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JOHN COWELL AND *THE INTERPRETER*: LAW, AUTHORITY, AND ATTRIBUTION IN SEVENTEENTH-CENTURY ENGLAND

ON 23 February 1610, the House of Commons introduced a complaint against John Cowell, Regius Professor of Civil Law at Cambridge University, and requested that his law dictionary *The Interpreter*, published in 1607 at the university press, be censored. On 25 March 1610, King James I issued a proclamation that suppressed and recalled the law dictionary. The suppression of *The Interpreter* has been studied before, particularly with reference to constitutional theory and the King's finances.[1] As well, the importance of the reception of Cowell's dictionary to legal history has been established by Colin Tite's study of its role in the development of parliamentary judicature and Brian Levack's examination of its place in disputes about civil and common law.[2] These legal issues, particularly growing tensions between civilians and common lawyers articulated during parliamentary proceedings about Cowell, direct attention to how he is defined as an author. No one has previously examined this example of the control of discourse about the King and state with reference to the questions of

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1 Chrimes, "The Constitutional Ideas of Dr John Cowell" (1949) 64 *English Historical Review* 487 corrected Gardiner's overstatement that "opinions" contained in *The Interpreter* "were such as no House of Commons could fail in pronouncing unconstitutional": see Gardiner, *History of England* Vol 2 (Longmans & Green, London, 3rd ed 1899) p66. Similarly, Sommerville, *Politics and Ideology in England, 1603-1640* (Longman, London 1986) pp121-127 corrects Elton's insistence that the King and the Commons concurred about prerogative powers and that the dictionary's suppression was "a plain acknowledgement of what the right doctrine was thought to be": see Elton, "The Rule of Law in Sixteenth-Century England" in Elton, *Studies in Tudor and Stuart Politics and Government: Papers and Reviews, 1946-1972* Vol 1 (CUP, Cambridge 1974) p268. The relation of the Great Contract to the constitutional debate is explained in Russell, *The Crisis of Parliaments: English History 1509-1660* (OUP, Oxford 1971) pp277-284.

2 Levack, *The Civil Lawyers in England, 1603-1641: A Political Study* (Clarendon Press, Oxford 1973) pp97-106; Tite, *Impeachment and Parliamentary Judicature in Early Stuart England* (Athlone Press, London 1974) pp54-64.

authority and attribution. This article will study the definition of an author and the implications of attributing to Cowell statements about the origins and jurisdiction of the King and the Commons in the parliamentary debates of 1610. I will emphasise how, during these debates, efforts to subject Cowell and his book to parliamentary judicature offer insight into ideas of an author, authority, and attribution as defined differently by writing practice[3] and jurisprudence in the early seventeenth century.

Because of the extraordinary responses of the King and Parliament to Cowell's dictionary three years after its printing, their objections to the book need to be assessed in detail. The King and the Commons attributed to Cowell statements that in *The Interpreter* he attributed to other authors. They named Cowell as the originator of statements that in fact were made by acknowledged authorities on English law and government. As well, the King and the Commons interpreted possible meanings of statements in the law dictionary concerning the Crown's prerogative powers in relation to civil and common law. An important consequence of their interpretative practice was that Cowell, when named as the author, became responsible for others' words. James I, in particular, identified Cowell as an author of erroneous statements that the King had used as evidence elsewhere of his prerogative powers. The following analysis of the Commons' proceedings in 1610 and of King James' proclamation and message about *The Interpreter* studies the production and function of John Cowell as an author in their arguments about the antecedents of English government and law.

LAW BY INTERPRETATION

Cowell did not designate his reference book arranged in alphabetical order as a dictionary, a term, according to the *Oxford English Dictionary*, first used around 1631 for such a text. Titled *The Interpreter: or Booke Containing the Signification of Words ... Collected by John Cowell*, it collated terms of civil and common law in brief essays. In a preface "To the Readers" Cowell explained that the book defined the signification "not onely of words belonging to the art of the lawe, but of any other also, that

3 "Writing practice" refers to the assumptions of early modern writers about the composition, attribution, and distribution of their writings, ideas that differ markedly from modern notions of creative originality and genius governing the practice of writers from the early nineteenth century. See Thomas, "Reading and Writing the Renaissance Commonplace Book: A Question of Authorship?" in Woodmansee & Jaszi (eds), *The Construction of Authorship: Textual Appropriation in Law and Literature* (Duke University Press, Durham 1994) pp401-415.

I thought obscure".[4] The content of *The Interpreter* originated in legal, historical, and political treatises by Roman, medieval, and early modern authorities. The definitions within the text were compiled statements of important jurists. The book was intended to facilitate "the advauncement of knowledge"[5] by organising and compiling examples of a word's use in legal texts, such as statutes.

By discussing the etymology of a word and examples of its customary usage, Cowell organised an orderly exposition of preceding authors' and texts' interpretations and use of the vocabulary of laws. For example, his definition of "law" located the origin of its etymology and "general signification" in civil law. He recorded evidence from annals and chronicle histories to prove the argument that Kings "reduced the whole land formerly severed by civile wars, into the state of a *Monarchy*, [and] made certaine wholsome lawes".[6] These historical sources provided evidence for the theory that England's laws came into being after the institution of monarchy in the land. In keeping with his intention to clarify all meanings of a word, Cowell cited authorities, such as the medieval jurist Bracton, to define the "especiall signification" of "Lawe ... wherein it is taken for that which is lawfull with us, and not elswhere".[7] The "definition" did not arbitrate between civil and common law by naming one or the other as true or more authoritative but instead made available to readers different sources of "true" significations and arguments. In the definition of the term "prerogative" Cowell discussed disputed theories of the sovereign power of the King in relation to law, and acknowledged both sides of the controversy, deferring to "the judgement of wiser men" to resolve "whether his power of making lawes be restreined (*de necessitate*) or of a godly and commendable policy, not to be altered without great perill".[8] The definition juxtaposed two different conceptions of the King's sovereignty as explicated by civil and common law. Unable to reconcile these two analyses of the King's sovereignty, Cowell instead remarked that "the King of England is an absolute King".[9]

4 Cowell, *The Interpreter* (Theatrum Orbis Terrarum, Amsterdam 1970, reprint of Legate, Cambridge 1607) p*4. The pagination of *The Interpreter* combines letters and page numbers. Citations of books throughout this article bring the letters i, j, u and v into conformity with modern practice.
5 As above p*3.
6 As above pRr2.
7 As above.
8 As above pDdd4.
9 As above.

The sources cited by Cowell exemplified a traditional concept of an author that seventeenth century England had inherited from the middle ages. As Thomas Greene has explained, "the author (auctor, actor, autor) at a medieval university was a writer whose work had commanded respect for so many centuries as to have become an authority (autorita), to be read as an *authentic* source of knowledge".[10] In this manner Cowell valued Bracton as an authority whose writings provided valid definitions or examples of correct usage explaining the signification of legal terms. By deferring "to the judgement of wiser men"[11] such as Bracton, Glanville, Britton, and Fortescue, and by citing and explaining others' words, Cowell did not take upon himself their role as authorities.

In relation to the discourse within the dictionary, Cowell's own name did not function in the same manner as the names of forensic authorities cited in definitions. As in forensic rhetoric used in courts of law, the words and name of an authority cited in *The Interpreter* functioned as a kind of proof that provided evidence relevant to arguments about subsequent cases or events.[12] The name of Sir Edward Coke was an important example. By 1607 Coke, of course, was well known to his contemporaries as the Solicitor-General (1592), Speaker of the House of Commons (1592-1593), Attorney-General (1593-1594, 1603-1606) and Chief Justice of the Common Pleas (1606-1613). But Cowell cited Coke not only as a noted judge and statesman but more specifically as the author of *The Reports* of which five parts had been printed by 1606.[13] Coke's name appeared

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10 Greene, *The Light in Troy: Imitation and Discovery in Renaissance Poetry* (Yale University Press, New Haven 1982) p12.

11 Cowell, *The Interpreter* pDdd4.

12 Ian Maclean has explained that during the seventeenth century Aristotle's and other classical rhetoricians' theories of forensic rhetoric remained influential. Jurists were well aware that Aristotle classified the names of authorities as "witnesses", one of the five kinds of inartificial proof to be used in courts of law. Aristotle explained that "By ancient [witnesses] I mean the poets and men of repute whose judgements are known to all ... By recent witnesses I mean all well-known persons who have given a decision on any point, for their decisions are useful to those who are arguing about similar cases": Aristotle, *The "Art" of Rhetoric* (Heinemann, London 1926) I:15.13-15. See Maclean, *Interpretation and Meaning in the Renaissance: The Case of Law* (CUP, Cambridge 1992) pp75-82.

13 Coke's *Reports* are cited, for example, in Cowell's definition of law: "But Sir Edward Cooke saith, it springeth originally from the judiciall lawe of god, li. 4. of his reports, *Slades case*, fol. 95. b. alleaging the 22. cap. of *Exodus*, versu. 7": Cowell, *The Interpreter* pRr3. On the printing and reception of Coke's *Reports*, see Baker, "Coke's Note-books and the Sources of his Reports" (1972) 30 *CLJ* 59 at 59-86.

within definitions in *The Interpreter* in the same manner as citations of a statute or year books, that is, texts that record legal arguments. His name and *Reports* identified sources from which other jurists could initiate juridical discourses, particularly arguments verified by an authority. In a similar manner Cowell's dictionary facilitated the creation of other legal discourses, such as commentaries and statements of forensic evidence informed by an understanding of the signification of words.

The Interpreter, which used others' words as evidence about the signification of legal terms, implied a decidedly different concept of an author to the later Romantic notion of an individual whose book was the product solely of his or her originality.[14] Cowell engaged in a kind of "collaborative" writing by gathering important authors' or authorities' words in his own book. He did not literally share the task of writing with another individual but instead appropriated others' words in a manner that characterised the practice of writing in the early modern period. His writing procedure, according to Martha Woodmansee, typified that of medieval and Renaissance authors, who believed "new writing derived its value and authority from its affiliation with the texts that preceded it, its derivation rather than its deviation from prior texts".[15] Cowell's relation to the words within *The Interpreter* was analogous to the twentieth-century idea of an editor rather than an author. He compiled definitions that detailed different usages, citations, texts, and authorities in order to present a diachronic catalogue of past and coexistent usages. Each definition set forth this information without specifying one usage as correct. Such a definition allowed a reader to limit the various meanings of a word to an utterance, written or spoken, within a particular situation. When a lawyer or reader used the most relevant signification in a particular case or argument, they excluded various heterogeneous meanings for a specific meaning *in situ*. The title of Cowell's book referred to the "interpretative" nature of the reader's activity rather than the writer's. Written in the form of a dictionary listing authorities' dicta, arguments and judgements on cases and rules of law, *The Interpreter* did not arbitrate among different statements in order to indicate their relative value; instead the entries provided the basis for jurists and readers to make interpretative acts. The Commons used definitions within the book in just this manner, that is, as

14 See Pfau, "The Pragmatics of Genre: Moral Theory and Lyric Authorship in Hegel and Wordsworth" in Woodmansee & Jaszi (eds), *The Construction of Authorship: Textual Appropriation in Law and Literature* pp33-58.

15 Woodmansee, "On the Author Effect: Recovering Collectivity" in Woodmansee & Jaszi (eds), *The Construction of Authorship: Textual Appropriation in Law and Literature* p17.

sources from which they produced an argument concerning the constitution, particularly the relation of the King and the Houses of Parliament. Their argument originated in statements by authorities that, as will be explained, the Commons not only interpreted but also attributed to Cowell.

LAW BY ATTRIBUTION

Parliament had been prorogued on 4 July 1607, the year Cowell published *The Interpreter*, and had only been in session one month during 1610 when the Commons initiated the complaint about the dictionary. John Hoskyns introduced the subject on 23 February 1610. Hoskyns produced not only Cowell's book but also "several treatises containing as much as Dr Cowell's book, all sold *impune*; amongst the rest was Blackwood's book, which concluded, 'that we are all Slaves by reason of the Conquest'".[16] Only Cowell's book was referred to the Committee for Grievances that reported on 24 February. The spokesperson for the committee, Sir Edwin Sandys, described *The Interpreter* as "undiscreet, tending to the Disreputation of the Honor and Power of the Common Laws".[17] But he urged readers to remember the difficulty of censuring a book if one interpreted a sentence in it "without the Contexture".[18] Throughout their discussions of the dictionary the Commons disregarded this important advice. They did not examine sentences within their context. Rather than evaluating all statements made in a specific definition, the Commons isolated one or two sentences for interpretation.

Circumstances in 1610 unrelated to the intentions of Cowell guided the interpretation of statements within *The Interpreter* to which the Commons objected. According to the Commons, in Cowell's book evidence concerning the relative authority of the King, Commons, and Lords challenged the jurisdiction and the authority of both Houses of Parliament. Cowell's book became a celebrated cause during 1610 when the Commons and the King were in conflict over the Crown's revenues. Traditionally the King enjoyed sovereign authority to use the hereditary and inalienable fisc - a complex of lands, revenues, and rights, for the maintenance of the

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16 Petyt, *Miscellanea Parliamentaria: Containing Presidents* (Thompson, London 1681) p66. Cf UK, Parl, *Journals of the House of Commons* (HMSO, London 1803) Vol 1 at 399. Blackwood, *Apologia pro regibus adversus Georgii Buchanani dialogum de jure regni apud Scotus* (Poitiers 1581) was cited in Cowell, *The Interpreter* pQq1.

17 UK, Parl, *Journals of the House of Commons* Vol 1 at 399.

18 As above.

estate and dignity of the perpetual Crown. As a result he could make claims for taxes, levies, and subsidies upon his subjects' wealth in "case of necessity", presented in Parliament but not in regard to the maintenance of the dignity of the Crown. As Harriss has explained, in England

> the 'dualism' of the financial system - that the Crown should meet ordinary expenses from its own revenues and only approach subjects for extraordinary needs - preserved both the independence of the Crown, which retained absolute control over its hereditary revenue, and the independence of the subject, whose obligations were strictly limited to accepted cases of necessity. It meant the Crown could not demand taxation, nor the Commons refuse it, merely at will.[19]

The Interpreter, citing authorities' statements concerning absolutism, provoked the Commons who feared this characterisation of the King's prerogative powers intimated that he could levy taxes without Parliament's consent. The Commons interpreted the dictionary's definition of the King's prerogative in relation to a specific issue concerning Parliament during 1610, namely the Great Contract, the proposal of Salisbury the Lord Treasurer, which provided for the King to receive an annual grant if he surrendered certain revenues, such as wardship.[20]

During proceedings in Parliament, speakers and procedural actions of the Commons used Cowell as a topic to initiate debate about their right to determine supply and taxes requested by the King. A message submitted to the Lords and discussed in a conference on 2 March 1610 defined the Commons' understanding of Cowell's offence; the Commons reported "that one Dr Cowell had written a book which was to take away the power and authority of the parliament".[21] The message briefly referred to four definitions in *The Interpreter* as the evidence for these charges:

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19 Harriss, "Medieval Doctrines in the Debates on Supply, 1610-1629" in Sharpe (ed), *Faction & Parliament: Essays in Early Stuart History* (Methuen, London 1985) p73.

20 See Russell, *The Crisis of Parliaments* pp277-279. Cf the analyses of Tudor and Stuart finances respectively in Hurstfield, "The Profits of Fiscal Feudalism, 1541-1602" in (1955 (Second Series)) 8 *Economic History Review* 53 at 61; also Russell, "Parliament and the King's Finances" in Russell (ed), *The Origins of the English Civil War* (Macmillan, London 1973) pp98-101.

21 Foster (ed), *Proceedings in Parliament, 1610* Vol 1 (Yale University Press, New Haven 1966) p18.

> [F]irst, "Subsidy," which is granted that the King may make laws no more freely of himself; secondly, title of "King," that he is above the law and not subject to law, for the King is always taken to be at full age, and that his politic body never dieth. "Parliament," *parlamentum* signifieth *collocutio* or *colloquium*, to bind the King to any law were repugnant unto an absolute monarchy. "Prerogative," the making of laws which are in the King's power are *insignia summae et absolutae potestatis*.[22]

As Stanley Chrimes has noted, the priority given to the definition of subsidy in the message revealed the most immediate concern of the Commons.[23] The role of the Commons in determining the rate of taxation and supply was viewed by members, according to Sommerville, as a means of exercising and thereby protecting subjects' liberty.[24] They insisted Cowell threatened this role of the Commons because definitions in *The Interpreter* implied that the King's prerogative enabled him to determine subsidies without their consent. According to the statement of the Commons' sub-committee on grievances, the definitions of King, Parliament, and prerogative also attributed to the King alone power and authority rightfully the jurisdiction of Parliament.

The Attorney-General Sir Henry Hobart explained to the House of Lords the circumspect response of the Commons who think

> parts of the book are dangerous and offensive to infuse into the readers, that though the King and his progenitors have admitted both the Houses to give their votes, yet is it only a politic mercy or merciful policy; but we will not dispute this question, for then should we arm him with an answer, who we desire rather to see punished.[25]

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22 As above p25. The definitions of King, Parliament, prerogative, and subsidy in *The Interpreter* and the discussion of the royal prerogative in Bracton are examined in Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton University Press, Princeton 1957) pp143-192; also Wormuth, *The Royal Prerogative, 1603-1649* (Cornell University Press, Ithaca 1939).

23 Chrimes, "The Constitutional Ideas of Dr John Cowell" (1949) 64 *English Historical Review* 467.

24 Sommerville, *Politics and Ideology in England, 1603-1640* (Longman, London 1986) p160.

25 Foster (ed), *Proceedings in Parliament, 1610* Vol 1 p24.

In particular Hobart referred to the definition of Parliament, a term used in England according to sources named in *The Interpreter*, as

> the assembly of the King and the three estates of the Realme ... for the debating of maters touching the common wealth, and especially the making and correcting of lawes, which assembly or court is of all other the highest, and of greatest authoritie, as you may reade in Sir Thomas Smith. *de Repub[lica] Anglorum* lib. 2. cap. 1. & 2. Camd[en] *Britan[nia]* pag. 112. ... And therefore though it be a mercifull policie, and also a politique mercie (not alterable without great perill) to make lawes by the consent of the whole Realme, because so no one part shall have cause to complaine of a partialitie: yet simply to binde the prince to or by these lawes, weare repugnant to the nature and constitution of an absolute monarchy. See Bracton. lib. 5. tract. 3. ca. 3. nu. 3. ... and many excellent men more, that handle this point.[26]

The definition aptly described the relative powers of the King and the Houses of Parliament during the Jacobean period. According to custom, King James, along with men whom he appointed Privy Councillors, served as the state's executive whereas Parliament met only at his discretion. The Commons particularly objected to the words defining the King's acknowledgment of Parliament's role in government as a "merciful policie" or "benignitie". To members, these phrases seemed "a presumptuous novelty"[27] that contradicted their understanding of the Commons' unquestionable role as one of the three powers of Parliament. Cowell's vocabulary and assertions, however, can be found in earlier writings about civil law, particularly those of Continental jurists, such as Charles Loyseau who described the legislative powers of France's assemblies allowed by the King's "bonte permette".[28]

Words and authorities' names in the definition when cited in parliamentary debates raised questions concerning the relation of the King and the Houses of Parliament to one another and to the law. The names and words

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26 Cowell, *The Interpreter* pAaa3.

27 Foster (ed), *Proceedings in Parliament, 1610* Vol 1 p24.

28 Kantorowicz, "The Mysteries of State: An Absolutist Concept and Its Late Medieval Origins" (1955) 48 *Harvard Theological Review* 67 notes that Cowell used terminology similar to that of Continental jurists such as Loyseau, *Traite des Seigneuries* (Lyons 1608).

of jurists who, in Cowell's definitions, functioned as *loci* of evidence, authorities concerning law, in the parliamentary debates provided a basis for two alternative arguments based on common and civil law. Among English common lawyers, it was customary to assert that the King did not exercise political and legal powers defined by natural, canon, or civil law.[29] Instead the King's prerogative, in relation to private property and public political rights, originated in the common law, defined as immemorial custom or, by Maitland, as traditional, "unenacted law ... common to the whole land".[30] Because common law, according to their arguments, preceded the establishment of monarchy, the law determined and limited prerogative powers. The various meanings of the term "Parliament" revealed by the dictionary enabled the Commons to use the theory of the institution's origin in common law as a precedent from which they traced a line of arguments undermining the theory of civil law that "the King is above the Parlament, that is, the positive laws of his kingdome".[31]

Many civil lawyers argued that the King was absolute in his powers and was able to exercise natural and divine law.[32] This view was supported by the authority of the *Corpus Juris Civilis*. Many civilians applied to England the Justinian code which stated that the Roman people had transferred their authority to the emperor. To cite one typical example, in a book printed in 1603, *An Answer to the First Part of a Certaine Conference Concerning Succession*, the civil lawyer John Hayward argued:

> [T]he Romans by the law of royalty yielded all their authority in government to the Prince ... [So] have our people many times committed to their King the authority of

29 See Tanner (ed), *Tudor Constitutional Documents, AD 1485-1603 With An Historical Commentary* (CUP, Cambridge, 2nd ed 1951) pp4-15; also McIlwain, "The English Common Law, Barrier Against Absolutism" (1943) 49 *American Historical Review* 23 at 23-31.

30 Cited in Bodet (ed), *Early English Parliaments: High Courts, Royal Councils or Representative Assemblies* (DC Heath & Co, Boston 1968) pxv. See the discussion of the theory of the origins of the common law popular in the seventeenth century in Knafla, *Law and Politics in Jacobean England: The Tracts of Lord Chancellor Ellesmere* (CUP, Cambridge 1977) pp70-71. Cf Dunham, "Regal Power and the Rule of Law: A Tudor Paradox" (1964) 3 *Journal of British Studies* 24 at 24-56.

31 Cowell, *The Interpreter* pAaa3.

32 See Levack, *The Civil Lawyers in England, 1603-1641: A Political Study* pp88-100.

> the Parliament either generally or else for some particular cause. For it is held as a rule that any man may relinquish the authority which he hath to his own benefit and favour.[33]

Civil lawyers found evidence that described the King's prerogative as absolute in Roman law, one of the many authorities cited by Cowell in *The Interpreter.*

The different theories of the origin of the King's sovereignty articulated by authorities of common and civil law were only one aspect of the disagreements informing Parliament's response to *The Interpreter.* Common lawyers' concern with the definition of the King's sovereignty was epitomised by Sir Edward Coke's assertion: "the King has no prerogative but that which the law of the land allowed him".[34] By placing the King under the sovereignty commanded by the common law and the obligation to do justice stipulated by the coronation oath, jurists found definitions of the legislative powers to which he was entitled. For English civilians and common lawyers the ways in which sovereign power was expressed determined the nature of his "absolute power".[35] Few would dispute the King's sovereign power to summon and dissolve Parliament, determine weights and measures, coin money, appoint magistrates, pardon criminals, and declare war. Yet the Commons adamantly refuted that his prerogative also included the power to levy taxes and to create and interpret laws independently from Parliament, an argument that they attributed to Cowell. In fact, however, *The Interpreter* did not explicitly make such an assertion. Rather it noted that the King could make laws without the assent of Parliament, a statement that attempted to define powers rarely explicated. The King's undeniable right to issue proclamations and to veto Parliamentary legislation identified him, in Cowell's definition, as the member of Parliament in whom legislative sovereignty resided.[36] Cowell himself did not extend his analysis of

33 Hayward, *An Answer to the First Part of a Certaine Conference Concerning Succession* (Theatrum Orbis Terrarum, Amsterdam 1975, reprint of Waterson & Burbie, London 1603) pp21-22.

34 Coke, *The Fifth Part of the Reports of Sir Edward Coke* (London 1738) p74. Knafla, *Law and Politics in Jacobean England: The Tracts of Lord Chancellor Ellesmere* pp65-76 discusses Ellesmere's position, shared by many other jurists, who mediated the extremes of placing the King above the law in his absolute power or merely commanding powers instituted by the common law.

35 See Levack, *The Civil Lawyers in England, 1603-1641: A Political Study* p98.

36 Cowell, *The Interpreter* pQq1 in the definition of "King" explains that to deny the King the power of dispensing any laws without Parliament's consent would make him "a subject after a sort and subordinate, which may not bee thought

absolutism to what Tanner (like the Commons) assumed to be its "logical conclusion - the destruction of the English parliamentary system".[37] Cowell did explain that the prerogative, in Tanner's words, "gave the King powers *outside* the law-to deal with emergencies for which the law made no provision".[38] But Cowell did not state that the prerogative was "a doctrine by the authority of which the King would be enabled to override the law".[39] Tanner's reading, like that of Hobart, misrepresented the definition by taking one sentence out of its context from within a much longer passage. Cowell's definitions of the terms "King" and "Parliament" did not explicitly contradict the customary idea that the entire Parliament was the "highest" and "greatest authoritie"[40] that made English laws. Instead, the definition of Parliament stated that the practice of making law in consultation with both Houses was "not alterable without great perill".[41]

During the Parliamentary debates in 1610, Hobart, on behalf of the Commons, spoke of Cowell as the "author" responsible for definitions questioned as "a presumptuous novelty, whereupon dependeth a dangerous consequent, for to remove this *lapis angularis* we think was never presumed to be undertaken".[42] The Commons identified Cowell as an author whose words departed from the truth and accepted practice. Ignoring the origin of the definitions in the words of preceding authorities, including the antiquarians Camden and Sir Thomas Smith, Hobart attributed the words and theories to Cowell. A dictionary was not customarily a kind of text associated with an author's name, but by designating Cowell as the author or autonomous source of a text that introduced "novel" ideas challenging customary practices, the Commons made him responsible for "a scandal"[43] threatening Parliament's jurisdiction. The identification of Cowell as the author of a text obscured

without breach of duty and loyaltie. For then must we deny him to be above the lawe, and to have no power of dispensing with any positive lawe, or of graunting especiall priviledges and charters unto any, which is his onely and cleare right, as Sir Thomas Smith well expresseth lib. 2. cap. 3. *de Repub. Anglican* and Bracton lib. 2. cap. 16. num. 3. and Britton, cap. 39. For hee pardoneth life and limme to offendours against his crowne and dignitie, except such as he bindeth himself by oath not to forgive": see Levack, *The Civil Lawyers in England, 1603-1641: A Political Study* pp103-106.

37 Tanner, *English Constitutional Conflicts of the Seventeenth Century, 1603-1689* (CUP, Cambridge 1961) p20.

38 As above.

39 As above.

40 Cowell, *The Interpreter* pAaa3.

41 As above.

42 Foster (ed), *Proceedings in Parliament, 1610* Vol 1 p24.

43 Braye MSS in Foster (ed), *Proceedings in Parliament, 1610* Vol 1 p180.

the actual source of his words, medieval and early modern authorities of legal discourse including statutes and jurists' treatises. Because refuting authorities (such as Bracton, whom *The Interpreter* cites in the definition of Parliament) would call into question the truth of the Commons' complaint, Hobart named Cowell, a respected contemporary scholar, as an individual responsible for words but lacking the authority to produce them. In the Parliamentary debates, "Cowell" functioned as the name of a person who without authority disputed or contradicted the law unlike "Bracton", an authority, a true origin, whose name functioned as a witness, a criterion differentiating truth from falsehood. Only by identifying Cowell as the originator of a new discourse that confused information contained in law reports, printed statutes, and year books could the Commons hold him responsible as "the author". Their identification of "one Dr Cowell [who] had written a book"[44] ignored his "collaborative" method of compiling information, a fact well documented within the dictionary. The authorial name of Cowell functioned within Commons' discourse as a means to prove that the origins of Parliament's constitutional argument drawn from common law were true.

The response of the Commons to Cowell's *Interpreter* was, according to Fredrick Siebert, typical of early Stuart Parliaments that attempted "to control and suppress discussion by outsiders or nonmembers" of parliamentary privilege.[45] In order to effect stricter control of discussion about Parliament and the law, the Commons in 1610 suggested that provisions should be made to examine all books discussing the common law irrespective of existing regulations for licensing printed books.[46] Because Cowell's book was a "scholarly" book, those responsible for licensing it escaped censure by Parliament. According to the Star Chamber Decree of 1586, books of common law were to be licensed by the two chief justices and the chief baron of the exchequer. As a scholarly book, however, *The Interpreter* was eligible for printing at Cambridge without licensing. The validity of the submission of the book for licensing and the identity of the person responsible for its licensing were not questioned in the proceedings against Cowell. Instead, Hobart in particular questioned the uses different readers could make of its contents. When considered as a dictionary, a pedagogic or scholarly genre of discourse used by members of a university, Hobart conceded its utility and propriety: "To dispute of things in *thesi* we disallow not, for so is the

44 UK, Parl, *Journals of the House of Commons* Vol 1 at 399.

45 Siebert, *Freedom of the Press in England, 1476-1776: The Rise and Decline of Government Controls* (University of Illinois Press, Urbana 1952) p112.

46 UK, Parl, *Journals of the House of Commons* Vol 1 at 399.

manner of disputants in the universities; but to dispute of kingdoms and states in *hypothesi, rebus sic stantibus,* is most dangerous."[47] Within a university, conventions governing the discourse of a disputation, such as the examination of theses, limited the production and meanings of words. It was assumed that by articulating and clarifying implicit meanings of a text a disputation formed a commentary. A disputation about law or government limited those who spoke about the subject to informed scholars. Because Cowell's dictionary was not limited to certain privileged or qualified readers, Hobart insisted that the dictionary was "most dangerous". From the Commons' point of view, the particular offence of the book was its potential to move readers to question the legislative jurisdiction of the Commons. In consideration of possible, not actual, interpretations and consequences of the dictionary's words, the Commons requested Cowell's punishment. By "imprinting" the dictionary (a fact cited by the Commons as evidence of Cowell's intention to disseminate opinions and dispute),[48] they feared that he made available to a wide audience a basis for discourses questioning parliamentary authority.

Hobart anticipated the consequences of a discourse evaluating Parliament's jurisdiction as a hypothesis - as a supposition made without the assumption that it is true - and insisted that even the two Houses of Parliament should not proceed to debate about Cowell. He feared the consequences of discussion about customary practices based on common law that empowered the Commons in its relation to the King. The potential of legal definitions in *The Interpreter* to confirm new and challenging arguments concerning Parliament caused the Commons to limit their own speech as well as Cowell's when they decided to "not dispute this question, for then should we arm him with an answer".[49] Their narrative about the authorial origin and content of the dictionary condemned its possible effects. By exposing the different meanings of the word Parliament, a term defined differently by theories deriving relatively equal validity from common and civil law, the dictionary could have produced conflict about the Commons' theory of privilege and prerogative. From the point of view of the Commons, the particular offence of the book was its potential to provide evidence that the prerogative of the King could be construed to deny their authority.

47 Foster (ed), *Proceedings in Parliament, 1610* Vol 1 p24.
48 As above p25.
49 As above p24.

The Commons and the Lords submitted their grievance jointly, although initially their responses had different emphases. Salisbury, the Lord Treasurer, having heard the Commons' message about Cowell urged careful examination of *The Interpreter*, particularly because "the book, being written out of parliament, and touching no particular member of the body"[50] could not therefore breach parliamentary privilege. The Commons' insistence that the dictionary was a "scandal to parliament"[51] was questioned by Salisbury who demanded a search of precedents before any accusation or punishment. Archbishop Bancroft also advised the Lords to be guided strictly by the law particularly when interpreting Cowell's meaning. The Archbishop prompted the Lords to "do as the civil law mentioneth, that if a matter beareth two contrary senses then to construe in the better part".[52] Certainly the method of interpretation that he advocated contrasted starkly with the Commons' practice.

In their response to the Commons, however, the Lords emphasised the importance of considering *The Interpreter* as a dangerous precedent for questioning the legal basis of the jurisdiction of Parliament, an institution composed not only of the Commons and the Lords but also of the King. The Lords tried to end discussion and rumours that could cause division. From their point of view, the two Houses of Parliament represented their own best interests by maintaining a "union of interest and uniformity"[53] with the King. As Lord Treasurer Salisbury explained, debates to "preserve", to define strictly, or to enlarge the jurisdiction of the Commons and the Lords would cause the King to "suspect they attempted means by which his sovereign power might fall".[54] Disagreements, the Lords feared, would produce division within the government and the state. Anticipating the consequences of "multiformity", that is, the fragmentation of competing interests and claims among different factions, the Lords

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50 As above p27. On scandalum magnatum, sedition, and defamation, crimes the Commons attempts to accuse Cowell of, see Holdsworth, *A History of English Law* Vol 8 (Methuen, London, 7th ed 1966) p333; Hamburger, "The Development of the Law of Seditious Libel and the Control of the Press" (1985) 37 *Stanford Law Review* 661 at 661-765; Manning, "The Origins of the Doctrine of Sedition" (1980) 12 *Albion* 99 at 99-100.

51 Braye MSS in Foster (ed), *Proceedings in Parliament, 1610* Vol 1 p180.

52 As above p29.

53 Foster (ed), *Proceedings in Parliament, 1610* Vol 2 (Yale University Press, New Haven 1966) p48. See the discussion of the proceedings against Cowell as a formative stage in Parliamentary judicature involving the co-operation of both Houses in Tite, *Impeachment and Parliamentary Judicature in Early Stuart England* pp54-64.

54 Foster (ed), *Proceedings in Parliament, 1610* Vol 2 p49.

advised that all proceedings against Cowell be based upon the uniform agreement of all members of Parliament. Salisbury assumed "multiformity" would be caused by parliamentary debates that disclosed different theories of prerogative and parliamentary authority. In a message that he delivered to the Commons, Salisbury emphasised the union within the institution of Parliament of

> a lower House, an upper House and a King, the sovereign head; that there were offenses of several natures against one House which are not against another, against the whole body which reacheth not to the head, against the head which descends not to the body. This complaint as it ascended concerned the whole.[55]

By viewing Cowell's book as a challenge to the jurisdiction not only of the Commons but also of the Lords and the King, Salisbury's message prevented further dispute about the relative authority of the three different powers within Parliament.

The use of Cowell's name had a particular effect upon the Commons' discourse. Positioning a well-known argument concerning the King's prerogative powers, supported by the authority of the civil law, as the erroneous words attributed to a particular individual enabled the Commons to articulate an alternative theory of the "correct" origins and relation of parliamentary privilege and royal prerogative described in common law. The House of Commons disguised its discursive practice by attributing to Cowell an argument that originated in civil law. The use of Cowell's name as that of an author in the modern sense, designating an autonomous source of intended meaning, obscured the relation of words within the dictionary to legal authorities.

LAW BY SUPPRESSION

The King also severed his own discourse from sources of legal authority cited in *The Interpreter* by repudiating Cowell as the author of mistaken and unlawful statements. By silencing Cowell and recalling his book, James I dissociated himself from a variety of authorities whose names and words denied the "opinion" of common lawyers "that the lawes be above the King".[56] In *The Interpreter*, the testimony of Bracton, Camden, and Sir Thomas Smith defined the King as one who

55 As above.

56 Cowell, *The Interpreter* pQq1.

> is above the Law by his absolute power. Bracton lib. pri. cap. 8. Kitchin fol. I. and though for the beter and equall course in making Lawes he doe admitte the 3. estates, that is, Lords Spirituall, Lords temporall, and the Commons unto Councell: yet this, in divers learned mens opinions, is not of constreinte, but of his owne benignitie, or by reason of his promise made upon oath, at the time of his coronation. For otherwise were he a subject after a sort and subordinate, which may not bee thought without breach of duty and loyaltie. For then must we deny him to be above the lawe, and to have no power of dispensing with any positive lawe, or of graunting especiall priviledges and charters unto any, which is his onely and cleare right.[57]

This definition, based on civil law, coincided with the understanding of the King's prerogative and independent legislative powers stated by King James I in *The Trew Law of Free Monarchies.* The King's tract (first published anonymously in 1598) attributed extensive prerogative rights to the Crown based on the "fact" to which

> our Chronicles beare witnesse ... there comes first our King *Fergus* ... hee made himselfe King and Lord, as well of the whole landes, as the whole inhabitants within the same. Thereafter he and his successours, a long while after their being kinges, made and established their lawes from time to time, and as the occasion required. So the trewth is directly contrarie in our state to the false affirmation of such seditious writers, as would perswade us, that the Lawes and the state of our countrey were established before the admitting of a King: where by the countrarie ye see it plainely prooved, that a wise King comming in among barbares, first established the estate and forme of governement, and thereafter made lawes by himselfe, and his successours according thereto.[58]

Thus James described as factually true and ancient a genealogical narrative about the origin of the Stuart monarchy and its sovereignty.

57 As above.

58 King James I, "The Trew law of Free Monarchies: or The Reciprock and Mutual Duties Betwixt a Free King and His Natural Subjects" in McIlwain (ed), *The Political Works of James I* (Harvard University Press, Cambridge 1918) pp61-62.

The origins and extent of the royal prerogative and its relation to Parliament within James's argument in *The Trew Law* could have provoked as much debate from the Commons as the definitions in *The Interpreter*. In order to confirm definitions of his pre-eminent sovereign power in civil law, James I produced a constitutional narrative that related the King's sovereign legislative powers to the "subordinate" powers of Parliament:

> The Kings therefore in *Scotland* were before any estates or rankes of men within the same, before any Parliaments were holden, or lawes made: and by them was the land distributed (which at the first was whole theirs) states erected and decerned, and formes of governement devised and established: And so it followes of necessitie, that the Kings were the authors and makers of the Lawes, and not the Lawes of the Kings ... And according to these fundamentall Lawes already alledged, we daily see that in the Parliament (which is nothing else but the head Court of the King and his vassals) the lawes are but craved by his subjects, and onely made by him at their rogation, and with their advice: For albeit the King make daily statutes and ordinances, enjoyning such paines thereto as hee thinkes meet, without any advice of Parliament or estates; yet it lies in the power of no Parliament, to make any kinde of Lawe or Statute, without his Sceptre be to it, for giving it the force of a Law.[59]

As set forth in *The Trew Law*, the role of the Houses of Parliament in the administration of government and law was merely a merciful policy that

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59 As above p62. Here James I clearly asserts the origin of the government and laws of Scotland in the King who first established the country. He modifies this argument concerning the origin of the laws and the King's prerogative to create law in his "Speach in the Starre-Chamber, the xx of June Anno 1616" in McIlwain (ed), *The Political Works of James I* p327. In this later speech James clarifies his relation to the law by explaining "the King that sits in Gods Throne, onely deputes subalterne Judges, and he deputes not one but a number (for no one subalterne Judges mouth makes Law) and their office is to interprete Law, and administer Justice". James explains that a King appoints judges who are responsible to him but he is responsible only to God. The issue that I am discussing, the Commons' understanding or "misunderstanding" of James' own ideas and statements concerning his relation to the law, is exemplified by these passages in which he refers to different theories drawn from civil and common law.

the King extended to his people. James' arguments drew upon authorities customarily cited by civil lawyers when debating the origins of the King's sovereignty with common lawyers in Jacobean England.

However, James did not refer to his treatise and its analysis based on civil law when he responded to the Commons' complaint about *The Interpreter*. Instead the disputes concerning the King's sovereignty and the proceedings against Cowell ended on 8 March 1610 when King James communicated to both Houses of Parliament that the dictionary would be suppressed. His decisive words concluded debate with the assurance:

> The King doth take exceptions at Cowell's book ... Although by the law of Latin nations and the law of this realm, he hath as absolute power as ever any monarch in this kingdom, therefore for this matter to treat of his power and prerogative, he holdeth not fit to be called into *problème* ... For these reasons, the King will not have this thing brought in question, but shall be careful and anxious that the parliament shall not be troubled hereafter with such businesses.[60]

Thus James affirmed the extent of his prerogative with acknowledged authorities, the civil law and English common law, and insisted that the subject required no further questioning. These authorities, the civil "laws of Latin nations" and the common "law of this realm", offering very different definitions of the origin and extent of the King's prerogative, were sources of the debate concerning Cowell's book.[61] By denying the similarity of his own and Cowell's statements, the King circumvented further questions and disputes. The King, however, incorporated within his own discourse the arguments not only of the Commons' but also of civilians about the origin of his prerogative powers. James' inclusive description of his powers resembled Cowell's definitions but nevertheless the King insisted that statements in *The Interpreter* about the antecedents of the constitution were erroneous.

The King astutely positioned Cowell as the author of a needless debate in order to appease the Commons. In this manner James obscured his own assertions about civil law and royal prerogative. By stating in his proclamation that "we are sworn and resolved to maintain" common as well as civil law, James dissociated his own words from rumours and from

60 Foster (ed), *Proceedings in Parliament, 1610* Vol 1 p29.
61 See Simon, "Dr Cowell" (1968) 26 *CLJ* 260 at 260-272.

Cowell's dictionary. In his speech to Parliament on 21 March 1610 James tried to silence rumours that he had intended to replace the common law with civil law in order to extend his prerogative powers and to circumvent parliamentary procedure. James named as the origin of words mistakenly attributed to himself the "booke written by doctour *Cowell*, [that] was a part of the occasion of this incident".[62] King James attributed the rumours to Cowell's definitions of Parliament, prerogative, and subsidy, which stated (among other things) that the King's power was absolute, superseding "the ordinary course of the common law". The King also admitted that Cowell's words provoked such alarm because of James' own words criticising the common law. The King had advocated reformation of the common law in a private conversation that had been reported to the public. As Chrimes has noted, a contemporary of James, Arthur Wilson, reported that the Commons' attention became drawn to Cowell because of a rumour that

> some expressions ... fell from him [the King] publicly at his dinner, in derogation of the Common Law, extolling highly the Civil law before it; and approving a Book lately written by Doctor Cowell, a civilian against it; which nettled our great Lawyers.[63]

Ironically, because it confirmed the King's own argument concerning the law and royal prerogative, Cowell's book as well as the King's powers became subjects of parliamentary scrutiny and debate. Brian Levack has explained that many English jurists feared that King James' efforts to secure the unity of the two kingdoms of England and Scotland would lead to jurisdictional conflict of common and civil law in England: "the same men who feared governmental influence in elections, constitutional innovation at the hands of James I, and even the destruction of Parliament itself, also expressed deep fears regarding the integrity of their law."[64] Because of a general identification of Scottish law with civil law, many English jurists opposed the King's proposals for a union of English and

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62 King James I, "A Speach to the Lords and Commons of the Parliament at White-Hall On Wednesday the xxi of March Anno 1609 [1610]" in McIlwain (ed), *The Political Works of James I* p307.

63 Chrimes, "The Constitutional Ideas of Dr John Cowell" (1949) 64 *English Historical Review* 461 at 466 quotes Wilson, *History of Great Britain* (Richard Lownds, London 1653) pp45-46.

64 Levack, "English law, Scots law and the Union, 1603-1707" in Harding (ed), *Law-Making and Law-Makers in British History: Papers Presented to the Edinburgh Legal History Conference, 1977* (Royal Historical Society, London 1980) p115.

Scottish law. In 1610 the coincidence of James' own words on this subject with statements in *The Interpreter* affected his own discourse.

Words of authorities cited in the dictionary were testimony for the King's own privileges and statements. As a result by criticising and recalling the dictionary, he suppressed evidence validating his own discourse about absolutism. As James realised, this was less dangerous than further discussion of his own words concerning the origin and extent of his prerogative. James had asserted to Parliament that his hereditary and divine rights to the throne meant "he was beholden to noe elective power, neither doth he depend upon any popular aplause",[65] but he knew popular opinion and rumours could intensify dispute and conflict.

LAW BY PROHIBITION

In a message read in the House of Commons on 8 March 1610, King James advised the members of Parliament:

> [S]o is it both a tender and dangerous thing to submit the power of a King to definition. The King ... derives the lines of his fortunes and greatness from the loins of his ancestors, from the law of nature, of nations, and from the laws of the realm; that to the common law of this kingdom he might acknowledge himself so far thankful as by that law he is our King.[66]

James' message acknowledged that different narratives could be legitimated using alternative juridical arguments of civil and common law. King James did not define his sovereign powers but instead designated their sources, not only hereditary succession and the law of nature, bases of the theory of his divine right, but also civil and common law, evidence of his privileges and jurisdiction within society. His message interpreted meanings implicit to these political and legal doctrines and acknowledged their relative authority. He objected to definitions, whether written in a law dictionary or discussed in Parliament, that delimited his sovereign powers and provoked debate.

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65 These words are from notes of the King's message of 19 March 1610 recorded by a member of the Commons found in Gardiner (ed), *Parliamentary Debates in 1610* (Camden Society, London 1862) p24.

66 Foster (ed), *Proceedings in Parliament, 1610* Vol 2 pp49-50.

On 25 March 1610, King James I issued a proclamation that stated his reasons for suppressing and recalling *The Interpreter.* The King seemed to concur with the Commons' judgment when he criticised the book for

> disputing so nicely upon the Mysteries of this our Monarchie, that it may receive doubtfull interpretations: yea in some poynts very derogatory to the supreme power of this Crowne: In other cases mistaking the true state of the Parliament of this kingdome, and the fundamentall Constitutions and priviledges thereof: And in some other points speaking unreverently of the Common Law of England, and of the works of some of the most famous and ancient Judges therein: it being a thing utterly unlawfull to any Subject, to speake or write against the lawe under which he liveth, and which we are sworne and are resolved to maintaine.[67]

As evidence of erroneous and unlawful statements within the book, the proclamation referred to the discussion of three subjects: the supreme power of the crown, the constitution and privileges of Parliament, and the common law of England. The King differentiated the discourse concerning each of the subjects: he criticised the dictionary for "disputing" about the monarchy; for "mistaking" the true state of Parliament; and for "speaking unreverently" about the common law. His criticisms dissociated from the truth statements described either as mistaken or as unreverent and "unlawful to any subject". Whereas the King objected to the content of definitions of Parliament and the common law, he suspected the "doubtfull interpretations" that could result from statements concerning the mysteries of state. The proclamation was a means not only of censoring the book but also of controlling the social production of language and the interpretation of meanings.

King James anticipated a consequence of the dictionary's publication: its future use as an authority, a source for other narratives and debates interpreting the jurisdiction and sovereign powers of the head of state. Both James and the Commons feared that definitions of words within *The Interpreter*, such as the law and Parliament, could provoke controversy and, perhaps, change. In order to prevent future debates initiated by other readers' interpretations that could cause "errors and inconveniences in all

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67 "By the King. A Proclamation touching D Cowels booke called the Interpreter [Westminster 25 March 1610]" in Larkin & Hughes (eds), *Stuart Royal Proclamations* Vol 1 (Clarendon Press, Oxford 1973) p244.

times to come",[68] the proclamation condemned the dictionary and Cowell for "meddling" in matters of state. The King's proclamation did not attribute to Cowell deliberation or intentions to misrepresent or denigrate the King, Parliament, or the common law. Instead the proclamation charged Cowell, an expert in civil but not common law, of erring because he presumed to discuss important matters of state. The dictionary, a collection of statements and arguments by ancient and contemporary authorities, became subject to limitation by a proclamation that accused Cowell of transgressing political doctrine.

James classified statements about the monarchy in Cowell's dictionary as trespasses against laws and customs that prohibit discussion of *arcana imperii* and juridical institutions. The definitions of the crown, Parliament, and the common law broke the silence imposed by tradition and Roman civil law upon the "mysteries of state".[69] This doctrine of political theology, found in Roman and late medieval law, surrounded statements about the King, his judgements, and his selection of officers with prohibitions that also secreted religious doctrine from dispute. By comparing his subjects' presumptuous speech about religion and government, James emphasised the customary prohibitions concerning speech about the church and the crown. The proclamation condemned those who

> not being contented with the knowledge of so much of the Will of God, as it hath pleased him to reveale; but they will needs sit with him in his most Privie Closet, and become privie of his most inscrutable Councels: And therefore it is no wonder, that men in these our dayes doe not spare to wade in all the deepest mysteries that belong to the persons or State of Kings or Princes, that are gods upon Earth.[70]

James compared inquiry and discussion of the state's secular *arcana*, the discourses of the King and his Privy Councillors, to unauthorised interpretation of Scripture and God's sacred mysteries. King James'

68 As above.

69 See a discussion of *arcana imperii* in Kantorowicz, "Mysteries of State: An Absolutist Concept and Its Late Medieval Origins" (1955) 48 *Harvard Theological Review* 69. Bracton discussed ancient law forbidding "disputation" of the King's judgements and selection of officers in Woodbine (ed), *Bracton de Legibus et Consuetudinibus Angliae* Vol 2 (Yale University Press, New Haven 1922) p109.

70 Larkin & Hughes (eds), *Stuart Royal Proclamations* Vol 1 p243.

analogy, drawn from writings by medieval jurists,[71] associated discourse about the monarchy with sacred as well as blasphemous and illegal statements.

The King's proclamation sought to establish control not only of the discourse of *The Interpreter* but also of debates about the dictionary. The proclamation enabled the King to control both his subjects' speech and writing. In Chrimes' words, "the tables were turned" on the Commons: "Cowell was to be censured certainly, but ... his book was to be suppressed, not by the parliament, but by the royal prerogative power, and the whole episode was to be turned into a superb piece of propaganda for the monarchy".[72] The proclamation in effect limited the Commons' debates when it suppressed Cowell's book. But the King's triumph was qualified because the proclamation designated not only definitions compiled by Cowell but also recognised legal authorities that he cited, including those that confirmed the King's own description of prerogative, as mistaken.

The Interpreter, from the perspective of the King, exposed the mysteries of state to debate by revealing contradictory theories of the King's prerogative and his relation to the fisc found in civil law, which defined his role as a trustee of a public property, and in common law, which acknowledged his role as a rightful lord of a demesne. This problem, as explicated using significations drawn from Cowell's dictionary and other texts, invited disputation and resolution, a process of definition that threatened to limit the prerogative powers of the King or the jurisdiction of the Houses of Parliament. It is important to recognise that the Commons in 1610 attempted to secure their jurisdiction over taxation and supply by debating the signification of the nouns: Parliament, prerogative, King, and subsidy. By defining a grievance about Cowell, the Commons initiated debate that addressed the subject not only of his book but also of the King's prerogative.

The proceedings in the Houses of Parliament became an exercise in the legal definition of an author's responsibility, not only for words' creation but also for their interpretation. The different interpretations of Cowell's book debated by Parliament in 1610 did not trace the meaning of words to the author's "intended meaning". As constituted by the discourses of the

71 Kantorowicz, "Mysteries of State: An Absolutist Concept and Its Late Medieval Origins" (1955) 48 *Harvard Theological Review* 69.

72 Chrimes, "The Constitutional Ideas of Dr Cowell" (1949) 64 *English Historical Review* 472.

King and Parliament, Cowell was held accountable for others' interpretations of his book. King James' remark (made in reference to *The Interpreter*) that he held "books to be *voces temporis*"[73] succinctly described the conflict. Readers, such as the Commons sitting in 1610, voiced their interpretation of words in the dictionary in relation to a specific, topical issue unintended by Cowell. The King and the Commons produced narratives that positioned Cowell as an author who was responsible for originating mistaken and unlawful words. This understanding of Cowell's role as an author did not conform with his practice. Cowell was an important example of an early modern writer whose work represented a tradition of "collaborative" authorship; that is, he did not have a living co-author but instead compiled the words of preceding authors upon whose authority he relied to vouchsafe the truth, utility, and meaning of his book. What should interest legal and literary historians about the King's and Parliament's response to Cowell's *Interpreter* is that they deliberately ignored the "collaborative" nature of the book's authorship in order to define an individual to be prosecuted. In both the proclamation and parliamentary debates, Cowell's name functioned in a manner Foucault associates with an author's name in the early modern period.[74] Before 1709 in England,[75] an author's name did not designate an individual who held proprietary rights or copyright, but instead designated the individual accountable for words causing offence, such as defamation, libel, or sedition. Early modern and modern concepts of an author converged in the Commons' debates and the King's proclamation about Cowell. In order to identify Cowell as an individual responsible for a scandal affecting Parliament, he was quite inaccurately described as the originator of words, an idea that surprisingly resembled the Romantic conception of authorship.

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73 Foster (ed), *Proceedings in Parliament, 1610* Vol 1 p31. The Latin phrase translates as "the voices of the time".

74 Foucault, "What is an Author?" in Bouchard & Simon (trans), *Language, Counter-Memory, Practice* (Cornell University Press, Ithaca 1977) pp113-138.

75 8 Anne c19 (1709). See Rose, *Authors and Owners: The Invention of Copyright* (Harvard University Press, Cambridge 1993) pp42-48.