 to the 1640s*, Oxford 2004, p. 292, see also p. 253 and p. 258 for other uses of Minsinger by English canon lawyers); Lancellotus was cited by Richard Hooker (in Hooker, *Of the Lawes of Ecclesiasticall Politie*, (*supra*, n.9), V.58.3, vol.2, p. 250) and was cited by Henry Swinburne (J. Duncan M. Derrett, *Henry Swinburne (?1551-1624) Civil Lawyer of York*, [Borthwick Papers 44], York 1974, p. 41). *Bracton* BL2, fos. 16^v and 27 have references to the Decretals, fos. 75^v and 86^v show references to *Littleton*, seemingly in the same hand. However, references to other common-law ideas (such as on fo. 18) seem to be in a different hand. *Bracton* GUL, fo. 86^v, features common-law annotations and a reference to the work of the civilian John Cowell. However, the reference is to a passage in Cowell's *Institutiones* which itself refers to *Bracton*. The *Institutiones* were strongly civilian in tone, but purported to be a work about the common law, so this reference does not demonstrate links with the civil law. The same page of *Bracton* also features later civilian annotations of a later date.

⁵¹ E.g., *Bracton* GUL, fo. 86^v has civilian annotations written around earlier common-law annotations.

⁵² For Parker, *Bracton* CCL. For Barlow, see *Bracton* QCL. My thanks to Ms Amanda Saville of the Queen's College, Oxford, for this information.

⁵³ See A.S. McGrade, *Constitutionalism Late Medieval and Early Modern – Lex Facit Regem: Hooker's Use of Bracton* in: *Acta Conventus Neo-Latini Bononiensis: proceedings of the fourth International Congress of Neo-Latin Studies*, ed. by R.J. Schoeck, Binghamton NY 1985, p. 116-123.

⁵⁴ See *supra*, n. 2.

Historians of reading have noted the tendency for early-modern readers to be ‘pragmatic readers’ who read for a particular purpose, actively looking for material related to particular concerns⁵⁵. The readers identified here were just such readers, reading for particular purposes. Barlow and Hooker seem to have read *Bracton* for possible utility in political discourse and Parker presumably owned *Bracton* due to his antiquarian interests. The common lawyers are similar - copies of *Bracton* were read, seemingly for use⁵⁶. Not only were lawyers selective in their choice of sections to read⁵⁷, but their reading technique both assumed and generated the possibility of using *Bracton* in early-modern legal argument.

The recommended technique for reading in early-modern Europe was through commonplacing and legal commonplacing was widespread in early-modern England⁵⁸. Commonplacing was a universal Renaissance approach to the collection, retention and subsequent recollection of material by collecting ideas, quotes, and summaries under appropriate headings; it was a method which children were encouraged to develop in their schooldays and continued into adult life, used to provide a store of material for use when required⁵⁹. Renaissance readers were encouraged to commonplace all texts they read. By so doing they divorced excerpted texts from their context, placing different texts in conjunction with one another on the assumption that all were equally suitable for use in argument. Common lawyers proceeded according to these expectations and many early-modern commonplace books survive, especially for the period 1590-1640⁶⁰.

⁵⁵ The concept of ‘pragmatic readers’ was introduced in L. Jardine and W.H. Sherman, *Pragmatic readers readers: knowledge transactions and scholarly services in late Elizabethan England*, in: Religion, culture and society in early modern Britain: essays in honour of Patrick Collinson, ed. by A. Fletcher and P. Roberts, Cambridge 1994, p. 115-116. The same idea is found, without this language, in L. Jardine and A. Grafton, “*Studied for Action*”: *How Gabriel Harvey read his Livy*, Past and Present, 129 (1990), p. 30-78.

⁵⁶ William Lambarde’s copy contains clear antiquarian annotations which, in Lambarde’s case, would also have been for his own specific purposes. However, see n.94 for evidence Lambarde also read *Bracton* with an eye to practical concerns.

⁵⁷ On which, see *infra*, nn. 93-125.

⁵⁸ For commonplacing and common lawyers, see R.J. Ross, *The Memorial Culture of Early modern English Lawyers: Memory as Keyword, Shelter and Identity, 1560-1640*, Yale Journal of Law and the Humanities, 10 (1998), p. 280-282.

⁵⁹ On commonplacing, see A. Moss, *Printed Commonplace-Books and the Structure of Renaissance Thought*, Oxford 1996. K. Sharpe *Reading Revolutions: the politics of reading in early-modern England*, New Haven 2000, is a good example of the use of commonplaces in historical research.

⁶⁰ Significant lawyers whose commonplace books survive include: Edward Coke (BL MS Harleian 6687, fos. 1-187); John Dodderidge (BL MS Harg. 407); and Thomas Egerton (Henry E. Huntington Library Manuscripts Ellesmere (HEH MS El.) 492, 494 and 496, probably an incomplete set). This study has made use of these examples, and several others. Brooks has recently discussed the possible impact of commonplacing on the form of legal discourse, but not on lawyers’ understanding of the substantive law or on the acceptability of sources for legal argument (C.W. Brooks, *Law, Politics and Society in Early Modern England*, Cambridge 2008, p. 66).

It is therefore unsurprising that annotators marked *Bracton* in a manner that indicates an intention to incorporate material from *Bracton* into commonplace books. Marginal annotations showing traditional abridgement and commonplace titles were written next to the text, presumably so that the reader could place the material appropriately in their personal notes⁶¹. For example, in one copy of *Bracton*, the discussion of *dos* is commonplaced under the heading ‘dower’⁶². The following section is replete with references to abridgement material taken from the title ‘dower’⁶³. For the reader of this copy, *Bracton* was integrated with the much later material, seemingly without difficulties. Crucially, commonplacing ensured *Bracton’s* place as a book in the common-law tradition. The act of commonplacing shows an acceptance of the idea that *Bracton* was capable of contemporary use. This method of reading therefore assumed, or contributed to, the entry of *Bracton* into the common-law canon.

Bracton’s use was shaped by the act of commonplacing. As one recent writer has observed, commonplacing forces a text into preconceived categories⁶⁴. By commonplacing *Bracton*, material that might not have been relevant to the early-modern common-law was made to become relevant. This combines with the fact that to commonplace the Latin material in *Bracton*, readers needed to place *Bracton* under law-French headings. This meant that *Bracton* was translated and viewed through the prism of the pre-existing understanding that lawyers had of the law⁶⁵, and ensured that *Bracton* was seen as having as much validity in legal matters as more recent material. Such an approach not only secured *Bracton’s* place in the common-law canon, but it could also lead to conceptual changes and misunderstandings⁶⁶.

⁶¹ Examples include *Bracton* DCC, fos. 13, 16^v, 104^v, 188^v and *Bracton* EUL1, fos. 1^v-8^v. The only reader of *Bracton* for whom both his complete commonplace book and his copy of *Bracton* have been identified is Edward Coke. See Williams, *The Tudor Genesis* (*supra*, n. 22), n. 93 for evidence that Coke’s marginal notes in this style did lead to the material so annotated being incorporated into his commonplace book.

⁶² *Bracton* GUL, fo. 304.

⁶³ *Bracton* GUL, fo. 305^v.

⁶⁴ Sharpe, *Reading Revolutions* (*supra*, n. 59), p. 181.

⁶⁵ This is especially likely given the evidence that *Bracton* was not a book read by law students, but rather by more established practitioners. See *supra*, nn. 22-24 and text. As Chartier has noted, early-modern readers (and perhaps all readers) ‘read books with a previously gained knowledge that was easily evoked in the act of reading... This “preknowledge”, as it were, was mobilized to produce comprehension of what was read – a comprehension not necessarily in conformity with that desired by the producer of the text or the maker of the book, or with that which a sharp and well-informed reading could construct’ (R. Chartier, *Texts, Printing, Readings*, in: *The New Cultural History*, ed. by Lynn Hunt, Berkeley 1989, p. 165). This is a valuable corrective to the claim in the first printed edition of *Britton* that the ‘first principles’ found in that book would illuminate the yearbooks, a claim which Cromartie implies also applied to the printing of *Bracton* (A. Cromartie, *The constitutionalist revolution: an essay on the history of England, 1450-1642*, Cambridge 2006, p. 100). In fact, for early-modern readers the yearbooks illuminated *Bracton*.

⁶⁶ See *infra*, nn. 118-125 and text and Williams, *The Tudor Genesis* (*supra*, n. 22), nn. 96-106 and text.

BRACTON AND THE COMMON-LAW CANON

However, commonplacing alone did not ensure *Bracton's* place in the common-law canon, nor did it explicitly overcome Fitzherbert's objections to *Bracton's* use. If nothing else, the habits of commonplacing did not explain why *Bracton* was a suitable book to integrate into a legal commonplace. It is rare, for example, to see texts from outside the common-law tradition integrated into common lawyers' commonplace books⁶⁷. How, then, did *Bracton* become an accepted part of the common-law canon?

The most important conclusion is that there should be serious doubts about the effects of Fitzherbert's statement about the place of *Bracton* in the common law. *Bracton* remained in use throughout the sixteenth century. Yale notes a seeming revival in references to *Bracton* in the early-Tudor period, but suggests this declines after the printing of Fitzherbert's negative remarks⁶⁸. In fact several references to *Bracton* can be found from late in the reign of Henry VIII to the printing of *Bracton* in 1569. In 1544 Shelley J referred to *Bracton* with no hint of disapproval⁶⁹; nine references to *Bracton* can be found in law reports from 1550-1569⁷⁰, a respectable number for a manuscript source; and in 1561 Catline CJ responded to a question from William Cecil by consulting *Bracton*⁷¹. William Fleetwood seems to have used a manuscript copy of *Bracton* when composing his treatise on the Admiralty Jurisdiction around 1568⁷². Furthermore, in the Inns of Court *Bracton* continued to be used. References can be found in 1527 and 1545⁷³. The latter, William Staunford's reading on forfeiture for treason, contains more references to *Bracton* than to any other non-statutory source⁷⁴, and Staunford continued to make considerable use of *Bracton* in his *Plees del Coron*, first printed in 1557. This

⁶⁷ Dodderidge is a notable exception, see *infra*, n. 120 and text.

⁶⁸ Yale, "Of No Mean Authority" (*supra*, n. 3), p. 383-4.

⁶⁹ See Baker, *Oxford History* (*supra*, n. 30), 649.

⁷⁰ *Colthirst v Bejushin* (1550) 1 Plowden 21, at 29; *Throckmerton v Tracy* (1555) 1 Plowden 145, at 159^v; *Stowel v Zouch* (1569) 1 Plowden 353, at 357-358; *Basset's Case* (1557) Dyer 136, at 137; *The Duke of Norfolk's Case* (1557) Dyer 138, at 138^v; *Thorn v Rolff* (1560) Dyer 185; *Hall v Kirby* (1562) Dyer 217b; *Lord Bray's Case* (1561) CUL MS LL.3.14, fo. 30 at fo. 40; *Hale's Case* (1569, printed as *A briefe declaration for what manner of special nuisance concerning private dwelling houses, a man may have his remedy by assise, or other action as the case requires*, London 1639), p. 16. Baker has identified four more references to *Bracton* in reported cases from 1486-1549, but describes earlier references as 'very uncommon' (Baker, *Oxford History* (*supra*, n. 30), p. 23 n. 90).

⁷¹ The National Archives, SP 12/16, fo. 136. See *infra*, n. 81 and text.

⁷² William Fleetwood, *Certen Notes declaring Admirall Jurisdiction taken out of the Queens Majesties Letters Patents*, in: Hale and Fleetwood on Admiralty Jurisdiction, [Selden Society vol. 108], ed. by M.J. Prichard and D.E.C. Yale, London 1992, p. 121. For the dating, and manuscript use of *Bracton*, see the editors' introduction, p. xxv.

⁷³ BL. MS Harg. 87, fo. 399 and CUL MS Ee.5.19, fo. 113 (Francis Mountford's 1527 reading on the Statute of Westminster II (1285), cc. 12-13, concerning criminal procedure). Baker states that there are 'many examples' of references to *Bracton* in surviving Inns of Court material from the reign of Henry VIII (Baker, *Oxford History* (*supra*, n. 30), p. 23 n. 91, which also has references to earlier examples).

⁷⁴ BL MS Harg. 92, fos. 86-103^v.

evidence suggests common lawyer's did not blindly follow Fitzherbert's rejection of *Bracton*; in fact, they continued to use the text.

This argument is supported by the evidence that most lawyers who used *Bracton* seem to have ignored Fitzherbert's rejection of the text's authority. Fulbeck warned his readers about using *Bracton* because the content was out of date, but never due to Fitzherbert's denial of *Bracton's* authority. In fact, other lawyers were happy to use *Bracton* without raising concerns about its status⁷⁵. A rare occasion on which Fitzherbert's challenge to *Bracton's* status is referenced is in *Stowel v Lord Zouch*, where both Catline CJ and Saunders CB use Fitzherbert's language, but it is not clear that they did more than pay lip-service to Fitzherbert's restriction on the use of *Bracton*⁷⁶. For example, Saunders used *Bracton* to set out the common law, and simply used cases to show that *Bracton* was correct. Furthermore, Plowden's interpretation of the arguments of both the judges was that they cited 'authorities' out of *Bracton* as elements of their argument, suggesting that at least one early-modern lawyer did not consider them to be citing the text solely as ornament⁷⁷. The only annotator before 1600 who even considers the matter is Edward Coke, and he considered Fitzherbert to be incorrect⁷⁸! Nevertheless, as lawyers came to focus on textual bases for their arguments from the later sixteenth century, we might expect Fitzherbert's criticism to be raised more frequently. But the same period also saw a number of developments which encouraged the use of *Bracton*.

The first important development antedates the printing of *Bracton* itself. In 1557 William Staunford's *Plees del Coron* was printed and describes *Bracton*, together with *Glanvill* and *Britton* as '*vetustis legum scriptoribus*', a direct contradiction of the denial of *Bracton's* authority found in Fitzherbert⁷⁹. There is good evidence that a number of common lawyers came to *Bracton* via the use of the text in Staunford's *Plees*, so this remark was probably of importance in challenging Fitzherbert's statement. A number of annotators of *Bracton* can be seen cross-referencing to Staunford in their copies. These

⁷⁵ References to *Bracton* after its printing, which do not consider restrictions on its use, include: *Clere v Brook* (1573) 2 Plowden 442, at 448^v-449^v and *Zangis v Whiskard* (1595) BL MS Additional 25211, fo. 124, at fo. 124^v. Coke used the language of ornament in *Paine's Case* (*supra*, n. 28), 35, but see *supra*, n. 28, for the fact Coke was simply repeating another's report. See *infra*, nn. 88-92 and text for evidence that Coke did not consider *Bracton* to be suitable only for use as ornament.

⁷⁶ *Stowel v Zouch* (*supra*, n. 70), 357-358. The other judges seem to accept this analysis of *Bracton's* role.

⁷⁷ *Stowel v Zouch* (*supra*, n. 70), 357. For difficulties with the language of 'authority' in this period, see I.S. Williams, *English Legal Reasoning and Legal Culture, c.1530-c.1640*, unpublished University of Cambridge PhD thesis 2008, p. 25.

⁷⁸ See *infra*, nn. 88-92 and text.

⁷⁹ Staunford, *Plees del Coron*, London 1557, unpaginated 'lectori'.

cross-references are to passages where Staunford himself cites *Bracton*, suggesting that the readers noted that part of *Bracton* precisely because it had been used by Staunford⁸⁰.

Two more detailed examples can be provided. In 1561, Catline was consulted on whether witchcraft was an offence at common law. Catline's reply was expressly based upon a consultation of Staunford (given the context, presumably the *Plees del Coron*), *Bracton* and *Glanvill*, with the tone suggesting that Staunford's work was Catline's first reference point⁸¹. A decade later, Catline described *Bracton* as an author in the common law in the *Duke of Norfolk's Case*, translating the same point made in Staunford's *Plees del Coron*⁸². Secondly, Thomas Egerton's personal notes relating to some criminal matters include references to Staunford, followed by the references which Staunford includes to *Bracton*. Annotations in Thomas Egerton's copy of *Bracton* can be linked directly to these personal notes, suggesting that Egerton obtained his references to *Bracton* from Staunford and then verified them from his copy of the book itself⁸³. Staunford's seeming role as a populariser of *Bracton* therefore indicates that his claim that *Bracton* was an author in the common law tradition would have been of importance in challenging Fitzherbert's denial of that status⁸⁴.

Other enhancements to *Bracton's* status relate to the printed edition itself. As Chartier has shown in a very different context, the simple title of a book can affect the expectations of its readers and their decision to read the work⁸⁵. The early-modern common lawyer Robert Callis was a little more circumspect, but still acknowledged that the title of a work could inform a reader's understanding of the text. For Callis, 'in Acts and Books the Titles and Stiles *may* give help in the Exposition' (emphasis added)⁸⁶. *Bracton*, conveniently, titled itself as a book on the laws and customs of England, indicating to readers that it was a common-law book and therefore suitable for integration into common-law material. Furthermore, *Bracton's* title-page states that it was

⁸⁰ *Bracton* GUL, fos. 3^v, 4, 30, 55^v, 77, 85, 104^v-105, 118^v-127^v (there is also a reference to Staunford's *Prerogative del Roy* on fo.14); *Bracton* SLL, fo. 139; *Bracton* AL, fo. 30.

⁸¹ *Supra*, n. 71.

⁸² *Supra*, n. 79 and text. The same point was also made in the editor's preface to the printed edition of *Bracton*, see *infra*, n. 87 and text.

⁸³ In HEH MS El. 496, fo. 162^v, Egerton's use of *Bracton* is expressly linked with Staunford's use of the text in his *Prerogative del Roy*. See *infra*, n. 107, for further links between Egerton, *Bracton* and Staunford.

⁸⁴ The preface to the 1604 printing of *Glanvill* referred to Staunford as procuring the first printing (Glanville, *Tractatus de legibus* (*supra*, n. 5), sig. *iii), a report which Coke subsequently repeated (Edward Coke, *The fourth part of the Institutes of the laws of England concerning the jurisdiction of courts*, London 1644, p. 345 margin). If this is combined with Staunford's use of *Bracton* in his criminal law text generating demand for that book to be printed, Staunford may be the key figure in the early-modern popularisation of the oldest common-law texts. His role (and any particular cause of it) merits serious consideration.

⁸⁵ Chartier, *Texts, Printing, Readings* (*supra*, n. 65), p. 166-167.

⁸⁶ Robert Callis, *The Reading of That Famous and Learned Gentleman, Robert Callis Esq; Sergeant at Law; Upon the Statute of 23 H.8.Cap.5. of Sewers*, London, 1647, p. 6. The reading was delivered in 1622.

printed by Richard Tottell under the auspices of the monopoly common-law printing patent, providing reinforcement for the impression that this was viewed as a book within the common-law tradition. Finally, Thomas Norton's preface referred to Bracton as an '*autor de Iure*'⁸⁷. The printed volume itself therefore proclaimed *Bracton* to be a work in the common-law tradition, contrary to the remarks of Fitzherbert.

Finally, other readers of *Bracton* seem to have come to the text from Edward Coke's references to it⁸⁸, and Coke engaged directly with Fitzherbert's challenge to *Bracton's* status. The title-page to Coke's copy of *Bracton* contains a set of notes which challenge the claim that *Bracton* was not an author in the common law. The notes can be divided into two types, although the two shade into one another. The first type consists simply of references to *Bracton* in the year-books, thereby demonstrating that Bracton was an author in 'our law'. This was a simple rejection of the statement in *Fitzherbert* that *Bracton* was not an author in the common law through the examination of other evidence⁸⁹. The other discussion cites references within *Bracton* to the author's own status as a judge. Yale has described this 'belief as to judicial status' as 'material to the authority of *De Legibus*'⁹⁰. From Coke's notes we can go further: for Coke himself, the belief in the judicial status of the author of *Bracton* was the principal justification for the authority of the book. Coke's response to the challenge of *Bracton's* status places the court at the centre, either as accepting the authority of the text, or as the author being a judge of the court himself. Coke's legal thought focussed on the role of the judges in crafting and ensuring the excellence of the common law and in understanding its 'artificial reason'⁹¹. Given the increased attention paid to judicial statements of the law in the later sixteenth century, Coke's approach to *Bracton's* authority might not be unique⁹².

⁸⁷ *Bracton*, sig. 1¶ii. It is possible that the simple fact of printing came to support the use of *Bracton*. On the preference common lawyers seem to have developed for printed material, see I. Williams, "He Credited More the Printed Booke": *Common Lawyers' Receptivity to Print, c.1550-1640*, *Law and History Review*, 28 (2010), p. 39-70, especially p. 66-7.

⁸⁸ As with Staunford, readers of *Bracton* can be seen marking passages in *Bracton* which are cited by Coke (*Bracton* KCL, fo. 58v; *Bracton* BL1, fo. 124; *Bracton* LIL1, fo. 53).

⁸⁹ Judicial approval of a text was always an important element in Coke's thought. In 1599, Coke discussed the authority of *Fleta* in legal argument, and relied on the fact of prior use evidenced in law reports to justify his citation of the text (*Hallyocke v White* (1599) BL MS Additional 25203, fo. 53), and in the preface to the *Commentary on Littleton*, Coke cited a Jacobean case where the judges approved Littleton's text and said that the cases in it must not be 'disputed or questioned' (Edward Coke, *The first part of the Institutes of the lawes of England. Or, A Commentarie vpon Littleton*, London, 1628, sig. ¶¶2).

⁹⁰ Yale, "Of No Mean Authority" (*supra*, n. 3), n. 32. Yale refers to Coke and later writers. Lupoi has recently suggested that a 'feeling of commonalty' between the common and civil laws enabled 'Bracton to come [sic] back as an authoritative source' (M. Lupoi, *Trust and Confidence*, *Law Quarterly Review*, 125 (2009), p. 286). Annotated copies of *Bracton* show little to no evidence to support this assertion.

⁹¹ See Williams, *English Legal Reasoning* (*supra*, n. 77), p. 15-18.

⁹² The only evidence found in the annotated copies is *Bracton* ASC, titlepage which quotes Coke on the title page, noting Coke's statements that Bracton wrote in the time of Henry III and that Bracton was both a

THE UTILITY OF *BRACTON*

Early-modern readers were selective, and the annotated copies provide evidence of which passages were of more interest. Historians of reading have noted the tendency for early-modern readers to be ‘pragmatic readers’ who read for a particular purpose, actively looking for material related to particular concerns⁹³. Given this fact, and that the annotations in *Bracton* do demonstrate particular interests on the part of readers, it is legitimate to infer that these interests may have spurred their reading of the book. The annotations of the common lawyers who read *Bracton* show that their interest was in the legal content⁹⁴. This section of the article will consider some of the particular interests of common lawyers when reading *Bracton*. In a number of cases, the evidence from the copies of *Bracton* suggests that certain isolated uses of *Bracton* visible in law reports were not atypical and therefore that *Bracton* should at least be considered as a possible formative influence on the law in a number of fields in the early-modern period.

The most obvious pattern of annotation is a tendency to annotate the start of *Bracton* (where *Bracton* gives a civilian discussion of legal theory) and the material on criminal law⁹⁵. Even those annotators who show a wider range of interests often have a higher concentration of annotations on these topics⁹⁶. The reason behind this is not difficult to discern, and in the case of criminal law has already been observed by Baker – a shortage of other available material on the topics as lawyers came to rely on textual sources for their understanding of the law, rather than the largely unprinted common learning⁹⁷. The difficulties with criminal law were pronounced – criminal law was not a common feature of the yearbooks, or of sixteenth-century legal literature⁹⁸. In fact,

judge in the Common Pleas and a ‘writer of the laws’.

⁹³ See *supra*, n. 55 and text.

⁹⁴ William Lambarde was a common lawyer who was an exception to this statement; he used *Bracton* as a source for his antiquarian research, although it seems that even some of his annotations are directed to more practical ends, such as Lambarde’s work as a Justice of the Peace (see, e.g., *Bracton* SUL, fos. 288^v and 292^v which concern perjury and attain of juries, bodies about which Lambarde was sometimes critical as a magistrate).

⁹⁵ *Bracton*, fos. 1-10 and 115-128.

⁹⁶ Eg., *Bracton* ASC, fos. 115^v-142 and *Bracton* SUL, fos. 105, 115^v onwards and fos. 288^v and 292^v on matters arguably concerned with criminal process (particularly for Lambarde’s work as a JP), perjury and attain.

⁹⁷ Baker, *Oxford History* (*supra*, n. 30), p. 529.

⁹⁸ A good example of this difficulty is *Bracton* GUL, fos. 118^v-127^v, where the plentiful cross-references to other criminal law material have only two references to substantive legal material from the early-modern period, in both cases from Plowden’s *Commentaries*. The other references are to Staunford’s *Plees*, *Glanvill*, *Britton*, and to William Lambarde’s work. Seipp has suggested that there is rather more criminal law in the yearbooks than is traditionally expected (D.J. Seipp, *Crime in the Year Books*, in: *Law Reporting in England: proceedings of the eleventh British Legal History Conference*, ed. by C. Stebbings, London 1995, p. 16-17). Copies of *Bracton* where annotations focus on the criminal law material include *Bracton* DCC, fos. 115^v

lawyers seem to have shown relatively little interest in criminal law. A sample of early-modern commonplace books found in Cambridge University Library suggests that almost half (seven of eighteen) made no reference to any criminal law matters at all⁹⁹. When, or if, lawyers did need to consider criminal law, it seems that a number of them might not have had source material readily available, and would have needed to read new books¹⁰⁰. The obvious choice would be Staunford's *Plees del Coron*, and this book does seem to have encouraged lawyers to read *Bracton* itself¹⁰¹.

This use of *Bracton* to provide material where other sources were lacking is typical of the other frequent uses to which *Bracton* was put and which will be discussed below. This conclusion also explains why *Bracton* never became a standard reference work - the text's principal use was in areas of uncertainty or where existing texts were inadequate. While the sixteenth and seventeenth centuries were periods of dramatic change, most of the law was not uncertain. This also explains why legal change between the time of the writing of *Bracton* and the early-modern reading of the text was of less concern than might be expected: *Bracton* was used in situations where lawyers were uncertain what the law was and therefore legal change was not obvious¹⁰².

Proof and witnesses

Common law courts did not generally raise questions concerning the adequacy of proof as issues of fact were determined by the jury, nor did they consider whether certain numbers of witnesses were required¹⁰³. However, on occasion such matters could be raised. Due to the relative absence of such material from common-law literature, lawyers seem to have turned to *Bracton*. The annotated copies show three readers were clearly

onwards; *Bracton* HEH, fos. 118^v-119, 143 and 145; *Bracton* GUL, fos. 118^v-127^v; *Bracton* KCL, fo. 105; *Bracton* LIL2, fos. 118^v-121.

⁹⁹ The following commonplace books did not have any obvious criminal law discussion: CUL MSs Dd.4.41; Dd.4.62; Ii.5.28 (this copy has a reference to treason on the contents page, but not in the main text); Gg.3.5; Ee.6.15; Add. 3295; Ii.5.29. It is possible some criminal law was placed under property law headings concerning escheat

¹⁰⁰ Evidently Staunford's use of *Bracton* cannot be explained on this basis. Staunford's reading may have been an occasion for Staunford to show his erudition (an early example of the trend that became more pronounced in the later-sixteenth century) and his interest in *Bracton* was piqued as a result of that. Certainly Baker has described all readers who made references to learned law as 'exceptional', and the readers who used civil law (as Staunford did), rather than canon law, were atypical within that small minority (J.H. Baker, *Roman Law at the Third University of England*, *Current Legal Problems*, 55 (2002), p. 145). Staunford may consciously have made his reading exceptional.

¹⁰¹ See *supra*, n. 80 and text.

¹⁰² Where readers did note that the law had changed, these annotations were in parts of *Bracton* less frequently annotated. See, e.g., *Bracton* THL, fos. 28^v and 63; KCL 12^v and SLL 139.

¹⁰³ It was also only in the reign of Elizabeth that witnesses could be compelled to testify (Perjury Act 5 Eliz. I, c.9), although the practice may already have existed.

concerned with rules about witnesses, for example the number required¹⁰⁴. More specifically, *Bracton* was put forward by the Duke of Norfolk in his trial for treason on the law concerning the eligibility of witnesses, and the authority of the book was accepted for that purpose¹⁰⁵.

In addition to being raised in unusual circumstances such as treason trials (where common-law judges advised the commissioners trying the facts directly), the other likely reason for a concern about witnesses and proof relates to jurisdictions other than the common-law courts. Courts such as the Chancery and Star Chamber did not make use of juries. The common lawyers appearing before such tribunals therefore needed to engage with questions of proof. An important example here is Thomas Egerton, whose copy of *Bracton* shows an interest in modes of trial and proof. For example, one of his more heavily annotated sections in *Bracton* concerns indictments on suspicion¹⁰⁶. Egerton's personal papers show links between his reading *Bracton* and his work in the Star Chamber¹⁰⁷. In this sense *Bracton* may be an overlooked source influencing the emerging ideas of evidence in those jurisdictions¹⁰⁸. Certainly an observer of Dyer in the Star Chamber considered that his reference to the idea that *nemo tenetur seipsum prodere* was a reference to 'Bractons principall'¹⁰⁹. A final possible explanation for the role of *Bracton* lies in the late-sixteenth and early-seventeenth century jurisdictional disputes with the ecclesiastical courts. Issues about the number of witnesses were newly raised in these disputes through the use of writs of prohibition. The requirement of two witnesses in ecclesiastical courts was a point of contention between the common and ecclesiastical

¹⁰⁴ E.g., *Bracton* BL2, fos. 38 and 61; *Bracton* AL fo. 38 (which features a reference to Plowden's *Commentaries* on the same point) and *Bracton* SLL, fo. 118^v. For discussion of the requirement of two witnesses more generally, see M.R.T. Macnair, *The Law of Proof in Early Modern Equity*, Berlin 1999, p. 249-253.

¹⁰⁵ *The Trial of Thomas Howard duke of Norfolk, before the Lords at Westminster, for High Treason* (1571) 1 St Tr col. 957, at col. 1026. The Duke of Norfolk raised the argument that witnesses must be freemen and must not be traitors, outlaws or attainted.

¹⁰⁶ *Bracton* HEH, fo. 143.

¹⁰⁷ HEH MSs El. 453 and 485, fo. 2^v feature references to *Bracton* in material for Star Chamber.

¹⁰⁸ E.g., Macnair, *The Law of Proof* (*supra*, n. 104).

¹⁰⁹ British Library MS Harleian 859, fo. 50 (printed in J. Bruce, *Observations upon certain Proceedings in the Star-chamber against Lord Vaux, Sir Thomas Tresham, Sir William Catesby, and others, for refusing to swear that they had not harboured Campion the Jesuit*, *Archaeologia*, 30 (1844), p. 104 and in *Select Cases in the Council of Henry VII*, [Selden Society vol. 75], ed. by C.G. Bayne and W.H. Dunham, London 1956, p. xciv n.6). Dyer himself does not refer to this point in his personal notes (see *Reports from the Lost Notebooks of Sir James Dyer*, [Selden Society vol. 110], ed. by J.H. Baker, vol.2, London 1994, p. 390 and 397). The maxim is not found in *Bracton*, but the reference shows an observer who presumably at least knew of *Bracton* associating *Bracton* with the law of evidence. Gray's extensive discussion of prohibition cases and self-incrimination does not refer to *Bracton* in connection with the maxim (C.M. Gray, *The Writ of Prohibition: jurisdiction in early modern English law*, 2 vols., New York 1994, vol.2, p. 293-423).

lawyers, and common lawyers may have been looking to *Bracton* for assistance in this field¹¹⁰.

Servitudes

The evidence from copies of *Bracton* corroborates Yale's suggestion that *Bracton's* consideration of servitudes as *iura in re aliena* was 'one ready source of material to give some order and substance' to the emergence of the law of servitudes from the law of nuisance in the sixteenth century, another field in which existing common-law literature was arguably lacking¹¹¹. If so, this would be an example of a situation where the reading of *Bracton* had the potential to introduce a romanisation of the common law. Yale based his suggestion on the evidence of a discussion in *Sury v Albon Pigot* (1625), where Whitlock J cited *Bracton* on servitudes¹¹². The case in itself may not provide much evidence: Whitlock was a trained civilian¹¹³, and Dodderidge and Jones JJ both had some knowledge of the civil law¹¹⁴. As such, it would be possible to argue that the judges there were predisposed to a civilian analysis and that *Bracton* served, at most, as a means of legitimising that approach. However, three of the annotated copies of *Bracton*, including that of Coke, show that readers were interested in *Bracton's* discussion of servitudes; William Lambarde's copy not only shows Lambarde's interest in the same topic, but also has Lambarde using *Bracton* to organise the law of servitudes into diagrammatic form, albeit not following the civilian model¹¹⁵. Coke's interest in his copy is reflected in his *Commentary on Littleton*, where Coke explains that the common law recognises three kinds of right of way, giving them the civilian titles of *iter*, *actus* and *via*, explicitly citing *Bracton* for the point¹¹⁶. Simpson is correct that the law of easements was still developing in the

¹¹⁰ C.M. Gray, *Prohibitions and the privilege against self-incrimination*, in: *Tudor Rule and Revolution*, ed. by D.J. Guth and J.W. McKenna, Cambridge 1982, p. 350-352). For more detail on prohibitions and the two-witness rule see Gray, *The Writ of Prohibition* (*supra*, n. 106), vol. 2, p. 207-291.

¹¹¹ Yale, "Of No Mean Authority" (*supra*, n. 3), p. 388.

¹¹² References can be found in the reports printed in Popham 166, at 171 and Buls. 339, at 340. Getzler suggests that the latter of these references shows that Whitlock was actually trying to reduce the impact of *Bracton* in this area, as *Bracton* had an expansive concept of servitudes (Getzler, *History of Water Rights* (*supra*, n. 3), p. 131-2).

¹¹³ Exceptionally unusually for a common law, he had a degree in the civil law. For Whitlock's use of the civil law, particularly in an educational context, see Baker, *Roman Law* (*supra*, n. 100), p. 136-137 and 141-144.

¹¹⁴ For Dodderidge, see *infra*, n. 120 and text. Jones made reference to canon law in *Russell v Ligorine* (1637) CUL MS Gg.ii.20, fo. 1023^v, at fo. 1024^v, although the language of the reference suggests Jones was referring to earlier English ecclesiastical court practice, rather than the learned law directly.

¹¹⁵ See *Bracton*, fo. 221 in ASC, DCC and GLL. For Lambarde, see *Bracton* SUL, fo. 221^v.

¹¹⁶ Coke, *Commentarie on Littleton* (*supra*, n. 89), fo. 56.

1620s, and so ‘the subject...is hardly mentioned in Coke’s commentary on Littleton’, but where it is, we find *Bracton*, and in this Coke was not unrepresentative¹¹⁷.

Contract

One annotator of *Bracton* raises the intriguing possibility of an influence upon the law of contract. That annotator inserted the word ‘*assumpsit*’ next to the index entry for *Bracton*’s chapter on the *stipulatio*¹¹⁸. This annotator was not the only common lawyer to link the *stipulatio* and *assumpsit*; John Dodderidge did the same in his argument in *Slade’s Case*, expressly citing *Bracton* for the proposition that ‘bare stipulacion’ alleged in the *assumpsit* claim in *Slade’s Case* lacked consideration¹¹⁹. Had such links between *Bracton*’s essentially civilian discussion and the early-modern common law been established firmly by the reading of *Bracton* there would have been the potential for a substantial romanising of the common law. Certainly Dodderidge did not view the two as incompatible: his commonplace often features civilian *sententiae* or maxims immediately underneath contemporary common-law headings, with that civilian content then followed by standard common-law material, integrating the two legal traditions¹²⁰.

Bracton’s discussion of the *stipulatio* followed the civil law in its discussion of the formal contract. There is no explicit evidence of a civilian concept of the *stipulatio* becoming part of English law. In theory, there was a large difference between the *stipulatio* as a civilian institution and the early-modern law of contract, which was split between the actions of covenant, debt and *assumpsit*. The common law *assumpsit* was a very different institution to the *stipulatio*, not a contract (nor, as Nicholas describes the *stipulatio*, a ‘method of contracting’¹²¹) but rather a mode of bringing a contractual claim. *Assumpsit* claims tended to be based on oral contracts (in this sense being similar to the classical civilian *stipulatio*), but these contracts had no prescribed formalities. In this sense the link between *Bracton* and *assumpsit* seems to be based, at best, on serious misunderstanding of civilian ideas.

However, *Bracton*’s discussion of the *stipulatio* is taken from Justinian’s *Institutes*. As Ibbetson has observed, the discussion of the *stipulatio* in the *Institutes* is where ‘we find the most substantial treatment of the general principles of contractual liability’ in Roman

¹¹⁷ A.W.B. Simpson, *A History of the Land Law*, 2nd ed., Oxford 1986, p. 115.

¹¹⁸ *Bracton* SLL, sig. 2¶ii^v.

¹¹⁹ BL MS Harleian 6809, fos. 45-46^v, at 46^v. Dodderidge noted *Bracton*, fo. 98^v in the margin of fo.45, when considering actions generally. *Bracton*’s discussion of *stipulatio* is on fo. 99^v.

¹²⁰ E.g. BL MS Harg. 407, fos. 59^v and 62^v. Dodderidge’s commonplace also includes references to *Bracton* (eg. fos. 74^v, 95^v and 111^v).

¹²¹ B. Nicholas, *An Introduction to Roman Law*, Oxford 1975, p. 193.

law¹²². In fact, the formal elements in the *stipulatio* are little discussed in either Justinian's *Institutes* or *Bracton* (for example, the requirement for correspondence between the question and the answer can be inferred from the text, but is not stated explicitly as a rule), rendering any equivalence between the *stipulatio* and the English law of contract more plausible. The readers of *Bracton* who drew the link between the *stipulatio* and English contract law were perhaps looking for just such a convenient statement of relatively unknown, or at least inexplicit, general principles¹²³.

To take one example, the emerging concept of consideration made reference to the civilian idea *ex nudo pacto non oritur actio*, and the same concept was also used in the property law context of uses¹²⁴. While it is only in *Throckmerton v Tracy* that we see *Bracton* being explicitly associated with this maxim, lawyers' familiarity with the language of bare pacts, combined with the association of the idea of bare pacts with *Bracton* may have encouraged them to link passages in *Bracton* considering bare pacts with the common law of consideration in the action of *assumpsit*. Certainly that seems to be Dodderidge's thought process. By so doing, *Bracton's* presentation of the Roman law of the *stipulatio* might have affected their conceptualisation of the general ideas of contract actionable in *assumpsit*.

However, the example of the *stipulatio* provides a good example of one of the difficulties in this area: we can see that circumstances were ripe for some influence from material like that in *Bracton*, and that some common lawyers, including Dodderidge, do seem to have read *Bracton* and made the relevant links, but we do not have express evidence of this view having any particular effects¹²⁵. *Bracton*, and the civilian ideas mediated through *Bracton*, may have shaped common-law thinking, but the thinking cannot easily be uncovered. From the perspective of any consideration of a 'reception' of Roman law, or the *ius commune*, in England, the reading of *Bracton* therefore provides another elusive fragment of evidence but does not lead to clear conclusions.

¹²² D.J. Ibbetson, *A Historical Introduction to the Law of Obligations*, Oxford 1999, p. 7.

¹²³ In this regard, perhaps *Bracton* actually performed the role that the printer of the first edition of *Britton* had claimed for that work (see *supra*, n. 65 and text)!

¹²⁴ J.H. Baker, *Origins of the "doctrine" of consideration*, in: *On the Laws and Customs of England*, ed. by Arnold et al. (*supra*, n. 3), p. 336. For the conveyancing context, see *Throckmerton v Tracy* (*supra*, n. 70), 161v, where Saunders J cited *Bracton* to introduce the civil law on clothed pacts. Although the case concerned a conveyance, rather than the usual issues of contract law, the resort to *Bracton* and such civilian ideas may support the idea that *Bracton* had more of an influence on common lawyers' thinking in this area than is immediately apparent.

¹²⁵ Baker (*Origins* (*supra*, n. 124), p. 351-2) considers that the use of the civilian language of bare pacts had no noticeable effect on the development of the doctrine of consideration as only the language was borrowed, not the substance.

Criminal Law - Treason

Bracton's influence was not confined to occasions when lawyers searched for guidance on novel questions or for substantive rules. On occasion, reading *Bracton* could have more subtle, but perhaps more important, effects. An instance of this is the law of treason. The English law of treason was confused, and confusing, from the 1550s to the Interregnum¹²⁶. Henry VIII introduced new treason legislation after the break with Rome, starting a tradition of statutory changes to the law of treason which continued through the reigns of his children. This sometimes left the source of the law of treason in doubt: in 1603 Popham CJ even asserted that all the treason statutes had been repealed and only the common law of treason remained¹²⁷! This was an unusual position; most lawyers recognised the continuing effect of at least the first Treason Act from 1352, a statute typically taken as the starting point for discussions of treason in the reign of Elizabeth and onwards¹²⁸. This section will consider an important conceptual development in the law of treason in the sixteenth and seventeenth centuries, before demonstrating *Bracton's* role in that development.

The Treason Act stated that there were six types of treason: compassing or imagining the death of the King, his wife or heir; levying war on the King in his realm; adhering to the King's enemies; violating various female members of the royal family with the corresponding risk of an heir not of the royal blood; counterfeiting the great or privy seal or coin or importing counterfeit coin; and killing the Chancellor, Lord Treasurer or judges¹²⁹. Of these various types of treason, that of compassing or imagining the death of the King was often interpreted extremely expansively by lawyers as 'constructive treason'¹³⁰. Royal lawyers sometimes relied upon the 1352 forms of treason even when more specific statutory treasons existed, because the older legislation did not include some of the procedural protections given to defendants in Tudor treason acts¹³¹.

¹²⁶ For an example of this confusion see L.M. Hill, *The Two-Witness Rule in English Treason Trials: Some Comments on the Emergence of Procedural Law*, *American Journal of Legal History*, 12 (1968), 95-111 and D. Cressy, *Dangerous Talk: Scandalous, Seditious, and Treasonable Speech in pre-modern England*, Oxford 2010, p. 41 and 265-7.

¹²⁷ *R v Sir Walter Raleigh* (1603) 2 State Trials col. 2, col. 13. Popham was using the confusion in the law to prevent Raleigh's claims to stricter requirements of proof based on statutory forms of treason. Coke was willing to assert simply that Raleigh had misunderstood the statutes (*R v Raleigh*, col. 8). The effect of legislation and repeals was unclear even in the reign of Mary, see the discussion in Serjeant's Inn in 1556 reported by William Dalison (*The Reports of William Dalison, 1552-1558*, [Selden Society Volume 124], ed. by J.H. Baker, London 2007, p. 106).

¹²⁸ L.J. Ward, *The Law of Treason in the Reign of Elizabeth I 1558-1588*, unpublished University of Cambridge PhD thesis 1985, p. 13.

¹²⁹ Stat.25.Ed.3, c.2.

¹³⁰ See, e.g., Ward, *The Law of Treason* (*supra*, n. 126), p. 15-16.

¹³¹ Ward, *The Law of Treason* (*supra*, n. 126), p. 166.

However, around 1600, early-modern common lawyers began to use the language of the Roman *crimen maiestatis* and *laesae maiestatis* in their own discussions of treason¹³². This was a change in vocabulary, but also more than that. The change in language provided an intellectual justification for a changed concept of treason, one which did not focus on the Treason Act 1352 or other statutory treasons.

The utility of this changed concept can be seen in remarks by two lawyers. For both Edward Coke and Christopher Yelverton, the changed view of treason as *laesae maiestatis* provided a theoretical core to the law of treason. The development was one of intellectualisation: systematising and justifying existing ideas into a coherent whole¹³³. But by laying new foundations for the law of treason, new law could be built.

In the trial of the gunpowder plotters for conspiring to detonate gunpowder under Parliament and thereby to kill the King, nobility and judges (amongst others), Coke stated that treason was *laesae maiestatis*. Coke then used the concept of *maiestas* to explain why killing the judges amounted to treason. According to Coke killing judges was a challenge to the King's authority, with the judges representing the 'majesty' of the King¹³⁴. The act was therefore *laesae maiestatis* and treason. Rather than relying simply on the relevant statutory provisions, Coke instead rationalised the statutory treason as an example of a broader crime of *laesae maiestatis*¹³⁵.

Christopher Yelverton's approach was similar, but moved beyond the forms of statutory treason. Yelverton explained that 'to alter the state, change the religion, inforce

¹³² See, e.g., *R v Sir Christopher Blunt et al* (1600) 1 State Trials col. 1415, col. 1419 per Christopher Yelverton; Edward Coke, *Le second part des reportes del Edward Coke*, London (1602), sig. ¶iv^v (preface to Coke's second volume of reports, alluding to Essex as 'the greatest offender' whose crime was '*crimen laesae maiestatis*'); *R v Sir Walter Raleigh* (*supra*, n. 127), col. 7 and *R v Robert Winter, Thomas Winter, Gny Fawkes et al* (1606) 2 State Trials col. 159, col. 167. The change is also visible in legal literature: William West described treason as an offence against the 'majesty' of the 'commonwealth' (William West, *Symbolaeography*, part 2, London 1594, sect. 213); Ferdinando Pulton, *De Pace* (*supra*, n. 10), fo. 109 (Pulton references *Bracton* on treason at fo. 109^v) and Robert Holborne, *The Reading in Lincolnes-Inne, Feb.28.1641 Upon the Stat. of 25.E.3. cap.2. Being the Statute of Treasons* (1642, Leonard Lichfield, Oxford) both used the language of *laesae maiestatis*. Unsurprisingly the language of *laesae maiestatis* is visible in work by lawyers with some civilian learning: William West's *Symbolaeography* is one such example (and was explicitly relied upon by the civilian John Cowell when defining treason in his *The Interpreter or booke containing the Signification of Words*, London 1607, sig. Vvv1^v). Thomas Smith, the first Regius Professor of civil law at Cambridge University, also linked treason and *laesae maiestatis*, although he does not clearly equate the two (Thomas Smith, *De Republica Anglorum*, London 1583, p. 84). See *infra* nn. 155-6 and text for the earliest links between treason and *laesae maiestatis* made by early-modern common lawyers.

¹³³ On the idea of intellectualisation, particularly from the use of civilian derived material, see F. Wieacker, *A History of Private Law in Europe*, trans. A. Weir, Oxford 1995, especially p. 95-7 in the German context. Such intellectualisation did occur in the common law of inheritance in the late-sixteenth century (see Williams, *English Legal Reasoning* (*supra*, n. 77), p. 122-124).

¹³⁴ *R v Robert Winter* (*supra*, n. 132), col. 168.

¹³⁵ Coke's analytical approach is the same as that taken by *Bracton*, who gave forgery as an example of the *crimen laesae maiestatis* (see *infra*, n. 148 and text). Lawyers in treason trials rarely cited authority, but it is possible that Coke took his analytical approach from *Bracton*.

the prince to settle power, and for subjects to say things at their list, is *crimen laesae maiestatis*; and all Indictments term this treason: for that subject that will rule his prince, will never be ruled by his prince¹³⁶. This is a classical idea of *laesae maiestatis*, indeed Yelverton was deliberately drawing parallels with the allegations against Catiline. While the idea of altering religion (or law) as constituting treason can be seen from the mid-sixteenth century, it then lacked any clear justification - it was simply assumed that interference with this aspect of the Crown's role was treason¹³⁷. For Yelverton, however, *laesae maiestatis* provided a conceptual basis for the development of the law of treason in Reformation England beyond that covered by statute.

This flexibility in the understanding of treason ultimately enabled claims in the reign of Charles I that actions of royal officials which were considered to be contrary to established law could be treason, even if these actions were in accordance with the wishes of the King. Orr has drawn attention to the similarities with the *crimen maiestatis*¹³⁸, and to the significance of this development as a crucial stage in moving concepts of treason from a focus on endangering the King to a crime against the State. Treason came to be conceived as a crime of acting against the established laws and jurisdictions. Although it did not become clearly defined as a crime against an impersonal 'State', that concept was emerging¹³⁹. From that position, treason could then be asserted as the legal justification for the 1649 trial and execution, for acting contrary to the established laws, of the king himself!

No real explanation has been provided for the change in vocabulary and ensuing conceptual change. The only historian to comment on the development simply observes that

¹³⁶ R v *Sir Christopher Blunt et al* (*supra*, n. 132), col. 1419. This concept of treason is very close to that propounded by Edward Coke in his *Third part of the Institutes of the laws of England concerning high treason, and other pleas of the crown, and criminall causes*, London 1644, p. 12. Bellamy considers that '[l]ese-majesty was a term virtually never used by the common lawyers and suggests some desperation or new policy on the part of the queen's legal advisers' (J. Bellamy, *The Tudor Law of Treason*, London 1979, p. 80), not considering the evidence below (*infra*, nn. 147-164 and text) that shows relatively widespread links between ideas of treason and *laesae maiestatis* around 1600.

¹³⁷ R v *Crofte* (1554) in: Baker, *Reports* (*supra*, n. 127), p. 63-4. Bellamy notes that seeking to change the established religion was increasingly included in treason indictments from 1570, but 'was not part of any particular act and was thus not essential for their soundness in law' (Bellamy, *Tudor Law* (*supra*, n. 136), p. 67 and 81).

¹³⁸ For this paragraph, see D.A. Orr, *Treason and the State: Law, Politics, and Ideology in the English Civil War*, Cambridge 2002.

¹³⁹ Holdsworth stresses that in this period 'treason must come to be regarded as essentially an offence, and the most heinous offence, against the state' (W.S. Holdsworth, *A History of English Law*, London 1969, vol. 8, p. 322). For the emerging concept of the State in the sixteenth century see Q. Skinner, *The Foundations of Modern Political Thought*, Cambridge 1978, especially vol. 2, p. 349-358.

[t]here can be no doubt that in practice the English conception of high treason bore strong familial resemblances to that of the Roman law and that the appropriation of Roman law concepts into the English law of treason was well advanced at the outbreak of the English Civil War. How this state of affairs came to pass is less important than the fact that English jurists of the early seventeenth century generally accepted these points of commonality as consistent with the traditions of English law¹⁴⁰.

The exigencies of particular treason trials cannot explain the change in vocabulary and the underlying change in the notion of treason itself¹⁴¹.

A more fruitful explanation lies in early-modern education. In the second half of the sixteenth century, all educated Englishmen shared a common training in Latin and particularly rhetoric¹⁴². As the author of the leading study on the Roman law of *maiestas* has observed, most of our knowledge of Roman ideas of the *crimen maiestatis* comes from literary and historical texts, not the juristic works of the *Corpus Iuris Civilis* which were the focus of consideration in the revived legal tradition of medieval and early-modern Europe¹⁴³. Some of these Roman texts which discussed the *crimen maiestatis* were part of an English rhetorical education¹⁴⁴. The language of *crimen maiestatis* and *laesae maiestatis* can therefore be regarded as part of the common intellectual background of early-modern Englishmen¹⁴⁵. While this explains the substantive knowledge of the *crimen maiestatis*, it does not explain how common lawyers came to view the common law as the same as Roman law on this point.

The argument here is that *Bracton* played an important role in this change. *Bracton* did not provide common lawyers with knowledge of the substance of the Roman *crimen maiestatis*, but *Bracton* did not need to do so. What *Bracton* provided was the means for the

¹⁴⁰ Orr, *Treason* (*supra*, n. 138), p. 45. Orr is concerned with political thought in the seventeenth century (and principally in the tumultuous years of the 1640s), not the development of legal doctrine, so his lack of concern is unsurprising. The only evidence brought forward as a possible explanation is the presence of Roman law books in Edward Coke's library.

¹⁴¹ For example, references to the *crimen maiestatis* in the trial of the gunpowder plotters, and Coke's explanation of the law of treason there, were entirely superfluous - the actions of the gunpowder plotters clearly placed them within the provisions of the Treason Act 1352.

¹⁴² For the thoroughly Latin, and rhetorical, education of Elizabethan England, see P. Mack, *Elizabethan rhetoric: theory and practice*, Cambridge 2002, especially p. 11-47 (for education in the grammar schools).

¹⁴³ R.A. Bauman, *The Crimen Maiestatis in the Roman Republic and Augustan Principate*, Johannesburg 1967, p. xvi.

¹⁴⁴ For example, the *Rhetorica ad Herennium*, which discusses competing definitions of *maiestas* (see Bauman, *Crimen Maiestatis* (*supra*, n. 143), p. 3) and Cicero's 'many definitions' throughout his works (Bauman, *Crimen Maiestatis* (*supra*, n. 143), p. 35 and 51-2). See Mack, *Elizabethan rhetoric* (*supra*, n. 142), p. 51-2 for evidence that these texts were widely read (or owned), at least at university level.

¹⁴⁵ Cressy observes that the Roman notion of *crimen laesae maiestatis* was 'well known to Tudor statesmen' (Cressy, *Dangerous Talk* (*supra*, n. 126), p. 285 n. 2).

vocabulary of *laesae maiestatis* to be considered as part of the common law tradition, and for it to be equivalent to the recognised law of treason¹⁴⁶.

As a Latin work, *Bracton* did not use the language of treason, but the discussion of pleas of the crown included a section entitled ‘*de crimine laesae maiestatis et suis speciebus*’. The substance of *Bracton’s crimen laesae maiestatis* listed ways of committing the crime, the first of which was compassing the death of the king, just as in the Treason Act 1352¹⁴⁷. Another species of the *crimen laesae maiestatis* was the crime of forgery, exemplified by forging the king’s seal or counterfeiting money, two specific forms of treason under the Treason Act 1352¹⁴⁸. Common lawyers reading *Bracton* would therefore come across passages specifying forms of treason since set out in statute as species of the *crimen laesae maiestatis*¹⁴⁹.

Bracton would not have been an unusual reference point for the small group of elite lawyers concerned with treason cases. As noted above, the discussion of criminal law in *Bracton* was one of the most popular with early-modern readers, presumably due to a shortage of other material¹⁵⁰. Furthermore, the standard work on criminal law, William Staunford's *Plees del Coron* commenced its discussion of treason with *Bracton’s* text¹⁵¹. The significance of Staunford's contribution can be seen in the work of William Fleetwood. In his treatise on the Admiralty, Fleetwood included a section entitled ‘Treason and traytors and misprision of treason’ in which he advised his readers to consult Staunford’s *Plees del Coron*¹⁵².

Evidence from the annotated copies of *Bracton* suggests that this link between *Bracton’s* discussion of *laesae maiestatis* and the law of treason was not overlooked by common lawyers. Of the lawyers who annotated the criminal law section in *Bracton*, the majority noted the section on *crimen laesae maiestatis* simply as ‘treason’¹⁵³. While these

¹⁴⁶ As Milsom observes, any judge who changes the law ‘must be persuaded that what he is doing is intellectually defensible; there must be a way of putting the matter which, on the existing authorities, is at least plausible’ (S.F.C. Milsom, *Not Doing is No Trespass*, in: *Studies in the History of the Common Law*, London 1985, p. 103). *Bracton* provided the relevant authority in this field.

¹⁴⁷ *Bracton*, fo. 118^v.

¹⁴⁸ *Bracton*, fo. 118^v and 119^v.

¹⁴⁹ For the significance of this, see *supra* n. 135 and text.

¹⁵⁰ See *supra*, n. 95 and text.

¹⁵¹ Staunford, *Les Plees del Coron* (*supra*, n. 79), fo. 2. Staunford did not make the link in his reading on forfeiture for treason, but he did highlight functional equivalence between the Roman *lex julia maiestatis* and the English forfeiture rules (BL MS Harg. 92, fo. 87^v).

¹⁵² Fleetwood, *Certen Notes* (*supra*, n. 72), p. 240.

¹⁵³ *Bracton* HEH; fo. 118^v-119; SLL, sig. 2¶i and fo. 118^v; ASC, fos. 99, 101, 105, 119, 141; SUL fo. 118^v and DCC fo. 12^v (marginal note of ‘Traytor’). See also *Bracton* L1L1, manuscript Latin index bound at rear which unusually features the vernacular ‘treason’ for *Bracton’s* discussion of *laesae maiestatis*. Edward Coke's commonplace incorporates material from *Bracton’s* discussion of *laesae maiestatis* under the heading ‘treason’ (BL MS Harleian 6687, fo.110).

notes may not have been a prelude to commonplacing, the approach was based around that reading technique¹⁵⁴. The lawyers reading *Bracton* were compelled to place legal material, such as that from *Bracton*, into contemporary categories. In the case of the *crimen laesae maiestatis* the appropriate category was treason. If lawyers then looked for material on treason in their commonplace books, they would find a reference to *laesae maiestatis*.

More specific evidence can be provided. The earliest known early-modern common lawyers to draw links between the English law of treason and the Roman law of *laesae maiestatis* knew *Bracton* well. The first reference occurs in William Staunford's 1545 reading on forfeiture for treason, where English law was explicitly linked with the Roman *lex Julia maiestatis*¹⁵⁵. Staunford cited *Bracton* in his reading and then in his *Plees del Coron*. The second reference to treason as *laesae maiestatis* is made in an anti-Catholic polemic from 1570, where '[h]ye treasons' are described as 'offences against hye maiestie, that is, either to the destruction of the persons, or denyall and defacement of the iust dignities and authorities of those that beare the name of maiestie...And therefore is treason called *Crimen lesae maiestatis*, the crime of violating or abating maiestie.' The author of that polemic was Thomas Norton, the editor of the 1569 edition of *Bracton*¹⁵⁶.

None of this demonstrates conclusively *Bracton's* role in changing the language and concept of treason in English law. However, the work of Thomas Egerton, an important crown legal official and judge, does do so¹⁵⁷. As Lord Keeper and Lord Chancellor, Thomas Egerton explicitly relied upon *Bracton* in developing his concept of crimes against the commonwealth and in so doing asserted that the crime of *laesae maiestatis* was part of English law. In *Bracton*, the offence of *laesae maiestatis* included a reference to acts done 'ad seditionem domini regis'¹⁵⁸. Egerton used this to draw links between treason and sedition, even asserting that they were the same. In 1600, Egerton directed the judges that sedition was treason until treason was placed on a statutory footing in the fourteenth century¹⁵⁹, and in 1605, Egerton explained to the Star Chamber

¹⁵⁴ Marginal notes to *Bracton* usually seem to be a prelude to commonplacing, but criminal law was not a regular feature of commonplace books (see *supra*, n. 99 and text). However, if lawyers were reading *Bracton* precisely because of an interest in criminal law, then the relative absence of criminal law material in commonplace books might not be reflected in those of the readers of *Bracton*.

¹⁵⁵ BL MS Harg. 92, fos. 86 and 87^v.

¹⁵⁶ Thomas Norton, 'A warning agaynst the dangerous practises of Papistes, and specially the parteners of the late rebellion' in: *All such treatises as have been lately published by Thomas Norton*, London 1570, sig. Ci-Ci^v.

¹⁵⁷ The best work on Egerton's career is Knafla, *Law and Politics* (*supra*, n. 7). Egerton served as solicitor general and attorney general for Elizabeth I (the chief royal prosecutorial positions), then as Master of the Rolls and Lord Keeper in Chancery, before being ennobled (as Baron Ellesmere) by James I and serving as Lord Chancellor until his death in 1616.

¹⁵⁸ *Bracton*, fo. 118^v.

¹⁵⁹ Hatfield House Calendar of MS Vol. 10, June 14 1600.

that groups seeking religious liberty sought ‘*movere seditionem regni*, which is treason’, and so these ‘maintainers and movers of sedition...deserve the greatest punishment next to treason’¹⁶⁰. Egerton’s personal notes show that he made such points expressly in association with *Bracton*. Some notes for the Star Chamber judgment against Oliver St John in 1615 show Egerton citing *Bracton* to demonstrate that ‘*maiore seditionem*’ was ‘*crimen lese maiestatis*’ at common law¹⁶¹, while other undated notes concerned with the Star Chamber again link treason and sedition and reference both *Bracton* and *Glanvill*¹⁶². Egerton’s copy of Staunford’s *Plees del Coron* underlines the material concerning *laesae maiestatis* and sedition taken from both *Glanvill* and *Bracton*¹⁶³. Egerton’s *Bracton* is not heavily annotated, but the section on *crimen laesae maiestatis* is an exception to that¹⁶⁴, suggesting that Egerton, a leading Crown official and judge in the crucial period, made use of *Bracton*, via Staunford, in developing his concepts.

In this context *Bracton* did not change English law alone, rather the work introduced a new vocabulary into English law. This new vocabulary was already familiar to common lawyers from their earlier education and brought with it a new set of concepts¹⁶⁵. As an example of the influence of legal ideas from one system affecting the development of another, it is also of wider interest. Given the Roman influence, it must be stressed that the use of Roman concepts here does not seem to be tied to any idea of a ‘reception’ of the substantive *ius commune* based upon the texts of Justinian’s *Corpus Iuris*¹⁶⁶. There is no evidence of the use of texts from the *ius commune* in this field. The Roman ideas used by common lawyers came from literary and historical texts. Roman concepts from classical literature, mediated via *Bracton*, influenced common lawyers’ understanding of their own law. Rather than a reception of Roman law, it might be better to see this as a classicising of the common law.

¹⁶⁰ Speech to the judges in the Star Chamber in: *Les Reportes del Cases in Camera Stellata, 1593-1609*, John Hawarde, ed. by W.P. Baildon, London 1894, p. 188.

¹⁶¹ HEH MS El. 453.

¹⁶² HEH MS El. 485, fo.2^v. Egerton was not alone in describing both *laesae maiestatis* and sedition as treason; the same was done by the annotator of *Bracton* ASC (see fo. 99, 101, 105, 119 and 141).

¹⁶³ Henry E. Huntington Library Rare Book 69586, fo. 1^v.

¹⁶⁴ *Bracton* HEH, fo. 118^v-119.

¹⁶⁵ From a comparative law perspective, this has some links with Watson’s suggestion that legal transplants which merely change the vocabulary in the transplanting system provide a degree of residual influence for the donor legal system (A. Watson, *Legal Transplants, an approach to comparative law*, Edinburgh 1974, p. 97).

¹⁶⁶ Scrutton observes, correctly, that ‘Bracton’s *crimen laesae maiestatis* appears to derive hardly anything but its name from Roman law’ (T.E. Scrutton, *The Influence of the Roman Law on the Law of England*, Cambridge 1883, p. 107). The literature on receptions of Roman law is vast. Important works considering any reception in early-modern England include J.H. Baker, *English Law and the Renaissance*, Cambridge Law Journal, 44 (1985), p. 46-61, and Ibbetson, *Common Law and Ius Commune*, [Selden Society Lecture], London 2001.

The structure of the law

Bracton's influence was not always predictable. Thomas Norton, in his preface to *Bracton*, stressed that *Bracton* had brought order to the sources of English law, which were ‘*indigesta confusio*’, by application of the institutional method from the civil law¹⁶⁷. Concerns about the volume of common-law material, the importance of memory and the need for method to aid in retention of information were widespread in the early-modern common law¹⁶⁸. Somewhat surprisingly, therefore, there seems to have been little influence from *Bracton* in arranging material according to the institutional model¹⁶⁹. However, this should alert us to an important point about the utility of *Bracton* – *Bracton* was only used where it was considered useful to do so. The dogmatic Ramist and common lawyer, Abraham Fraunce, discussed method in law books and observed that *Bracton* simply followed the order of the civil law. Fraunce praised *Bracton* for a method superior to that of simply collecting common law material under alphabetical headings, but he certainly did not think that the structure was perfect¹⁷⁰. Annotators to *Bracton* seem to show a preference for another mode of structuring their knowledge.

While common lawyers reading *Bracton* continued to commonplace material under headings, seven annotators also made use of humanist techniques with similarities to Ramism to divide (and sometimes sub-divide) the material in *Bracton*, using this approach to impose some structure on the law. The classically Ramist visual technique of bifurcation is consequently widespread amongst readers of *Bracton*¹⁷¹. Some annotators not only used such a visual approach, but also marked where *Bracton's* text included an example of *divisio*¹⁷². Robert Callis' 1622 reading on sewers made use of *Bracton* in this way,

¹⁶⁷ *Bracton* sig. 1¶ii.

¹⁶⁸ Ross, *Memorial Culture* (*supra*, n. 58), p. 271-295.

¹⁶⁹ The only arrangement of the common law on institutional lines was the civilian John Cowell's *Institutiones* (*supra*, n. 48). Coke's *Institutes* do not follow the civilian method.

¹⁷⁰ Abraham Fraunce, *The Lawiers Logike*, London 1588, fos. 118^v-119^v. For Fraunce's Ramism, see Abraham Fraunce, *The Arcadian Rhetorike*, ed. by E. Seaton, Oxford 1950, p. ix-xvi.

¹⁷¹ Such annotations are found in: *Bracton* NUL, fos. 1^v, 2^v, 443^v; *Bracton* EUL1, fos. 3-6^v; *Bracton* KCL, fo. 105; *Bracton* SLL, sig. 2qii; *Bracton* ASC, *passim*. On Ramism, see most recently Howard Hotson, *Commonplace Learning: Ramism and its German ramifications, 1543-1630*, Oxford 2007, especially p. 44-51. For discussion of Ramism and the common law, see L.A. Knafla, *Ramism and the English Renaissance*, in: *Science, Technology, and Culture in Historical Perspective*, ed. by L.A. Knafla, M.S. Staum and T.H.E. Travers, Calgary 1976, p. 40; I.D. Aikenhead, *Students of the Common Law 1590-1615: Lives and Ideas at the Inns of Court*, *University of Toronto Law Journal*, 27 (1977), p. 243; and W.R. Prest, *The Dialectical Origins of Finch's Law*, *Cambridge Law Journal*, 36 (1977), p. 326-352. For an example of the Ramist visual approach applied to the common law, see Prest, *Dialectical Origins*, p. 333. Finch is unusual in applying the technique to the entire common law: annotators of *Bracton* used the approach to analyse particular parts of the law found in *Bracton*.

¹⁷² *Bracton* NUL, fo. 4^v, *Bracton* KCL, fos. 6 and 24^v, and *Bracton* SLL, fo. 23^v. As Maclean observes, Ramist dichotomies are a visual representation of ‘a technique of logical disposition found in the Digest itself’ (I. Maclean, *Interpretation and meaning in the Renaissance: the case of law*, Cambridge 1992, p. 38). Like civilians using Ramist techniques (discussed by Maclean, *Interpretation and meaning*, pp. 37-8), these common lawyers clearly took their cue to utilise dichotomies from the use of *divisio* in the text of *Bracton* itself.

relying upon *Bracton's* division of the topic of exile to set out the law¹⁷³. The reading also shows a propensity to utilise the Ramist visual approach¹⁷⁴.

The annotations, and Callis' reading, seem to indicate that a sizeable proportion of the readers to *Bracton* were in this regard predisposed to structuring material in a Ramist, rather than civilian, fashion¹⁷⁵. Ramism was not in itself applied dogmatically, but the approach was applied in conjunction with other memorial techniques, principally commonplacing¹⁷⁶. While the use of Ramist techniques could be attributed to Fraunce's polemical encouragement of such techniques, it seems more probable that the reason was a combination of receptivity and utility.

In the later sixteenth century an increasing proportion of common lawyers had attended university, with the concomitant likelihood of coming into contact with Ramism and its claim of suitability for structuring any field of knowledge¹⁷⁷. That educational background explains a predisposition to Ramism. Some common lawyers may have had familiarity with the institutional structure, even before the publication of Cowell's *Institutiones Iuris Angliae* in 1605. Abraham Fraunce noted that *Bracton's* structure would be familiar to readers of the *Institutes*, suggesting that he considered such familiarity a possibility¹⁷⁸, and there is some evidence that some common lawyers turned to Justinian's *Institutes* as an introductory text in the early-seventeenth century¹⁷⁹. However, the institutional structure was a problematic one for common lawyers to apply, as many common lawyers still tended to focus on actions rather than substantive law, even if the gradual rise of trespass on the case writs reduced the importance of different writs. An institutional structure was poorly suited to such exposition, whereas a Ramist approach could be used successfully¹⁸⁰. Common lawyers therefore rejected, or perhaps simply ignored, *Bracton's* institutional structure and experimented instead with a better-known, and more easily applicable, method for structuring their knowledge.

¹⁷³ Callis, *Reading* (*supra*, n. 86), p. 188.

¹⁷⁴ Examples can be found throughout, but the best example is Callis' summary of his previous readings, Callis, *Reading* (*supra*, n. 86), pp. 220-225.

¹⁷⁵ If this is correct, the use of Ramism by Henry Finch in his *Nomotechnia* is less radical than it might at first appear.

¹⁷⁶ In this regard the annotators of *Bracton* are similar to the writers of method books in the common law, who also mixed Ramism with other techniques (Ross, *Memorial Culture* (*supra*, n. 58), p. 286 n. 199).

¹⁷⁷ On this 'matriculation revolution' at the Inns of Court, see L.A. Knafla, *The Matriculation Revolution and Education at the Inns of Court in Renaissance England*, in: *Tudor Men and Institutions: Studies in English Law and Government*, ed. by A. Slavin, Baton Rouge 1972, p. 232.

¹⁷⁸ Fraunce, *Laviers Logike*, fo. 118^v.

¹⁷⁹ W.R. Prest, *The Inns of Court under Elizabeth I and the early Stuarts, 1590-1640*, London 1972, p. 147.

¹⁸⁰ In this sense Finch's work is still important in making the transition to arranging material concerning substantive law, rather than focussing on the forms of action. Although Ramist techniques were used, there is no evidence of Ramist ideas influencing the substance of the law. In this regard English law is similar to the *ius commune* (see Maclean, *Interpretation and meaning* (*supra*, n. 172), p. 206).

CONCLUSION

Bracton was an author in the common law throughout the early-modern period and Fitzherbert's isolated remark did not prevent that. After the printing of *Bracton* the role of the text became strengthened, although that process had begun over a decade earlier with the references to *Bracton* in Staunford's *Plees del Coron*. However, *Bracton* was not used indiscriminately by early-modern common lawyers. The text was used in a number of different fields, but only where early-modern lawyers considered it appropriate. Lawyers turned to *Bracton* where existing material was lacking and did not rely on the text unhesitatingly or uncritically.

APPENDIX – COPIES OF THE 1569 PRINTING

Table 1 – Annotated Copies of the 1569 Printing

Abbreviation	Library	Shelfmark
AL	Advocates' Library, Edinburgh	TR E.139.1
ASC	All Souls College, Oxford	ASC Stack 2 nd , 8:SR.114.b
BL1	British Library	19.b.9
BL2	British Library	507.g.14
BL3	British Library	507.f.18
CUL1	Cambridge University Library	Peterborough A.6.23
CUL2	Cambridge University Library	Syn.4.56.1
DCC	Downing College, Cambridge	24.2.80
EUL1	Edinburgh University Library	JY 1086
GLL	Georgetown University Law Library	KD 600.B.73 1569 Folio
GUL	Glasgow University Library	Mu14-b.6
HEH	Henry E. Huntington Library	RB 97059
KCL	King's College London	K106 B7
LUL	Leeds University Library	Strong Room Engl.fol.1569 BRA
LIL1	Lincoln's Inn Library	-----
LIL2	Lincoln's Inn Library	-----
MT1	Middle Temple Library	B555 (per slip) or B547 (per an inner sheet)
MUL	Manchester University, John Rylands Library	Deansgate 8561
NUL	Newcastle University Library	PI F.347-BRA
QCL	Queen's College, Oxford	Upper Library 37.E.1
SUL	Sheffield University Library	RBR Q 347 (B)
SLL	Squire Law Library, University of Cambridge	J.dd.9.B.12
TCC1	Trinity College, Cambridge	Gryll.1.139
TCC2	Trinity College, Cambridge	Gryll.32.181
THL	Trinity Hall, Cambridge	K8.c.18

Table 2 – Unannotated Copies of the 1569 Printing

Abbreviation	Library	Reference
Bodl	Bodleian Library, Oxford	N.2.13 Jur
CCL	Corpus Christi College, Cambridge	M.2.7
CUL3	Cambridge University Library	S*.3.8.C
DUL	Durham University Library	Palace Green Library, Cosin L.2.14 ¹⁸¹
EUL2	Edinburgh University Library	JY 473
MPI	Max Planck Institut für Rechtsgeschichte, Frankfurt am Main	Br 13 f 01 Q ¹⁸²
NCL	New College, Oxford	Restricted BT1.28.2

¹⁸¹ Thanks to Dr Warren Swain of Durham University for inspecting this copy on my behalf.

¹⁸² My thanks to Dr Kurt Lench and Dr Douglas Osler of the Max Planck Institut for inspecting this copy for annotations.

