

## COMMON LAW SCHOLARSHIP AND THE WRITTEN WORD

Ian Williams

The sixteenth and seventeenth centuries have been identified as the period in which the common law changed from a system of predominantly oral learning to one based primarily on texts.<sup>1</sup> By the 1570s lawyers consciously address texts to ‘readers’ and refer to their work as ‘treatises’, a type of written scholarship.<sup>2</sup> Early-modern legal historians have tended to focus on printed and manuscript texts, especially law reports, but oral readings continued in the Inns of Court until 1642.<sup>3</sup> Even in the 1630s a judge could identify an argument made in court as originating in the Inns.<sup>4</sup> To overlook the continued oral scholarship of the Inns and focus solely on printed and manuscript texts is to misunderstand the early-modern common law. However, lawyers clearly did regard texts as extremely important, with legal argument focusing increasingly on printed cases and occasional consideration of the relationship between printed and manuscript texts.<sup>5</sup> This chapter investigates the interactions and relationships between the continuing tradition of oral scholarship in the Inns of Court and the increased use of texts to circulate legal ideas up to around 1640. It raises questions about how legal scholarship circulated amongst the legal profession and the extent of such circulation, as well as the sources which common lawyers used in their scholarship.

### <h1>Oral and Written Scholarship and their Interaction</h1>

The relationship between oral readings, manuscript and print is complex. Two Elizabethan students did not distinguish between law reports they found in printed volumes and cases

discussed at readings in the Inns, freely mixing the two sources in collections of maxims produced in the 1580s, as did Thomas Gibbon in his notebook from early in the reign of Charles I.<sup>6</sup> While readings themselves were rarely printed (although sometimes in some sense published in manuscript), the boundaries between oral and written scholarship were porous. Material from readings was reused in written scholarship, and an author's writings might be the basis for a reading.

For example, the prefaces to the first and third volumes of Edward Coke's *Reports* were taken, in part, from the speeches which preceded Coke's readings in Lyon's Inn and the Inner Temple.<sup>7</sup> William Prynne's 1662 reading on the Petition of Right repeated points which Prynne had previously made in print, sometimes in very similar language. For example, in his reading, Prynne observes that Coke 'grossly asserts' that the *Modus Tenendi Parliamentum* is a pre-Conquest text, an error Prynne described as a 'gross confident mistake' in print in 1657.<sup>8</sup> Sometimes the relationship between readings and written scholarship is more opaque. William Fleetwood's reading included discussion of the laws of the forest;<sup>9</sup> he also collected and wrote a large volume of material on the topic, some of which is addressed to 'readers' rather than an oral audience, but there is insufficient evidence to understand how these various works interacted.<sup>10</sup> Sometimes an originally oral reading influenced manuscript scholarship, which itself affected a printed work. For example, Marowe's reading on justices of the peace influenced Fleetwood's discussion of the topic in manuscript. Both Fleetwood and Marowe influenced Lambarde's printed *Eirenarcha*.<sup>11</sup>

The contemporary, sometimes inadequate, state of written literature occasionally acted as a spur for readings at the Inns on particular topics. Edward Littleton delivered a reading in the Inner Temple on a statute concerning merchants, explaining that his choice was due to the

number of cases which arose in relation to the topic. He observed that nevertheless there was ‘no mention of [this] learning in the printed books of the common law’.<sup>12</sup> Prynne did not address some topics in his reading precisely because he had already written about them, presumably to an adequate standard.<sup>13</sup> A similar justification can be seen for written scholarship. William Lambard wrote that his *Eirenarcha*, a printed manual for justices of the peace, was written because of the inadequacy of existing works.<sup>14</sup> Unusually, William Fleetwood justified some of his written work on the forest laws on the basis that he was addressing different issues to those covered in George Treherne’s 1520 reading, which circulated widely in manuscript.<sup>15</sup>

The relationship between readings is more complex. Consultation of previous readings, so far as possible, may have been standard preparation for a reader’s own work. Henry Sherfield lent his reading to Richard Townsend, observing that ‘he doth intend to reade on the same Lawes’.<sup>16</sup> However, the reasons for such consultation varied. Mere repetition of earlier readings was not typical from the Elizabethan period onwards, seemingly in contrast to the situation in the fifteenth century, when Littleton could write that he had ‘often heard’ a point in a reading on the Statute of Westminster II.<sup>17</sup> Mirow’s study of readings on the Statute of Wills reveals that only one unusual reading, Hugh Hare’s from 1592, features direct ‘borrowing of material, citations, and legal thought’ from an earlier reading.<sup>18</sup> Instead, readers used prior readings for assistance in their own efforts. In 1640, Edward Bagshaw referred to the lack of ‘help of other mens labours’ in preparing his reading ‘as not knoweing that it was ever read on before’.<sup>19</sup> Citation of readings was also rare. While Bagshaw openly referred to John Dodderidge’s reading delivered at New Inn in 1592-4 he may have acknowledged Dodderidge’s influence both because Dodderidge’s reading had already been printed (as the *Compleat Parson* in 1630) and to demonstrate his own labour. Bagshaw

expressly cited from a manuscript copy of the reading, ‘the printed copy being very erroneous & false’.<sup>20</sup>

A marked departure from the earlier tradition in readings was that some readers consulted prior work was to ensure originality. When John Banks delivered his reading in Gray’s Inn in 1631, he acknowledged that there had been recent readings on the same statute and that he had seen some of the material from those readings. Banks said that ‘I would not treat of that which they have delivered’.<sup>21</sup> Such originality may have had a pedagogical purpose given that readings did circulate. When the readings in Lincoln’s Inn on the Statute of Wills, delivered by John Briscoe in 1623 and Henry Sherfield in 1624, are combined ‘these two readings provide a comprehensive treatment of the statute’, suggesting a deliberate strategy of originality by the two readers.<sup>22</sup> By ascertaining what previous readers had covered, a reader could fill gaps, just as readings and written scholarship were intended to fill gaps in the printed and manuscript sources. In this respect oral, manuscript and printed scholarship were motivated by similar concerns.

The oral scholarship of the readings may have inspired other examples of common law scholarship in the early-modern period. William Staunford’s book on the prerogative took the ‘statute’ *Praerogativa Regis* as its base, like the readings on that text which began in the late-fifteenth century.<sup>23</sup> Edward Coke’s *Second Institutes* was a collection of glosses on statutes, largely replicating the coverage which may have formed a cycle of readings in the fifteenth century.<sup>24</sup>

A less obvious example is the glosses and commentaries on Littleton’s *Tenures* which first appear in the Elizabethan period. There are sufficient surviving copies to suggest that these

works, or perhaps the production of them, were an important part of legal studies in early-modern England and may have constituted a distinct genre of legal literature. In addition to his well-known printed *Commentary on Littleton*, Coke glossed his own copy of *Littleton* extensively.<sup>25</sup> William Fleetwood produced a ‘Tractatus’ on the first chapter of *Littleton*,<sup>26</sup> while Edward Littleton wrote ‘notes of coment upon the first two bookes of Littleton’ which he thought worthy of printing.<sup>27</sup> A civilian gloss on *Littleton* seems to have circulated in the early-seventeenth century.<sup>28</sup> A further anonymous commentary on the *Tenures* from around the 1620s was printed in the nineteenth century.<sup>29</sup> Fleetwood’s text is particularly revealing, as it is followed by a ‘Lecture’ on *Littleton* also attributed to Fleetwood. Readings on chapters of *Littleton* could be delivered in the Inns of Chancery, and presumably Fleetwood’s lecture was one of these.<sup>30</sup> The relationship between the written glosses and commentaries, and the Inns of Chancery readings, is unclear. Fleetwood’s ‘Tractatus’ could not have been delivered orally as it survives, given the presence of two diagrams. It may be that the Elizabethan and later works on *Littleton* are a form of literature filling the gap as fewer lawyers attended Inns of Chancery before the Inns of Court. This may be too neat; readings on *Littleton* must have been a late-fifteenth century, or later, development, too recent to have inspired imitation.<sup>31</sup> Instead, the glosses and commentaries may simply reflect the importance of *Littleton* to early-modern lawyers. There is certainly evidence that reading *Littleton* was the first stage in a legal education in the seventeenth century.<sup>32</sup>

Other written scholarship is not obviously associated with existing legal education or the Inns. Such works often had an explicitly practical focus, such as manuals for justices of the peace or guides to writing legal instruments. The purpose behind some other written scholarship is less clear, but patronage and relations with prominent individuals were clearly relevant to some productions. Some legal writing, as well as non-legal writing by lawyers,

was probably an attempt to acquire patronage, although such patronage has not yet been investigated as a topic.<sup>33</sup> Henry Finch's *Nomotexnia* was almost certainly a successful attempt to rejuvenate a lawyer's career, at least in its later drafts and printed form.<sup>34</sup> Similarly, Robert Snagg sent a copy of his reading about Chancery's place in the English legal system to the Lord Keeper, Christopher Hatton.<sup>35</sup> Sometimes, such texts were not unsolicited gifts but requested by an interested party. For example, James Morice sent an edited version of his reading on the prerogative to William Cecil in 1578, 'for that your Honour required a sight of my travaile concerning the kings Prerogatives'.<sup>36</sup> Cecil's request also served as a justification for both alteration of the reading from an oral exercise to a text and the reworking of the content of the original reading. A patron might, on occasion, be an important element in the final work, something which is evident in Thomas Egerton's role as a lawyer who acted as a patron for legal works. Ferdinando Pulton's work editing statutes was impossible without Egerton's intervention,<sup>37</sup> but more significantly Egerton may have amended a draft version of the dedicatory preface to Davies's *Irish Reports*.<sup>38</sup>

On occasion, legal works could be specifically commissioned. Edward Coke wrote two works at the request of others. The *Little Treatise of Baile and Mainprize*, printed in 1635, also circulated in manuscript.<sup>39</sup> The surviving manuscripts refer to the text as having been '[w]ritten att the Request of Sir William Haydon'. Coke is also reported as having written 'A Discourse touchinge the unlawfulness of private Combates' in 1609, 'at the, request of the Lord, Henry Howard, Earle of Northampton'.<sup>40</sup> Both of these texts may have been related to patronage: William Haydon was a prominent figure and landowner in Norfolk, an area from which Coke derived much of his legal practice;<sup>41</sup> Coke also had a long relationship with the Howard family in legal matters,<sup>42</sup> although it is less clear if this persisted after Coke's appointment to the Bench.

A particular individual of interest for questions of patronage is Thomas Sackville, whose career spans literature, law and politics. Coke's manuscript circulation of his report of *Shelley's Case*, together with a dedicatory letter, may have been an attempt to gain patronage from Sackville, who had several connections with the Inner Temple, Coke's own Inn.<sup>43</sup> While Coke's manuscript may have been unsolicited, there is evidence that Sackville, like Cecil, encouraged legal scholarship. While Cecil asked for a copy of a reading which had already been delivered, Sackville seems to have approached John Dodderidge, whose outline of a never-completed treatise on the prerogative was written in response to 'your Lordships commaundement...To write in the Mayntenaunce of the Auncient Praerogatives Royall of her Maiestie drawne out of the Lawes Constitutions and Recordes of the Realme', something Dodderidge described as an 'imposed charge'.<sup>44</sup> An interesting example of Sackville's intervention in the world of legal writing is John Kitchin's *Le Court Leete*, first printed in 1580. The third printing, in 1585, begins with a dedication to Thomas Sackville in which Kitchin writes that Sackville had valued his earlier work and required him 'moreover to write'.<sup>45</sup> Obediently, Kitchin substantially expanded his earlier work.

## <h1>The Circulation of Legal Scholarship</h1>

Non-lawyers may have known little of legal developments not covered in print. The Elizabethan author of a history of the law of England clearly did not know about the preceding half century of defamation jurisdiction in the common law courts, something which was not covered in printed sources.<sup>46</sup> Printed legal scholarship was available to the wider public, although the extent to which non-lawyers acquired such books has not yet been investigated in detail.<sup>47</sup> The focus of this section is on the circulation of legal scholarship

within the legal profession, particularly the bar. As printed works were available both new and second hand, the particular concern is access to oral and manuscript legal scholarship.

The circulation of oral scholarship seems relatively simple: each of the Inns was a closed society during readings with only members and specially invited guests present. Good evidence of this can be found in two collections of legal maxims from the 1580s. As the readings are spread over a period of around five years in each volume, the collections were probably compiled by students. In each collection there are references to cases put at readings. In one manuscript all of the readings are from Lincoln's Inn;<sup>48</sup> in the other all but one of the readings are from the Middle Temple.<sup>49</sup> Such isolation presumably explains the surviving collections of readings, often in close temporal proximity, from single Inns.<sup>50</sup> Some collections of readings are more diverse, and can be seen as later compilations, such as one containing material from readings in Gray's Inn, the Inner Temple, Lincoln's Inn and Lyon's Inn between the late-fifteenth century and 1580.<sup>51</sup> Some of these collections clearly circulated and were copied, such as two identical manuscripts of readings from the 1560s in Gray's Inn and the Inner Temple.<sup>52</sup>

While the readings themselves were closed, material from readings could circulate in manuscript.<sup>53</sup> The originally oral readings became valuable texts. Henry Sherfield recorded loans of his manuscripts, including readings, in his financial records.<sup>54</sup> Whether manuscripts of readings were available commercially is unclear and evidence is extremely limited. There is plenty of evidence of law reports being circulated and reproduced scribally, but much less evidence for readings.<sup>55</sup> In the one detailed study of the output of a Caroline scribe, Peter Beal's 'Feathery Scribe', there is a considerable body of legal work, including a collection of material on Chancery totalling over one thousand pages.<sup>56</sup> Clearly legal material was



produced by scribes as part of a commercial enterprise. However, no material from the Inns of Court has been identified as written by the Feathery Scribe. This could simply be an accident of survival, but the Feathery Scribe's legal output does not include any more technical works, including any law-French material.

One possible explanation is that scribal work for lawyers was carried out by specialist scribes; this may explain the seemingly high price per page paid by Lincoln's Inn for a manuscript work.<sup>57</sup> An alternative, perhaps related, explanation is suggested by William Fleetwood's presentation copy of legal material related to London. Fleetwood's volume was prepared by his own clerk.<sup>58</sup> In the preface to Plowden's *Commentaries*, Plowden refers to the manuscript reports which he lent to friends being obtained by their clerks, showing that lawyers' private clerks were involved in the circulation of manuscript material.<sup>59</sup> If lawyers' own servants undertook copying for their masters, more technical material may not have left the households of lawyers and so not circulated scribally.

Nevertheless, it has been suggested that despite the vagaries of manuscript circulation, some early-modern readings were intended primarily as treatises, meant to circulate as texts, rather than as oral scholarship which came to be written down.<sup>60</sup> Certainly some readings survive in sufficient numbers and detail to suggest that this did occur. Some readers may have released their texts to circulate through scribal publication. James Whitelocke's lengthy reading on benefices was probably deliberately circulated and many copies survive.<sup>61</sup> However, there are only a handful of readings of which sufficient copies survive to suggest widespread circulation. For many other readings, the evidence suggests something considerably more limited.<sup>62</sup>

One of the readings which Mirow suggests should be considered as a treatise is Henry Sherfield's 1624 reading in Lincoln's Inn on the Statute of Wills and its explanation. Several copies of the reading survive and there is some evidence from Sherfield himself about how the text circulated. Sherfield's four books of his reading remained in his possession, but he lent them to four other lawyers in the decade after the reading was delivered. In July 1631 Richard Townsend borrowed the books as he was about to read on the same statute. The books were also lent to Oliver St John and William Prynne.<sup>63</sup> A Mr Romsey of Gray's Inn borrowed Sherfield's text of his recapitulation of the reading.<sup>64</sup> Such direct borrowing from the author raises questions about the utility of written readings as treatises. Several years after the reading was delivered, even a relatively experienced practitioner such as Richard Townsend seems to have had to approach the original reader for access to the text, rather than obtaining it from a colleague or in the marketplace. Half of the borrowers of Sherfield's reading were, like Sherfield, members of Lincoln's Inn, perhaps revealing that manuscript circulation, even of treatise-like readings, was to some extent limited by the divisions between the Inns, an issue also identified in relation to earlier readings by McGlynn in this handbook.<sup>65</sup>

It is notable, for example, that Sherfield seems not to have trusted Townsend with Sherfield's own notes on his reading. While Sherfield recorded loans in his account book, in the case of Townsend he also noted the presence of two witnesses to the handing over of the manuscript, one of whom, Sherfield's brother, frequently acted as a witness to his financial transactions. Furthermore, Sherfield specified that the books of the reading were 'to be kept safely for his use and to be delivered backe to me safe as they are without defasing'.<sup>66</sup> These explicit conditions suggest that Sherfield was uncomfortable with the loan to Townsend and needed to clarify the limits of acceptable use. Unlike Sherfield and most the other borrowers

of his notes, Townsend was not a member of Lincoln's Inn. This might explain Sherfield's concern: Townsend was a relative stranger.

Such a limitation on circulation, and concern about relative strangers, may have been a shared norm. When Matthew Hale left his writings to Lincoln's Inn, he expressly limited their use to members of the Inn.<sup>67</sup> Hale explained '[t]hey are a treasure not fit for every man's view, nor is every man capable of making use of them'. While this might explain Hale's ban on the printing of his writings, it does not explain their restriction to members of Lincoln's Inn. Presumably members of other Inns would also have been 'capable of making use of them' and so Hale must have had another reason for limiting availability to members of a single Inn. Another explanation for circulation focused on individual Inns may be practicality, in that it may have been easier to make contact with, and recover materials from, members of a lawyer's own Inn. Certainly Sherfield recorded that he received his reading back from Oliver St John at another Lincoln's Inn reading, an event which all lawyers in the Inn were expected to attend.<sup>68</sup>

Hale's will also demonstrates that even posthumous circulation of manuscript material might be limited. While death deprived a lawyer of physical control over his manuscripts, testamentary instructions might continue to limit circulation, at least in the short term. James Dyer left all of his manuscripts and other law books to his nephews. As relatives often attended the same Inn, such gifts to family members may also have acted to limit the circulation of material outside particular Inns of Court. It was only after much persuasion that a restricted selection of Dyer's manuscript case reports was printed and two more decades before the manuscript was obtained by Edward Coke.<sup>69</sup>

When it did occur, textual circulation of scholarship could be incomplete and unreliable. Borrowing seems to have depended largely upon personal connections, and such connections might not suffice to obtain desired texts. When describing the preparations for his 1631 reading, John Banks acknowledged that he had seen ‘concepts’ from readings delivered in different Inns in 1628 and 1629 on the same statute.<sup>70</sup> As Mirow explains, conceits were ‘short points of law extracted by note takers from the readings’.<sup>71</sup> Banks, in other words, did not have access to the full text of earlier readings, nor seemingly, the readers’ own material. Also in 1631, Hugh Cholmely of the Inner Temple lent Henry Sherfield of Lincoln’s Inn ‘a little book of some notes’ of a reading.<sup>72</sup> Sherfield did not receive the full text of the reading, but only some notes, which may well have been from an audience member, rather than the reader’s own. The material was based upon the oral presentation, mediated via the listener’s understanding. As a result, the knowledge of unheard readings which circulated in manuscript risked incompleteness and inaccuracy. Such limitations may explain why, in 1573, Wray J could only refer to what ‘he had heard...the opinion of the Middle Temple’ to be, and why early-modern judges could identify particular views of the law as attributable to individual Inns.<sup>73</sup>

## <h1>Sources for Common Law Scholarship</h1>

The circulation of material and ideas is one approach to the relationship between speech, manuscript and print in legal scholarship. Another is to consider the range of sources upon which that scholarship was based. Early-modern legal scholarship was increasingly based on reading texts. Coke informed students that when attending readings they would hear cases and could then ‘finde out *and reade* the case so vouched’ [emphasis added], clearly assuming the cases were based upon those available as texts.<sup>74</sup> As preparation for his reading, Robert

Snagg wrote that he had ‘looked into’ previous readings, just as John Banks said he had ‘seene’ material from prior readings on the same topic.<sup>75</sup> Unlike the fifteenth century lawyer Littleton, early-modern lawyers did not refer to what they had ‘heard’ at readings.<sup>76</sup>

Legal scholarship, particularly in the Inns of Court, was not based solely on printed texts. As Baker observes, even in the Inns of Chancery, ‘the students were told of earlier inns of court readings, of cases depending in the courts, and of other unpublished authorities of various kinds’.<sup>77</sup> Such scholarship was also not grounded simply on a combination of print and manuscript. Information about cases pending in the courts, for example, does not seem to have circulated in textual form. Such use of non-textual material was not unique; several readers made use of their personal knowledge and experience, whether as practitioners or legislators, to inform their readings.

Personal experience could provide more than just knowledge of sources. John Banks justified his choice of statute on the basis that he had been a Member of Parliament when it was enacted and ‘therefore have some Advantage to knowe the meaninge of it’.<sup>78</sup> Francis Phillips explained that he had chosen his statute to enable him to consider the customs of London, his practice having ‘given me occasion to looke further into the customs of that citty then most others of my profession’.<sup>79</sup> Such personal experience was not always acknowledged. Robert Snagg’s 1581 reading on Chancery included discussion about whether a peer could be arrested for contempt of the Chancery, or if the privilege of peers from arrest protected him.<sup>80</sup> Nowhere in the reading as it survives is it mentioned that precisely this question arose in the early 1570s.<sup>81</sup> Snagg’s knowledge of the case probably came not from text, but his own personal experience; Snagg was an MP in 1571-2, just as the issue was discussed and decided in the House of Lords.<sup>82</sup>

New materials were quickly adopted in legal scholarship, whether decisions of the courts or contemporary scholarship. Edward Coke's *Commentarie on Littleton* was printed in 1628 and was cited in two readings in 1631 and another in 1632.<sup>83</sup> William Lambarde's *Archeion* incorporated material from Bodin's *République*, first printed in 1576, in a draft section completed in 1579.<sup>84</sup> New cases were similarly introduced into readings quickly. Mirow has shown that *Butler and Baker's Case*, printed in Coke's *Third Reports* in 1602 was discussed in Augustine Nicholls' reading of the same year,<sup>85</sup> and that other readers used cases found in printed volumes within a few years of printing.<sup>86</sup>

Manuscript or unwritten material seems a little more problematic. Hugh Hare's 1592 reading on the Statute of Wills did not discuss the 1591 decision in the then-unprinted *Butler and Baker's Case*, despite its obvious relevance.<sup>87</sup> However, this is exceptional. Readers on the Statute of Wills did generally make use of unprinted material, especially to consider recent cases.<sup>88</sup> The same concern with recent scholarship can be seen in John Banks' description of the preparations for his 1631 reading, where he acknowledged that he had seen material from readings delivered in different Inns in 1628 and 1629 on the same statute.<sup>89</sup>

Both personal experience and texts were not used uncritically in readings, which were consequently more than an opportunity to expound the law. In Snagg's discussion of contempt of Chancery it was not mentioned that Snagg's conclusion was contrary to that reached by the House of Lords.<sup>90</sup> The disagreement was consequently not overt, but does demonstrate that readings in the Inns could be a means of (implicitly) censuring decisions as bad law. Similarly, views expressed in texts could be rejected. In his reading on the prerogative, James Morice observed that in Brooke's *Graunde Abridgement*, Brooke

described a case as holding that judges could not be required to provide advice to the king concerning cases in which the king was a party.<sup>91</sup> Morice rejected this conclusion, ‘since it is not small part of the Justices allegiance expressed in their oath faithfully and lawfully to Councell and advise the king in his affaires’. However, Morice went further, stating that ‘[i]f his Maiestie therefore demand the opinion of his Justices...if they conceale or deny to declare the same the king hath iust cause to displace them and according to the law to correct and punish them’.<sup>92</sup> Morice’s view, in his reading, would seem not only to reject Brooke’s interpretation of the case, but also the underlying premise of the case itself, in which Henry VII accepted the judges’ refusal to advise him.<sup>93</sup> The same critical approach can also be seen in written scholarship. William Fleetwood even applied it to George Treherne’s widely circulated reading on the law of the forest, describing Treherne as incorrect when records were to the contrary.<sup>94</sup>

One feature of the texts discussed so far is their relative insularity. Not the geographic parochialism for which Pocock criticised the common lawyers and which has long been exploded, but a disciplinary narrowness.<sup>95</sup> Early-modern common law scholarship relied heavily upon legal sources. Even Bodin’s *Republique*, now usually regarded as a work of political thought, was categorised by John Dodderidge as a work by a French lawyer.<sup>96</sup> There are of course exceptions. Henry Finch’s *Nomotexnia* began with a selection of maxims taken from other disciplines, such as theology, grammar, and logic, although these maxims were immediately linked with legal sources to demonstrate their relevance.<sup>97</sup>

Where appropriate, non-legal material could be used in legal scholarship. When considering questions about the meaning of Latin words, or etymology, use of classical sources was entirely appropriate. William Fleetwood’s argument that the Star Chamber,

*camera stellata*, was ‘soe called of the Serpent Stellio...For the forme of the said serpent was in Colour blewe, al to be speckle with spots shyneinge in the night bright like unto Starres’ echoes Ovid’s *Metamorphoses*, a widely-known text in Elizabethan England.<sup>98</sup> The argument may have seemed particular apposite as Ovid’s description occurs in the context of a punishment, just as the Star Chamber operated as a criminal court.

Other use of non-legal sources was rare and tended to occupy a very particular place in both the physical arrangement of law books and legal scholarship. While many lawyers do not seem to have incorporated non-legal material into their notes, a printed edition of Littleton’s *Tenures* owned by Thomas Egerton features manuscript annotations from Aristotle and Cyprian on the rear flyleaves.<sup>99</sup> One of Egerton’s commonplace books includes material from Plato, Aristotle, Cyprian, Aquinas and Joachim Hopper on the inner flyleaves.<sup>100</sup> A similar arrangement can be seen in Edward Coke’s commonplace book, which was preceded by a selection of material under the heading ‘de legibus’, drawn from Cicero, Isidore, Thomas More’s *Utopia* and St German’s *Doctor and Student*.<sup>101</sup> Similarly, a collection of material related to London, written by William Fleetwood, includes a selection of more jurisprudential topics such as ‘De Aequitate’ and ‘De Judice’, but only at the very rear of the volume.<sup>102</sup> Fleetwood’s collection included references to Aristotle’s *Politics* and *Ethics*, Bracton, Justinian’s *Institutes*, Fortescue’s *De Laudibus Legum Angliae*, Aulus Gellius and Augustine’s *City of God* (although this final work was only cited from an intermediate source). Most of these texts would have been just as familiar to educated non-lawyers as to common lawyers; they were part of wider intellectual culture. For none of these three lawyers, some of the most successful of Elizabethan and Jacobean England, does such non-legal material appear in the body of the notebooks themselves. The substance of the law was determined by legal sources, not philosophy or theology. Even John Dodderidge’s



commonplace book, which incorporates a wider range of material, falls into this model, incorporating material from the civil law, but no non-legal sources.<sup>103</sup>

This physical locating of non-legal material outside the main body of doctrine is reflected in the way non-legal sources were typically used in legal scholarship, namely as introductory or prefatory material. We do not, for example, see common lawyers using poets as an authoritative source of law, unlike in the civilian tradition. While Grotius could cite Ovid's *Metamorphoses* as one of the authorities demonstrating that the waters of a river were *res communis*, when Matthew Hale discussed the law in relation to rivers, his sources were limited to legal texts, despite Hale's own knowledge of Grotius' work.<sup>104</sup>

This does not mean the non-legal sources were unimportant; their physical and intellectual location meant that they literally framed doctrinal material and placed the common law within a wider intellectual and cultural heritage. They shaped the theory of, and ideas about, law for common lawyers and could equally have done so for non-lawyers. Such references were rarely fully developed theories. Instead, the various texts form a collection of assumptions and uncontested commonplaces about law which seem to have been widely shared amongst the legal profession. Cicero's *De Legibus*, for example, was a common point of reference throughout the period.<sup>105</sup> Occasional glimpses also suggest that non-legal sources shaped the form of legal scholarship by providing a guide to method. When reading in New Inn, Dodderidge referred to Cicero's *De Officiis* to justify commencing the reading with a definition of the subject matter.<sup>106</sup>

When non-legal sources are cited in substantive, not prefatory, discussions, this is probably a hint that legal sources were lacking on the point in question. John Dodderidge admitted as

much when explaining why his proposed treatise on the prerogative would make use of more than legal texts:

for that their ar no more Prerogatives Royall medled with all by the said Lawes but sutche onely as tyme gave occation to debate and call into question whiche although they be manye yeat in deede ar they but somme fewe of a greater nommber yt shall be requisite in this Treatise somme tyme in yeilding of Reasons and for more varietye to have recourse to the fountaynes themselves I meane the fountaynes of Divinitie Philosophie The Lawes of Nations and Recordes oute of which all lawes but espetially the lawes of this Realme ar evidently deduced<sup>107</sup>

Dodderidge highlights his proposed use of non-legal materials and justifies this on the basis of the inadequacy of legal material. Generalising from Dodderidge's admission seems plausible. For example, when Edward Coke explained the illegality at common law of monopolies or brothels, he did so on the basis of the law of God drawn from Scripture, followed by other non-legal material.<sup>108</sup> The typical references in the rest of the *Institutes* to cases or statutes are notable only for their absence.

## <h1>Concluding Remarks</h1>

This chapter has highlighted the continuing role of oral scholarship in the legal profession. Lawyers made use of, and sought out, material from readings and incorporated such material into their notebooks and their own readings. Both oral and written legal scholarship also made extensive use of texts, rapidly adopting new sources, not entirely uncritically. Despite the important role of texts, the inadequacy of existing writings was described as justification

for both oral and written scholarship, while the traditional forms of oral scholarship in the Inns also inspired printed and manuscript texts.

Scholarship was also produced which was never intended for oral dissemination. Reasons such as patronage can be identified as at least one cause of some such works, and the chapter has also noted the role of individuals in soliciting such texts from lawyers, although more work remains to be done on both of these topics, both of which might draw fruitfully on scholarship outside traditional legal history.

The circulation of ideas from readings amongst the legal profession was increasingly a textual activity although such circulation was uneven and unreliable. There is stronger evidence of the circulation of both oral and written scholarship within individual Inns than between them. By the seventeenth century it was no longer possible to refer to a text as ‘of Lincolnesin labour’, as Thomas Frowyk described a manuscript abridgement in his will, but we might legitimately consider whether it is more appropriate to refer to scholarship in an Inn of Court, rather than the learning of the Inns of Court.<sup>109</sup> These limitations should not be taken too far. Even if a particular piece of scholarship cannot be assumed to represent ‘the law’, it serves, like a dissenting judgment, to show what was thinkable.<sup>110</sup>

In some respects, lawyers were also relatively isolated from other groups in early-modern England. Common law scholarship relied heavily upon purely legal sources. Reference to non-legal material was admitted to be a sign of inadequacy in the legal texts. However, for certain important topics, especially more theoretical issues, lawyers were happy to make use of a wider range of textual sources, typically those with general currency in early-modern England. While the Inns of Court might have been relatively separate from each other, and

doctrinal legal scholarship from other disciplines, broad ideas of the role of law, equity and justice were shared amongst lawyers and non-lawyers alike.

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<sup>1</sup> J. H. Baker, 'English law books and legal publishing', in *The Cambridge History of the Book in Britain, vol. IV, 1557-1695*, edited by John Barnard and D. F. McKenzie (Cambridge: Cambridge University Press, 2002), pp. 474-475.

<sup>2</sup> For 'readers' see BL MS Add. 26047, ff. 4, 5 and 12. For 'treatises' see London Metropolitan Archive MS COL/CS/01/011, f.83v and BL MS Harl. 5220, f. 4v.

<sup>3</sup> John H. Baker, *Readers and Readings in the Inns of Court and Chancery* (London: Selden Society, 2000), p. 7. For more on the readings, see McGlynn's chapter in this handbook.

<sup>4</sup> *Dawles v. Baldwin* (1631) Cambridge University Library MS Gg.2.19, f. 210.

<sup>5</sup> Ian Williams, "'He Creditted More the Printed Booke": Common Lawyers' Receptivity to Print, c.1550-1640', *Law and History Review* 28 (2010): pp. 39-70, doi: 10.1017/S0738248009990034.

<sup>6</sup> BL MS Harg. 207, ff. 63, 64v, 66v, 71v, 76 and 77; BL MS Harg. 318, ff.26, 27, 45v, 50v and 95v; BL MS Harl. 980, ff. 5v, 81, 86.

<sup>7</sup> Ian Williams, 'The Tudor Genesis of Edward Coke's Immemorial Common Law', *Sixteenth Century Journal* 43 (2012): pp. 107-110.

<sup>8</sup> BL MS Harg. 98, f. 53v and William Prynne, 'The Preface to the Reader' in *An Exact Abridgement of the Records in the Tower of London*, edited by William Prynne (London: William Leake, 1657), sig. A6-A6v.

<sup>9</sup> London Metropolitan Archive MS CLC/270/MS00086, f. 159v.

<sup>10</sup> London Metropolitan Archive MS CLC/270/MS00086 and BL MS Add. 26047, ff. 4 and 12.

<sup>11</sup> J.D. Alsop, 'William Fleetwood and Elizabethan Historical Scholarship', *Sixteenth Century Journal* 25 (1994): p. 162, doi:10.2307/2542557.

<sup>12</sup> BL MS Harg. 372, f. 54.

<sup>13</sup> BL MS Harg. 98, f. 33.

<sup>14</sup> William Lambarde, *Eirenarcha: or of The Office of Justices of Peace* (London: R. Newbery and H. Bynneman, 1581), sig. A2.

<sup>15</sup> BL M Add 26047, f. 4v. For Trehearne's reading, see Baker, *Readers and Readings*, p. 117.

<sup>16</sup> Hampshire Record Office: Jervoise of Herriard Collection: MS 44M69/L25/6/1, entry for 2

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July 1631.

<sup>17</sup> Thomas Littleton, *Les Tenures des monsieur Littleton* (London: Richard Tottel, 1581), f. 112v (s.481).

<sup>18</sup> Matthew Mirow, 'The Ascent of the Readings: Some Evidence from Readings on Wills', in *Learning the Law: Teaching the Transmission of English Law 1150-1900* edited by Jonathan Bush and Alain Wijffels (London: Hambledon Press, 1999), p. 244; M.C. Mirow, 'Bastardy and the Statute of Wills: Interpreting a Sixteenth-Century with Cases and Readings', *Mississippi Law Journal* 69 (2000): pp. 366-7.

<sup>19</sup> BL MS Stowe 424, f. 3v.

<sup>20</sup> BL MS Stowe 424, f. 8.

<sup>21</sup> BL MS Harl. 5141, f. 83.

<sup>22</sup> Mirow, 'Ascent of the Readings', pp. 232-233.

<sup>23</sup> William Staunford, *An Exposition of the kinges prerogative* (London: Richard Tottel, 1567). For the readings on *Praerogativa Regis*, see Margaret McGlynn, *The Royal Prerogative and the Learning of the Inns of Court* (Cambridge: Cambridge University Press, 2003).

<sup>24</sup> Edward Coke, *The Second Part of the Institutes of the Lawes of England* (London: M. Flesher and R. Young, 1642). On the cycle of readings, see Baker, *Readers and Readings*, p. 3.

<sup>25</sup> John H. Baker, 'Coke's Notebooks and the Sources of His Reports', *Cambridge Law Journal* 30 (1972): pp. 61-2, doi: 10.1017/S0008197300008692.

<sup>26</sup> BL MS Harl. 5225, ff. 11-16.

<sup>27</sup> John H. Baker, 'The Newe Littleton', *Cambridge Law Journal* 33 (1974): p. 147, doi: 10.1017/S0008197300091339.

<sup>28</sup> John H. Baker, 'Roman Law at the Third University of England', *Current Legal Problems* 55 (2002): pp. 141-2, doi: 10.1093/clp/55.1.123.

<sup>29</sup> Henry Cary, ed., *A Commentary on the Tenures of Littleton; Written Prior to the Publication of Coke upon Littleton* (London: Saunders and Benning, 1829), from BL MS Harl. 1621.

<sup>30</sup> BL MS Harl. 5225, f. 16v; Baker, *Readers and Readings*, p. 189.

<sup>31</sup> Although in 1626 Lincoln's Inn could describe such readings as authorised by 'ancient lawes and customes' (W.P. Baildon, ed., *The Records of the Honorable Society of Lincoln's Inn: The Black Books*, vol.2 (London: H.S. Cartwright, 1898), 265.

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<sup>32</sup> James O. Halliwell (ed.), *The Autobiography and Correspondence of Sir Simonds D'Ewes*, vol.1 (London: Richard Bentley, 1845), pp. 178-179.

<sup>33</sup> For non-legal writing by lawyers, see, e.g., BL MS Sloan 1065, 'An Abstract of Boterus Della Ragione di Stato' by the lawyer Richard Etherington to Chief Justice Henry Hobart for 'your speciall undeserved favour allready received by mee' (f. 2v). My thanks to Richard Serjeantson for drawing this to my attention. The importance of a lawyer's relationship with long-standing clients, as well as the role of patronage in securing advancement, can be seen in the careers of Edward Coke and John Davies. See Allen D. Boyer, *Sir Edward Coke and the Elizabethan Age* (Stanford CA: Stanford University Press, 2003), pp. 37-9, 42-4, 216-7 and 246-9 and Hans S Pawlisch, *Sir John Davies and the Conquest of Ireland: A Study in Legal Imperialism* (Cambridge: Cambridge University Press, 1985), pp. 17-25. More generally, see Louis A. Knafla, 'The "Country" Chancellor: The Patronage of Sir Thomas Egerton Baron Ellesmere', in *Patronage in Late Renaissance England*, edited by French R. Fogle and Louis A. Knafla, (Los Angeles CA: William Andrews Clark Memorial Library, 1983), p. 66.

<sup>34</sup> Wilfrid Prest, 'The Dialectical Origins of Finch's Law', *Cambridge Law Journal* 36 (1977): pp. 344-5, doi: 10.1017/S000819730009245X.

<sup>35</sup> Robert Snagg, *The Antiquity and Original of the Court of Chancery* (London: Henry Seile, 1654), p. 1.

<sup>36</sup> BL MS Egerton 3376, f. 2.

<sup>37</sup> Virgil B. Heltzel, 'Ferdinando Pulton, Elizabethan Legal Editor', *Huntington Library Quarterly* 11 (1947): pp. 77-79, doi: 10.2307/3816033.

<sup>38</sup> Henry E. Huntington Library Ellesmere MS 2622. The alterations to this draft were included in the 'Preface Dedicatory' to John Davies, *Le Primer Reports des Cases et Matters en Ley resolves et adiudges en les Courts del Roy en Ireland* (Dublin: John Franckton, 1615). The alterations are in a hand which could be Egerton's, but this is not certain.

<sup>39</sup> Edward Coke, *A Little Treatise of Baile and Mainprize* (London: William Cooke, 1635); BL MS Harl. 444, ff. 185-202; BL MS Stowe 145, ff. 80-98v.

<sup>40</sup> Bodleian MS Tanner 85, ff. 29v-41v, printed in John Gutch, *Collectanea Curiosa; or Miscellaneous Tracts relating to the history and antiquities of England and Ireland*, vol. 1 (Oxford: Clarendon Press, 1781), pp. 9-12.

<sup>41</sup> Boyer, *Sir Edward Coke*, pp. 40-4.

<sup>42</sup> Boyer, *Sir Edward Coke*, pp. 37-9.

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<sup>43</sup> David A. Smith, ‘Was There a Rule in *Shelley’s Case*?’ *Journal of Legal History* 30 (2009): p. 62, doi: 10.1080/01440360902765449.

<sup>44</sup> BL MS Harl. 5220, ff. 2 and 4.

<sup>45</sup> John Kitchin, *Le court leete, et court baron* (London: Richard Tottell, 1585), sig. A2.

<sup>46</sup> BL MS Harl. 4317, ff. 11v-12. The author only refers to *Scandalum Magnatum*, criminal regulation by JPs and proceedings in the church courts as remedies for defamation. The author refers to Elizabeth as the current monarch on f. 1.

<sup>47</sup> A useful starting point will be Richard J. Ross, ‘The Commoning of the Common Law: The Renaissance Debate over the Printing of English Law’, *University of Pennsylvania Law Review* 146 (1998): pp. 323-461, doi: 10.2307/3312623.

<sup>48</sup> BL MS Harg. 207, ff. 63, 64v, 66v, 71v, 76 and 77.

<sup>49</sup> BL MS Harg. 318, ff. 26-27, 50v, 95v. Edward Heron’s 1587 reading in Lincoln’s Inn is mentioned on f. 45v. It is possible that knowledge of this reading was acquired through a text, but a report of a single case may also have been communicated orally through a personal connection.

<sup>50</sup> E.g. BL MS Harl. 1631 which features notes from readings in Gray’s Inn from 1595-1599.

<sup>51</sup> BL MS Harl. 3209, see Baker, *Readers and Readings*, pp. 286-7.

<sup>52</sup> BL MS Lansd. 1134 and Cambridge University Library MS Ff.5.17. See J.H. Baker, *A Catalogue of English Legal Manuscripts in Cambridge University Library* (Woodbridge: Boydell Press, 1996), pp. xxxiv and 251.

<sup>53</sup> Why readings were not printed until 1630 (Dodderidge’s *Compleat Parson* is the first) is unknown.

<sup>54</sup> Hampshire Record Office: Jervoise of Herriard Collection: 44 M69/L25/1-6, unpaginated. The references to some of these loans in Baker, *Readers and Readings*, p. 236 are incorrect following recataloguing.

<sup>55</sup> Baker, *A Catalogue of English Legal Manuscripts*, pp. xlii-xliii.

<sup>56</sup> Peter Beal, *In Praise of Scribes* (Oxford: Clarendon Press, 1998), pp. 96 (referring to Harvard Law School MS 1034) and 211-268.

<sup>57</sup> Beal, *In Praise of Scribes*, pp. 69-72, n. 12. Lincoln’s Inn paid 7½d. per page. The other evidence collected by Beal for scribal costs suggests prices of 1d.-5d. per page were more common.

<sup>58</sup> London Metropolitan Archive MS COL/CS/01/011, insert after front cover.

<sup>59</sup> Edmund Plowden, *Les Comentaries, ou les Reportes* (London: Richard Tottell, 1571), sig.

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<sup>60</sup> Mirow, 'Ascent of the Readings', p. 238.

<sup>61</sup> Baker, *Readers and Readings*, p. 235.

<sup>62</sup> Baker, *A Catalogue of English Legal Manuscripts*, p. xxxiv.

<sup>63</sup> Hampshire Record Office: Jervoise of Herriard Collection: 44M69/L25/6/1, entry for 2 July 1631; 44M69/L25/3, entry for 23 June 1627; 44M69/L25/5/1, entry for 14 November 1633.

<sup>64</sup> Hampshire Record Office: Jervoise of Herriard Collection: 44M69/L25/5/1, entry for 14 November 1633. I have not found any 'Romsey' admitted to Gray's Inn in this period (Joseph Foster, ed., *The Register of Admissions to Gray's Inn 1521-1889* (London: Hansard, 1889)). The recapitulation of Sherfield's reading is BL MS Harg. 402, ff. 34-59.

<sup>65</sup> Sherfield recorded eleven loans of manuscript material, five of which were of Court of Wards material to the father and son members of the Inner Temple, Nicholas and Hugh Cholmely. Sherfield does not record any other loans of his collections concerning the Court of Wards. Of the remaining six loans, four were to members of Lincoln's Inn. Two were of Sherfield's reading, another was of Robert Constable's 1489 reading, also in Lincoln's Inn (Hampshire Record Office: Jervoise of Herriard Collection: 44M69/L25/1, rear flyleaf, loan to William Noy in 1609). The final loan was of antiquarian material (Hampshire Record Office: Jervoise of Herriard Collection: 44M69/L25/3, entry for 17 February 1626, loan to William Hakewill). The two remaining loans were those of Sherfield's reading to Townsend and Romsey.

<sup>66</sup> Hampshire Record Office: Jervoise of Herriard Collection: 44M69/L25/6/1, entry for 2 July 1631.

<sup>67</sup> Joseph Hunter, ed., *A Catalogue of the Manuscripts in the Library of the Honourable Society of Lincoln's Inn* (London: Eyre and Spottiswoode, 1838): p. vii.

<sup>68</sup> Hampshire Record Office: Jervoise of Herriard Collection: 44M69/L25/3, entry for 23 June 1627.

<sup>69</sup> John H. Baker, *Reports from the Lost Notebooks of Sir James Dyer* (London: Selden Society, 1993), pp. xxxv-xxxviii.

<sup>70</sup> BL MS Harl. 5141, f. 83.

<sup>71</sup> Mirow, 'Ascent of the Readings', p. 245.

<sup>72</sup> Hampshire Record Office: Jervoise of Herriard Collection: 44M69/L25/5/1, entry for 26 February 1631.



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<sup>73</sup> John Baker, *Baker and Milsom Sources of English Legal History: Private law to 1750*, 2nd ed. (Oxford: Oxford University Press, 2010), p. 145; *Dawles v. Baldwin* (1631) Cambridge University Library MS Gg.2.19, f. 210 (view of the Inner Temple).

<sup>74</sup> Edward Coke, *The first part of the Institutes of the lawes of England. Or, A commentarie Upon Littleton* (London: assigns of John More, 1628) f. 70.

<sup>75</sup> Snagg, *The Antiquity and Original*, p. 2; BL MS Harl. 5141, f. 83.

<sup>76</sup> Littleton, *Les Tenures*, f. 112v (s. 481).

<sup>77</sup> John H. Baker, 'The Inns of Court and Legal Doctrine', in John H. Baker, *The Common Law Tradition: Lawyers, books and the law* (London: Hambledon Press, 2000): p. 47.

<sup>78</sup> BL MS Harl. 5141, f. 83.

<sup>79</sup> BL MS Harg. 267, f. 3.

<sup>80</sup> Snagg, *The Original and Antiquity*, pp. 80-83.

<sup>81</sup> On the case, see M.A.R. Graves, 'Freedom of Peers from Arrest: The Case of Henry Second Lord Cromwell, 1571-1572', *American Journal of Legal History* 21 (1977): pp. 1-14, doi: 10.2307/844922.

<sup>82</sup> P.W. Hasler, ed., *The History of Parliament: the House of Commons, 1558-1603*, vol. 3 (London: Boydell and Brewer, 1981), pp. 408-409.

<sup>83</sup> Richard Townsend (Cambridge University Library MS Dd.5.51, f. 22v); John Wilde (Cambridge University Library MS Dd.5.8, f. v); Edward Littleton (BL MS Harg. 372, f.54). The first reference to the *Commentarie on Littleton* I have found in a reported case is earlier: *Pope v Tinker* (1629) Cambridge University Library MS Gg.2.19, ff. 49-50.

<sup>84</sup> Ian Williams, 'Developing a Prerogative Theory for the Chancery: the French Connection', forthcoming in *Law and Authority in British Legal History, 1200-1900*, edited by Mark Godfrey (Cambridge: Cambridge University Press, 2015).

<sup>85</sup> *Butler and Baker's Case* (1591) 3 Co Rep 25; Mirow, 'Ascent of the Readings', p. 252.

<sup>86</sup> Mirow, 'Ascent of the Readings', p. 242-4.

<sup>87</sup> Mirow, 'Ascent of the Readings', p. 247.

<sup>88</sup> Mirow, 'Ascent of the Readings', pp. 242-7.

<sup>89</sup> BL MS Harl. 5141, f. 83.

<sup>90</sup> In 1572 the House of Lords held that Henry, second Lord Cromwell, could not be arrested for contempt of Chancery (see Graves, 'Freedom of Peers from Arrest'). Snagg seems to have considered that arrest of peers for contempt of the Chancery should be possible, although the report is qualified, referring to the matter as a 'great case' on which he would not decide the

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law (Snagg, *The Original and Antiquity*, pp. 80-84).

<sup>91</sup> Presumably citing Robert Brooke, *La graunde abridgement* (London: Richard Tottel, 1573): tit. Judgement, pl. 157.

<sup>92</sup> BL MS Egerton 3376, f. 36v.

<sup>93</sup> (1486) YB Trin. 1 Hen VII, f.25a, pl.1 at f.26a.

<sup>94</sup> BL MS Add. 26047, ff. 7-7v.

<sup>95</sup> On geographical insularity, see Christopher Brooks and Kevin Sharpe, 'Debate: History, English Law and the Renaissance', *Past and Present* 72 (1976): pp. 137-138, <http://www.jstor.org/stable/650331>.

<sup>96</sup> BL MS Harl. 5220, f. 6.

<sup>97</sup> Henry Finch, *Nomotexnia, cestascavoir un description del common leys dangleterre solonque les rules del art* (London: Societie of Stationers, 1613), ff. 3-15.

<sup>98</sup> Folger Shakespeare Library V.b.303, f. 26; Ovid, *Metamorphoses* (London: William Heinemann, 1916), p. 271 (5.446-5.461).

<sup>99</sup> Thomas Littleton, *Les Tenures*, Henry E Huntington Library RB 62239.

<sup>100</sup> Henry E Huntington Library Ellesmere MS 496, ff. 2v-3v.

<sup>101</sup> BL MS Harl. 6687, f. 7.

<sup>102</sup> BL MS Add. 26047, ff. 113-120.

<sup>103</sup> BL MS Harg. 407.

<sup>104</sup> Govaert C.J.J. van den Bergh, 'Auctoritas Poetarum in Court: A footnote to the history of *Institutes* 3.23.2 and *Digest* 1.8.6.5 and 7', in *Fundamina: A Journal of Legal History: Essays in Honor of Eric Pool*, edited by Rena van den Bergh (Pretoria: South African Society of Legal Historians, 2005): p. 346; Matthew Hale, 'A Treatise in Three Parts', in *A Collection of Tracts Relative to the Law of England*, edited by Francis Hargrave (London: E. Brooke, 1787): pp. 5-10. On Hale's knowledge of Grotius' *De Iure Belli ac Pacis*, where Ovid is cited, see Alan Cromartie, *Sir Matthew Hale 1609-1676: Law, religion and natural philosophy* (Cambridge: Cambridge University Press, 1995): p. 46.

<sup>105</sup> BL MS Harl. 4990, f. 146v (an anonymous reading probably from the 1530s); Finch, *Nomotexnia*, f. 3; BL MS Add. 25251, f. 33 (John Briscoe's reading in 1623).

<sup>106</sup> BL MS Harl. 5053, f. 1.

<sup>107</sup> BL MS Harl. 5220, f. 4v.

<sup>108</sup> Edward Coke, *The Third Part of the Institutes of the Laws of England* (London: M. Flesher, 1644), pp. 181 and 205.

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<sup>109</sup> John H. Baker, ‘The books of the common law’, in *The Cambridge History of the Book in Britain*, vol.III, 1400-1557, edited by Lotte Hellinga and J.B. Trapp (Cambridge: Cambridge University Press, 1999), p. 416 n.38.

<sup>110</sup> Charles Donahue, Jr, “‘The hypostasis of a prophecy’: legal realism and legal history’ in *Law and Legal Process: Substantive law and procedure in English legal history*, edited by Matthew Dyson and David Ibbetson (Cambridge: Cambridge University Press, 2013), p. 6.