

The English Legal Renaissance

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The primary aim of this article is to provide a partial contextualisation to the history of legal education in England during the period known as the Renaissance. An initial overview of the demographics, economics and technologies of late Elizabethan England therefore serves to situate certain significant events and theories within a societal and historical matrix. From there, the issues of whether or not the period under investigation can be considered one of change, and whether the idea of Renaissance (or indeed the practice of periodisation) are at all useful, may be noticed, and some of the opinions expressed on these questions can be evaluated. How the emerging method of humanism may be related to this notion of Renaissance, and how the associations of these concepts with the study and practice of law in England at the time are to be understood, are further questions which can then be addressed.

Structures and Change

The late sixteenth century and the early seventeenth century is a time which, presently, we describe as “early modern”. But that description already bears a certain worn and tired visage. Was the period special? And if so, why? Was it a period of transformation? By looking at indices such as population and patriarchy we can only really notice slow, long-term change. Other perspectives, like economics, warfare and technologies, by contrast, provide examples of faster, more eventful, change. The total population of England during the Elizabethan period can only be

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roughly estimated due to the fact that population records were not nationally systematised until 1801. Extant records, in the form of parish registers, musters, house and hearth tax records and the like, provide piecemeal evidence which suggests a population range for the period of between four and seven million persons surviving beyond infancy.¹ The estimate of Wrigley *et al* is rather conservative: a population of about five million in 1600, but this figure increased from a base of about three million of a century before. This estimate is based on various (daunting) statistical projections, and has been revised downwards by De Vries, who reckoned on a population (of England and Wales) which rose from 2.6 million in 1500 to 4.4 million in 1600.² By any estimate, the sixteenth century most likely experienced something close to a doubling of England's population. Urbanisation also accelerated, with the population of London probably increasing fivefold over the same period.³ Economic growth also burgeoned, particularly in the comparatively new sphere of land as a marketable commodity. Houlbrooke has demonstrated that there was a surplus of labour, in the form of a growing class of landless poor, a phenomenon which, in turn, led to a large degree of internal geographical migration, the settlement of hitherto unpopulated areas as well as increased urbanisation.⁴ Economic growth, while considerable, apparently did not keep pace with the population explosion. In addition to this, many English towns (and not just London) hosted significant enclaves of foreign migrants, most of whom can be shown to have moved for economic rather than religious reasons.⁵ All of this, if accurate, makes for an image of the overall population which, although small, had undergone a recent and dramatic increase, was remarkably mobile, and increasingly cosmopolitan.

At the same time, the primary unit of society in England (as elsewhere

¹ Phillips, W., "Elizabeth I and her subjects", (1967) *British Tax Review* 404, Sharpe, J.A., *Early Modern England: A Social History 1550-1760*, London, Arnold, 1987, pp 36-55 and Jack, S.M., *Trade And Industry In Tudor And Stuart England*, London, Allen and Unwin, 1977, pp 29-31.

² Wrigley, E.A. and Schofield, R.S., *The Population History of England, 1541-1871*, London, Arnold, 1981, *passim* and De Vries, J., *European Urbanisation: 1500-1800*, Cambridge (Massachusetts), Harvard University Press, 1984, p.36. Stone's estimate of the total population is greater, and more specific, at between five and five and a half million: Stone, "The Educational Revolution In England, 1560-1640", *Past and Present*, 28 (1964) 41-80 at 57. Houlbrooke is in broad agreement with these figures, but adds that the numbers are especially significant when seen in light of the base of only about two million in 1470: Houlbrooke, R.A., *The English Family, 1450-1700*, London, Longman, 1984, p. 27. Merton's estimate is also within these parameters: Merton, R.K., "Science, Technology and Society in Seventeenth Century England", *Osiris*, 4 (1938) 360-632, at 571. See also Jack, S.M., *Towns In Tudor And Stuart Britain*, New York, St.Martin's Press, 1996, pp. 169-170.

³ De Vries, *op. cit.*, pp. 29, 195 and 308-309 and Jack, *Towns In Tudor And Stuart Britain*, p. 92, and more generally pp. 159-184. Cf. Wright, L. B., *Middle Class Culture in Elizabethan England*, Chapel Hill, University of North Carolina Press, 1935, p 10.

⁴ Houlbrooke, *loc. cit.*

⁵ Rich, E. E., "The Population Of Elizabethan England", *Economic History Review*, 2nd Series, 2 (1950) 247-265 at 260-263, Houlbrooke, *op. cit.*, p. 28 and Jack, *Towns In Tudor And Stuart Britain*, pp. 23-26.

in Europe) remained the nuclear family, or, at the broadest, the extended group consisting of parents, children, kinsfolk and servants living in one house, under one head. The overwhelmingly predominant pattern was, all the same, for households to accommodate just two generations - parents and children.⁶ The average age for marriage, and the establishment of the household, seems to have been in the middle to late twenties - an age at which the economic requirements of establishment could be met following a period of paid employment, apprenticeship or inheritance. At higher social levels, marriage seems to have often occurred a little earlier, owing to the greater availability of economic resources and the demands of dynastic arrangements.⁷ The actual size of households was very much dependent upon social and economic status, and whether it was located rurally or in a town. Houlbrooke has estimated that while the average labourer's household numbered approximately four persons, the average for the gentry (which he puts at about two percent of the population) was eight persons. Within the gentry itself families might be very large indeed, with peers averaging forty-member households (owing to a large number of servants, and the practice of married children remaining within the household).⁸

Within the home, the common law regarded the position of the wife as being subordinate to the husband. Her goods became his, and under the doctrine of *curtsey* a husband became entitled to hold his wife's lands for the duration of his own life as soon as a child was born of the marriage (which child would, if it lived long enough, be its mother's heir). The life estate of the widow in such circumstances was termed "tenure by curtesy of England".⁹ As a husband and father, the male head of the household held significant disciplinary powers which might be exercised, free of external controls, over his wife and children.¹⁰ Society of the time can, therefore, while acknowledging the power which was unquestionably exercised by some women and especially widows, be characterised as thoroughly patriarchal. Nor is there any evidence that the period between 1560 and 1660 was marked by any cataclysmic change in the nature of English patriarchy. However, while the historical records

⁶ Houlbrooke, *op. cit.*, pp. 18-20 and Wrightson, K., *English Society, 1580-1680*, London, Hutchinson, 1982, pp. 89-118.

⁷ Houlbrooke, *op. cit.*, p. 20, Wrightson, *op. cit.*, pp. 66-88 and Pottage, A., "Proprietary Strategies: The Legal Fabric Of Aristocratic Settlements", *Modern Law Review*, 61 (1998) 162-187.

⁸ Houlbrooke, *op. cit.*, pp. 23-24. See generally: Byrne, M.St.C., *Elizabethan Life In Town And Country*, London, Methuen, 1954 and Jack, *Towns In Tudor And Stuart Britain*, pp 19-33.

⁹ The right endured even if the wife subsequently died without leaving issue.

¹⁰ Houlbrooke, *op. cit.*, p. 22 and Sharpe, *op. cit.*, London, Arnold, 1987, pp 63-64. See also Underdown, D.E., "The Taming of the Scold: The Enforcement of Patriarchal Authority in Early Modern England" and Amussen, S.D., "Gender, Family and Social Order, 1550-1725" in Fletcher, A.J. and Stevenson, J., ed's, *Order and Disorder in Early Modern England*, Cambridge, Cambridge University Press, 1985 at 116-136 and 196-217 respectively and Prest, W., "Law And Women's Rights In Early Modern England", *The Seventeenth Century*, 6 (1991) 169-187 at 169-172.

available for any investigation of gender based power relations in this period have been almost entirely produced by men, it cannot be said that the period was without gendered conflict. Fletcher submits that there was a restless dynamic in marriage at this time, and that while patriarchal order rested upon the moral and social example of the heads of households, as a group women were far from docile or passive.¹¹ For instance, even if the wife's duty was to set an example of obedience to children and servants, more privately Fletcher contends it was a more equal and spirited relationship.¹² A certain apprehension amongst English men about women is evidenced by literature showing an obsession with the dangers ascribed to womanhood. During the period there was an intense unease about women and the (masculine) need to control them.¹³ Fletcher's argument is that men worked hard to put down women's assertive behaviour, and accordingly came together to defend the gendered order. The weapons of this defence were prescriptive literature, satirical literature, community action and relevant legislation and its enforcement.¹⁴ Again, the picture which forms itself depicts a society marked by flux rather than calm.

At other levels of analysis, there was more noticeable change, and Hughes has referred to the century preceding the Civil War as 'A Century Of Social Change'.¹⁵ The machinery and volume of exchange underwent a rapid transformation. An important factor in England's economic growth was the solidity of its currency. After the debasement of the coinage in the 1540s, the value of the pound remained a constant after its ordering by Elizabeth in 1560.¹⁶ Gresham founded the Royal Exchange, as England's

¹¹ Fletcher, A., "Men's Dilemma: The Future of Patriarchy in England, 1560-1660", *Transactions of the Royal Historical Society*, 6th ser. vol.4 (1994) 61-81 at 63 and Houlbrooke, *op. cit.*, p. 19. See also three articles by Alison Wall: "Patterns of politics in England, 1558-1625", *The Historical Journal*, 31 (1988) 947-963; "Elizabethan precept and feminine practice: the Thynne family of Longleat", *History*, 75 (1990) 23-38 and "For love, money, or politics? a clandestine marriage and the Elizabethan Court of Arches", *The Historical Journal*, 38 (1995) 511-533.

¹² Fletcher, "Men's Dilemma: The Future of Patriarchy in England, 1560-1660", p. 65.

¹³ *id.*, pp. 67-71 and Greenblatt, S.J., *Learning To Curse: Essays In Early Modern Culture*, New York, Routledge, 1990, pp. 80-98 and 131-145.

¹⁴ Fletcher, "Men's Dilemma: The Future of Patriarchy in England, 1560-1660", p. 73. An example of the last is provided by Fletcher: 18 Eliz c 3 - legislation introduced to punish women who had given birth to illegitimate children, *id.* at 78-79. See Wright, *op. cit.*, pp. 465-507.

¹⁵ Hughes, A., *The Causes Of The English Civil War*, London, Macmillan, 1991, her summary: pp. 126-133.

¹⁶ Challis, C.E., *The Tudor Coinage*, Manchester, Manchester University Press, 1978, pp. 81-134, Challis, C.E., "The Debasement Of The Coinage", *Economic History Review*, 20 (1967) 441-466, Gould, J.D., *The Great Debasement: Currency And The Economy In Mid-Tudor England*, Oxford, Clarendon Press, 1970 and Braudel, F., *Civilisation and Capitalism: 15th - 18th Century*, London, Collins, 1982, 3 vols: vol 3, p 356 ff. See also Turberville, A.S., "Changing Views Of The Renaissance", *History*, 16 (1932) 289-297 at 296.

bourse, in 1566.¹⁷ A market economy, in consumables and luxuries as well as land, enabled cash and security investments in foreign trading ventures and in domestic agricultural projects. The period also included the exploration of distant lands, foreign and domestic conflicts, profound religious turbulence and pivotal technological advancement.

One of the main themes of change during the period was the dilution of the agricultural economy by the infiltration of commercial capital. English agriculture, according to Kerridge, had for centuries been more economically advanced than elsewhere in Europe.¹⁸ Thorne's thesis, from 1951, proposed that in the sixteenth century the approach of innovative agricultural entrepreneurs was to treat land holding as a money-making activity.¹⁹ The methods used by this emerging group resulted in enmity from small copyholders and freeholders. The business of landholding gradually destroyed traditional village society. These techniques involved a determined employment of the central law courts' superior juridical position gradually to efface local legal custom (as being "unreasonable", and therefore invalid).²⁰ But entrepreneurialism was also opposed by many of the aristocracy, as by many of the gentry who had only more recently established themselves as "land holders". This perennial conflict thus intensified, and while purchasers demanded security of transaction, the aristocracy (and some of the gentry) sought to preserve their positions by asserting the venerable protection of heirs and remaindermen.²¹ What is the evidence for this argument? Thorne traced the fall of the entail by

¹⁷ Johnson, F.R., "Gresham College: Precursor Of The Royal Society", *The Journal Of The History Of Ideas*, 1 (1940) 413-438 especially at 413-414, Adamson, I.R., "The Administration of Gresham College and its Fluctuating Fortunes as a Scientific Institution in the Seventeenth Century", *History of Education*, 9 (1980) 13-25 and Feingold, M., *The Mathematicians' Apprenticeship: Science, Universities and Society in England, 1560-1640*, Cambridge, Cambridge University Press, 1984, pp. 166-189.

¹⁸ Kerridge, E., *The Common Fields Of England*, Manchester, Manchester University Press, 1992, *passim*.

¹⁹ Thorne, S.E., "Tudor Social Transformation And Legal Change", (1951) 26 *New York University Law Review* 10 at 10-11. An important although now somewhat outmoded work which appears to be permeated by the themes of Maitland's two famous essays "The Mystery of Seisin" and "The Beatitude of Seisin", which were first published in the *Law Quarterly Review*, respectively in 1886 and 1888 and are reproduced in Fisher, H.A.L., ed., *The Collected Papers of Frederick William Maitland*, 3 volumes, Cambridge, Cambridge University Press, 1911, vol. 1, at pp. 358-384 and 407-457 respectively.

²⁰ Thirsk, J., "Enclosing And Engrossing" in Thirsk, J., ed., *The Agrarian History Of England And Wales*, vol. 4 1500-1640, Cambridge, Cambridge University Press, 1967, Chapter 5, pp. 200-255, "The Common Fields", "The Origin Of The Common Fields" and "Tudor Enclosures" in her *The Rural Economy Of England: Collected Essays*, London, Hambledon, 1984, Yelling, J.A., *Common Field And Enclosure In England, 1450-1850*, London, Macmillan, 1977 and Kerridge, E., *The Agrarian Problems In The Sixteenth Century And After*, London, Allen and Unwin, 1969.

²¹ Tawney, R.H., "The Rise of the Gentry, 1558-1640", *Economic History Review*, 11 (1941) 1-38 and Cooper, J.P., "Patterns Of Inheritance And Settlement By Great Landowners From The Fifteenth To The Eighteenth Century", in Goody, J., Thirsk, J. and Thompson, E.P., ed's, *Family And Inheritance: Rural Society In Western Europe, 1200-1800*, Cambridge, Cambridge University Press, 1976, pp. 192-327 at pp. 192-233 and 299ff. See also Habakkuk, J., *Marriage, Debt And The Estates System: English Land Ownership, 1650-1950*, Oxford, Clarendon Press, 1994.

judicial device, particularly after 1540, and its subsequent resurrection at the end of the of the seventeenth century - when entrepreneurs invested more in industrial property, and a large landed aristocracy was re-established. Leases, and the rise of the fictitious demise in the action of ejectment, increased rights of landholders over what had been known as termors (tenants). Significantly, Thorne noted that of the one hundred and thirty-five peers in the House of Lords in 1640 over half had obtained their titles after 1603. Although part of a strategy beginning under the Tudors, the Stuart creation of new nobility was in large part a recognition of economic realities: it was clear that the economic power of the older aristocracy had been eclipsed by the parvenus. Therefore Thorne interpreted the period 1540-1640 as 'a hundred years war' of the emerging bourgeoisie - against the ancient doctrines of real property law. His view was that this long struggle was technical (in the extreme) and left a mass of legal subtlety and misdirected ingenuity which was ultimately to the detriment of real property law.²² Thorne's examples of this technical warfare in real property law were: the Rule in *Shelley's case*; the contingent remainder; shifting and springing uses; long term leases of 99 or 999 years; perpetuities; and the emergence of contract law.²³ Perhaps Thorne overstated the legal mindedness of the times. At the very least however there was much business for the legal community during this century. Indeed law itself increasingly became seen as a commercial activity, and its vocation was indisputably affiliated with the rise of a new and powerful stratum in society.²⁴

The year 1588 is of course symbolised by the defeat of the Armada. That symbolism, of naval victory, freedom and independence, was borne out in reality by many other far-flung achievements. In not much more than a single generation English seamen struck out to the four corners of the world, establishing overseas colonies and direct trading access to the Indies markets. The age of naval exploration, colonisation and global trade had reached England. To the west beckoned a new world of limitless mystery (and certainly gold), and to the east the India trade at its source.²⁵ It was also in 1588 that Cavendish returned to Plymouth, having retraced Drake's westward global circumnavigation of eight years before. Like Drake, Cavendish also brought back much Spanish booty. By this stage,

²² Thorne, *op. cit.*, pp. 14-18.

²³ *id.*, pp 18 - 20. All of which represent a development of the illustrations of Maitland, in "The Mystery of Seisin", at pp. 366-367 and in "The Beatitude of Seisin", at p. 414 ff.

²⁴ Prest, W. R., *The Inns of Court under Elizabeth I and the Early Stuarts: 1590-1640*, London, Longman, 1972, pp 21-46, Ives, E.W., "Some Aspects Of The Legal Profession In The Late Fifteenth And Early Sixteenth Centuries", (unpublished doctoral dissertation, University of London, 1955), Ives, E.W., *The Common Lawyers Of Pre-Reformation England*, Cambridge, Cambridge University Press, 1983, pp. 285-329 and Clendenin, T.B., "The Common Lawyers In Parliament And Society: A Social And Political Study Of The Common Lawyers In The First Jacobean Parliament", (unpublished doctoral dissertation, University of North Carolina, 1975), pp. 61-96.

²⁵ James, L., *The Rise and Fall of the British Empire*, second edition, London, Abacus, 1998, pp. 3-26.

there had recently been attempts to establish colonies on the east coast of North America, in Newfoundland in 1583 and in Virginia two years later. There was probably more interest, however, in quickly exploiting the trade routes eastwards: the Dutch had already begun their seizure of Portuguese monopolies and there was no time to be lost. In 1591, Lancaster set out on the first of his voyages to the Indies via the eastern route. Lancaster repeated the voyage in 1601, and was followed twice by Middleton - in 1604 and 1610. In 1611 Saris landed in Japan. The English East India Company had by then been chartered, in 1600.²⁶ The threat of invasion from Spain did not, however, represent England's only military commitment. Associated with naval exploration was intermittent naval warfare on the high seas. There were also sporadic but significant expeditions to the Low Countries, and the imposing and on-going engagement in Ireland. Again, all of these developments in trade, foreign relations and war, this general broadening of the perspective on the world²⁷, contributed to legal work in the capital and consequently enhanced income and prestige for England's lawyers.

The burden of these changes, which certainly benefited a numerically small part of the community, was borne by the bulk of the populace. The Elizabethan success story was no romance for the masses. By the 1590s, the stresses and displacements, bred of Hughes' 'century of social change' and Thorne's 'hundred years war', were manifest in a partial break down in law and order. With immediate causes in recurrent famines, poor harvests, unemployment, localised outbreaks of plague and other diseases, and mutinies amongst demobilising soldiers, serious instances of riot and sedition were on the rise. The 1590s have been described, by some at least, to be a decade of crisis.²⁸

Finally, after about a century of printing in England, access to printed material was had by almost all groups and levels in society.²⁹ In fact new

²⁶ Napier, W., Gilbert, J. and Holland, J., *Pacific Voyages*, New York, Doubleday, 1973, p. 76 ff, Lenman, B.P., "England, the International Gem Trade and the Growth of Geographical Knowledge from Columbus to James I" in Brink, J.R. and Gentrup, W.F., ed's, *Renaissance Culture in Context: Theory and Practice*, Cambridge, Scholar Press, 1993, pp. 86-99 and Fussner, F.S., *The Historical Revolution; English Historical Writing And Thought 1580-1640*, London, Routledge, 1962, p. 7.

²⁷ Wright, *op. cit.*, pp. 508-548.

²⁸ Sharpe, J., "Social Strain and Social Dislocation, 1585 - 1603", in Guy, J., ed., *The Reign of Elizabeth: Court and Culture in the Last Decade*, Cambridge, Cambridge University Press, 1995, pp. 192-211, and particularly Outhwaite, R.B., "Dearth, The English Crown and the 'Crisis of the 1590s'" and Clark, P., "A Crisis Contained? The Condition of English Towns in the 1590s" in Clark, P., ed., *The European Crisis of the 1590s*, London, Allen and Unwin, 1985, pp. 23-43 and 44-66 respectively. On the plague, and other epidemics, see the comprehensive study: Slack, P., *The Impact of Plague in Tudor and Stuart England*, London, Routledge and Kegan Paul, 1985.

²⁹ See Merton, *op. cit.*, Boas, M., *The Scientific Renaissance: 1450-1630*, London, Collins, 1962, *passim*, Stearns, R.P., "The Scientific Spirit in England in Early Modern Times", *Isis*, 34 (1943) 293-300 and Fussner, *op. cit.*, p. 8.

occupations were brought about by printing itself.³⁰ New theories were able to develop with an historically unprecedented access to accumulated knowledge, and more abundantly stocked bookshelves expanded opportunities to consult and compare different texts.³¹ Writings from various regions and diverse textual traditions were more available and were combined to bring about 'cross-cultural' interchange. Eisenstein saw the first century of printing as marked by intellectual upheaval: as a flourishing, wide-angled and unfocused scholarship. But she also noted that a countervailing religious single-mindedness stiffened with printing: an intensification of both religiosity and secularism.³² The standardisation of printing, the production of exactly repeatable textual and pictorial statements, also assisted developing enterprises which required efficient planning, methodological attention to detail, and rational calculation. The people who consolidated the new diagrams and grammars applied routines which were conducive to a new collegiality, and editorial decisions about layout helped to reorganise the thinking of readers.³³ Similarly, adaptations of textual formats contributed much to the rationalisation of the diverse. By 1500, legal fictions were already being devised to accommodate the patenting of inventions, a subject of much controversy.³⁴ A similar change took place with the assignment of literary properties, and a new individualism emerged with the eponymous inventor and the personal author.³⁵ Spoken words could be conveyed by printed messages

³⁰ Eisenstein, E.L., *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe*, 2 volumes, Cambridge, Cambridge University Press, 1979, pp. 18-25 and Eisenstein, E.L., "Some Conjectures about the Impact of Printing on Western Society and Thought: A Preliminary Report", *Journal of Modern History*, 40 (1968) 1-57 at 5-6.

³¹ Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe*, pp. 132-149, Eisenstein, "Some Conjectures about the Impact of Printing on Western Society and Thought: A Preliminary Report", pp. 6-7 and 24-29, Topulos, K., "A Common Lawyer's Bookshelf Recreated: An Annotated Bibliography of a Collection of Sixteenth-Century English Law Books", *Law Library Journal*, 84 (1992) 641-686 and Ong, W.J., "Writing Is A Technology That Restructures Thought", in Baumann, G., ed., *The Written Word: Literacy In Transition*, Oxford, Clarendon Press, 1986, pp. 23-48.

³² Boas, op. cit., pp. 28-30 and 47-48 and Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe*, pp. 181-225.

³³ Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe*, pp. 88-107, Pearson, D., "Scholars and Bibliophiles: Book Collectors in Oxford, 1550-1650", in Myers, R. and Harris, M., ed's, *Antiquaries, Book Collectors and the Circles of Learning*, Winchester, St. Paul's Bibliographies, 1996, pp. 1-26 and, more generally, Grafton, A., *Commerce with the Classics: Ancient Books and Renaissance Readers*, Ann Arbor, University of Michigan Press, 1997.

³⁴ Thirsk, J., *Economic Policy And Projects: The Development Of A Consumer Society In Early Modern England*, Oxford, Clarendon Press, 1978, pp. 51-60 and 98-99.

³⁵ Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe*, pp. 228-237, Feather, J., "Authors, Publishers and Politicians: the history of copyright and the book trade", *European Intellectual Property Review*, 10 (1988) 377-380, Feather, J., "From Rights in Copies to Copyright: the recognition of authors' rights in English law and practice in the sixteenth and seventeenth centuries", *Cardozo Arts and Entertainment Law Journal*, 10 (1992) 455-473 and Woolf, D.R., "Genre into Artefact: The Decline of the English Chronicle in the Sixteenth Century", *The Sixteenth Century Journal*, 19 (1988) 321-354.

and even be replaced by them: the storyteller was being replaced by the literate villager who read out loud.³⁶ The mediaeval "hearing" society eventually became separated by a vast psychological and cultural gulf from the early modern "reading" one.³⁷ The clergy were vulnerable to the challenge of being defunct - as they no longer monopolised the keeping of old texts.³⁸ The emergence of family bibles, and the transference of functions from the priest to the parents (at home) reinforced patriarchy. A new "concept of childhood" emerged as the gap widened between literate and oral cultures. Book-learning gradually became a focus of daily life during childhood, adolescence and early adulthood.³⁹ Finally, a sharper division between the private and public sphere accompanied the advent of printed publicity: communal solidarity dissolved but vicarious participation in more distant events was enhanced.⁴⁰ The "literary Renaissance", still burgeoning in late sixteenth century England, was powered by the technology of printing.⁴¹

The preceding account of some of England's enduring societal patterns, and also some of the societal changes, helps to set the scene for a period of history with which we will be concerned. Part of this article must therefore address the issue of "periodisation" in historical studies. It seems clear that any decision as to how to periodise depends on one's objective. If one's goal is to explain the events which occurred during a certain time, then one should try to envision those events within a theoretical framework which is capable of providing some assistance in fashioning the sought after explanations. From the standpoint of the legal historian this may require, for example, a conceptual framework which permits differentiation between the events of the so-called Middle Ages

³⁶ See Thorndike, L., "Public Readings of New Works in Medieval Universities", *Speculum*, 1, (1927) pp.101-103.

³⁷ Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe*, pp. 129-136. Cf. Cressy, D., *Literacy and the Social Order: Reading and Writing in Tudor and Stuart England*, Cambridge, Cambridge University Press, 1980 and Woolf, D.R., "Speech, Text and Time: The Sense of Hearing and the Sense of the Past in Renaissance England", *Albion*, 18 (1986) 159-193.

³⁸ Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe*, pp. 313-329.

³⁹ *id.*, pp. 424-431.

⁴⁰ *id.*, pp. 136-159, Eisenstein, "Some Conjectures about the Impact of Printing on Western Society and Thought: A Preliminary Report", p. 42 and Levy, F.J., "How Information Spread Among the Gentry, 1550-1640", *Journal of British Studies*, 21 (1982) 11-34. For a quite different view, one which significantly downplays the importance of printing and literacy, see Thomas, K., "The Meaning Of Literacy In Early Modern England", in Baumann, *op. cit.*, pp.97-122. See also Wright, *op. cit.*, pp. 121-169.

⁴¹ See generally Dubrow, H. and Strier, R., ed's, *The Historical Renaissance: New Essays on Tudor and Stuart Literature and Culture*, Chicago, University of Chicago Press, 1988, Grafton, *op. cit.*, Helgerson, R., *Forms of Nationhood: The Elizabethan Writing of England*, Chicago, University of Chicago Press, 1992, Boyer, A.D., "Sir Edward Coke, Ciceronianus: Classical Rhetoric and the Common Law Tradition", *International Journal for the Semiotics of Law*, 10 (1997) 3-36, and Ross, R.J., "The Commoning Of The Common Law: The Renaissance Debate Over Printing English Law, 1520-1640", *University Of Pennsylvania Law Review*, 146 (1998) 323.

and the Renaissance. In a sense therefore the issue of “periodisation” is itself a working through of the methodology of contextual writing. The use of certain terms, like “Renaissance”, establishes a discursive system in which suggested explanations can be given meaning. A relationship between a term (like “Renaissance”) and an agenda, such as what we now describe as “humanism”, might then be probed in a relevant and cautious way.

The Renaissance

The notion of a renaissance which effectively terminated the so-called Middle Ages has for centuries fashioned our understanding of the unfolding of Western European civilisation. Representations of its amplitude, its nature and spirit, have varied over the years.⁴² The idea was restricted initially to a revivification of classical art and culture. From there the theory of the “Renaissance” was expanded as intellectuals gradually added what was thought to be the quintessence of the “modern”, at least for the time being. Ferguson has commented that as the Renaissance withdrew into the past, it also acquired more finite chronological limits:

“It gradually ceased to be something still taking place and became an event which had occurred in a more or less definite period in the past. Finally the process of expanding the content of the rebirth, while at the same time limiting it to a past age, culminated in the conception of the Renaissance as a period in the history of European civilization, a period characterised by a spirit common to all aspects of its culture.”⁴³

For Ferguson, the conclusion of this agenda was the nineteenth century work of Jacob Burckhardt, who reconstructed the “varied strands” of humanist, Protestant, rationalist, Romantic, liberal, and idealist traditions. Burckhardt’s translation of the “Renaissance” attained ubiquitous contemporary acknowledgment: it became, in Ferguson’s words, “the traditional interpretation, an established orthodoxy”. It was not long, however, before acceptance engendered dissent and Burckhardt’s temporal and geographical confines were successively increased and contracted to match the prevailing argument.⁴⁴

For convenience the term “Renaissance” will therefore be used, initially

⁴² See generally Jacob, E.F., “Changing Views Of The Renaissance”, *History*, 16 (1931) 214-229 and Bush, D., *The Renaissance and English Humanism*, Toronto, University of Toronto Press, 1939, particularly chapter 1 “Modern Theories of the Renaissance”, pp. 13-38.

⁴³ Ferguson, W.K., *The Renaissance in Historical Thought: Five Centuries of Interpretation*, Cambridge (Massachusetts), Riverside, 1948, p. ix.

⁴⁴ *id.*, pp ix-x, Ferguson, W. K., “The Reinterpretation of the Renaissance” in his *Facets of the Renaissance*, New York, Harper, 1959, pp 1-17 and Ferguson, W.K., “Humanist Views of the Renaissance”, *American Historical Review*, 45 (1939-40), 1-28 at 1.

at least, as though there were consensus as to its meaning: we will assume that something significant happened in Europe from the fourteenth to the sixteenth centuries which justifies our attention. One approach to demonstrating the veracity of this assumption is to ask how people of the time saw themselves. Weisinger's hypothesis is that the actors of the Renaissance were actually very aware of the fact that they were doing and experiencing something new and different: that the idea of the "Renaissance" was created in the Renaissance. The premise is worth testing. The method, fundamentally phenomenological, relies upon the scrutiny of particular writers in those centuries, and what they thought they were doing which distinguished them from their antecedents. It aims to provide coexistent observation and discussion of the Renaissance phenomenon.⁴⁵ The best example of this kind of phenomenology is the identification of "Renaissance" writers referring to the more recent past in terms which distinguish it from the present in such a way as to indicate its distance. The work of Edelman is one of the earliest of this type of study.

"The Latin texts particularly have yielded numerous items, interesting for their early date. *Media tempestas*, found once in 1469, was soon followed by *media aetas* (1518) and *media antiquitas* (1519), *media tempora* (1531) and *media tempus* (1534), *medium aevum* (1604), *intermedia tempora* (1620), *medium seculum* and *media secula* (1625), *inter media aetas* (1639)."⁴⁶

More pertinent to us, Edelman recognised that such an awareness, of the remote quality of the earlier times referred to, is especially evident in the writings of Camden and Spelman.⁴⁷ In a similar vein, Robinson has pointed out that when late sixteenth century writers used terms like "middle ages" it was meant to refer to the period between the Incarnation and Judgment Day, and it was (according to Robinson) only with the "Renaissance" that such terms were applied to the period between "Antiquity" and the "modern period".⁴⁸ Accordingly, this "Renaissance" can be linked, as will be seen below, with "humanism":

"Yet another terminus often given for the Middle Ages is the so-called 'Revival of

⁴⁵ Weisinger, H., "The Self-Awareness of the Renaissance as a Criterion of the Renaissance", *Papers of the Michigan Academy of Science, Arts and Letters*, 29 (1944) 561-567 at 562-563, Weisinger, H., "Ideas of History during the Renaissance" and Trinkaus, C., "The Problem of Free Will in the Renaissance and the Reformation" in Kristeller, P.O. and Wiener, P.P., ed's, *Renaissance Essays*, New York, Harper, 1968, pp.71 and 187-198 respectively. See also Gilmore, M. P., "The Renaissance Conception of the Lessons of History" in Ferguson, W. K., ed., *Facets of the Renaissance*, New York, Harper, 1959, pp 73-98 at p. 73 ff, Fussner, *op. cit.*, p. 3 ff, Nelson, N.E., "Individualism As A Criterion Of The Renaissance", *Journal Of English And Germanic Philology*, 32 (1933) 316-334. Contra: Ferguson, "Humanist Views of the Renaissance", p. 2 and Schiffman, Z.S., "Renaissance Historicism Reconsidered", *History and Theory*, 24 (1985) 170-182, *passim*.

⁴⁶ Edelman, N., "The Early Uses of *Medium Aevum*, *Moyen Age*, *Middle Ages*", *Romanic Review*, 29 (1938) 3-25 at 4-5.

⁴⁷ *id.*, pp. 6-9.

⁴⁸ Robinson, F.C., "Medieval, The Middle Ages", *Speculum*, 59 (1984) 745-756 at 749.

Learning', that marvellous era when Humanist scholars 'discovered' classical texts and restored them to mankind after the long Gothic night. Medievalists must always smile a little over these 'discoveries', for we know where the humanists discovered those classical texts - namely, in medieval manuscripts, where medieval scribes had been carefully preserving them for mankind over the centuries."⁴⁹

Other contemporary English denotations of this period included: Barbarous Age(s); Dark Age(s); Obscure Age(s); Leaden Age(s); Monkish Age(s); Muddy Age(s) and the Gothic Period.⁵⁰

Arguing in the alternative, against periodisation, provides some equally cogent explanations of phenomena. The abiding theme, from this perspective, is continuity and gentle evolution.⁵¹ It is probably true that most of the things claimed as new in the Renaissance already existed in the so-called Middle Ages.⁵² But perhaps such things were in a sense *innocuous* in the Middle Ages - and only became *adventurous* in the "Renaissance". Panofsky and Ginzburg argue that it was the fact that most people had already (by the time which we normally associate with "Renaissance") changed their mental orientation that made these 'new' things dangerous - in other words, that people were ready to receive and entertain ideas, inventions and discoveries in the "Renaissance" in a way in which they would not or could not in the so-called Middle Ages. Much of this change in outlook was evidently attributable to a discernible shift in the idea of 'creation': in Middle Ages it was God who created, but in Renaissance it was man who was 'inspired'.⁵³

More controversially, Kristeller has stated that the term "Renaissance" is almost completely unnecessary because, since the increase in the quantum of knowledge on the so-called Middle Ages, there was in fact no measurable re-birth at all. However Kristeller acknowledges that it is true to say, despite the fact that there had previously been numerous claims of a new breakthrough, such claims were much more persistent during this named period:

"Even if we were convinced that it was an empty claim and that the humanists did not bring about a real Renaissance, we would still be forced to admit that the illusion itself was characteristic of that period and that the term Renaissance thus had at least a subjective meaning."⁵⁴

⁴⁹ *id.*, at 750.

⁵⁰ *id.*, p. 749. See also Gordon, G.S., "Medium Aevum and the Middle Ages", *Tracts of the Society for Pure English*, 19 (1925) 3-28.

⁵¹ Elliott, J. H., "Revolution and Continuity in Early Modern Europe", *Past and Present*, 42 (1968) 35, *passim*.

⁵² Turberville, *op. cit.*, p. 289.

⁵³ Panofsky, E., "Renaissance and Renascences", *Kenyon Review*, 6 (1944), pp.201-236 at 232-233 and Ginzburg, C., "High And Low: The Theme Of Forbidden Knowledge In The Sixteenth and Seventeenth Centuries", *Past and Present*, 73 (1976) 28-41 at 38. See also Turberville, *op. cit.*, p. 293.

⁵⁴ Kristeller, P.O., "Humanism and Scholasticism in the Italian Renaissance", *Byzantion*, 17 (1944 - 45) 346-374 at 347.

Kristeller's general aim is to re-examine the relationship between the Renaissance and the Middle Ages from the point of view, not of mediaeval universalism, but of mediaeval regionalism. For instance Kristeller notes also that Italy, in particular, was isolated from and behind French medievalism and was always more in contact with its Roman heritage and its Byzantine links.⁵⁵ "Renaissance" was, in truth, simply the gradual emergence of the widespread humanist method, and this, in turn, meant:

"The general tendency of the age to attach the greatest importance to classical studies, and to consider classical antiquity as the common standard and model by which to guide all cultural activities."⁵⁶

Yet even this theory, the "Renaissance" / humanism (the "rise in classical scholarship") theory, is not entirely satisfactory for Kristeller - because it fails to account for the cosmopolitan activities of humanists as such:

"The humanists were not classical scholars who for personal reasons had a craving for eloquence, but, *vice versa*, they were professional rhetoricians, heirs and successors of the medieval rhetoricians, who developed the belief, then new and modern, that the best way to achieve eloquence was to imitate classical models, and who were thus driven to study the classics and to found classical philology."⁵⁷

Whilst there is, therefore, a clear relationship between "Renaissance" and "humanism", the terms are not synonymous. It may be very difficult, as Gilson has recounted, to disconnect the two phenomena.⁵⁸ For Kristeller the "humanism as the new world view of the 'Renaissance'" theory is equally flawed because of the persistence, throughout the period, of scholastics and a comparative lack of interest in philosophy by the humanists.⁵⁹ The humanists, as a "group", emerged principally from scholars of grammar and rhetoric and from that point they influenced, but did not control in terms of directing discourse or subject matter, other areas of

⁵⁵ *id.*, pp. 348-350.

⁵⁶ *id.*, p. 350 and Panofsky, *op. cit.*, pp. 202-203.

⁵⁷ Kristeller, *op. cit.*, pp. 352-353.

⁵⁸ Gilson, E., "Humanisme Medieval et Renaissance", in his *Les idées et les lettres*, Paris, Vrin, 1955, pp. 171-196 at 172: "Ce n'est pas chose facile. Elle nous arrive toute chargée d'implications et de connotations dont l'examen n'a jamais été sérieusement tenté. Certains historiens, par exemple, l'associent étroitement avec la Réforme, qui n'en aurait été selon eux que l'aspect religieux. Il y a probablement sous ce jugement quelque vérité profonde, dans la mesure où Renaissance et Réforme s'opposent à la théologie médiévale, et ce serait une erreur grave que de négliger cet aspect de la question. Il est également certain que l'Humanisme et la Réforme ont concouru, chacun par leur méthodes propres, à produire certains effets sur le terrain religieux, de sorte que ces effets leur appartiennent pour ainsi dire en commun. De ce nombre sont l'important renouveau de l'exégèse biblique et le développement des études patristiques par exemple. Mais il serait encore beaucoup plus inexact de confondre la Renaissance et la Réforme que de les isoler, car dans la mesure où l'Humanisme est l'exaltation de la nature, il est la négation de la Réforme dans son essence même."

⁵⁹ Kristeller, *op. cit.*, pp. 353-354.

knowledge where they were amateurs.⁶⁰ Above all Kristeller links this “group” with the university. When scholars began to describe their field, dealing with the consolidation of the discrete mediaeval entities of grammar, rhetoric and poetry, as *studia humanitatis*, this description was not, according to Kristeller, a revolution in *weltanschauung*: “The term seems to have originated in the slang of university students and gradually penetrated into official usage.”⁶¹

Continental Humanism

The term “humanism” is derived from the Italian *umanesimo*, which probably dates from, at the earliest, the second half of the fifteenth century. The word did not gain wide usage until the nineteenth century, and thus may be interpreted either broadly or narrowly. Our understanding of the compass of the phenomenon which we use the term to describe is thus conditioned by the breadth we allow the term.⁶² The Italian *umanesimo* is itself derived from the Latin *humanitas*.⁶³ The etymology of the word, according to Campana, is to be connected with a discrete discipline of study within the mediaeval university system because of its *ista* (*umanista*) suffix. Earlier *ista* are appended to other discrete disciplines of study, and it seems that this is the word to describe the ‘faculty of Humanities’.⁶⁴ Campana concluded that the word primarily:

“Is closely connected with the scholastic system: it qualifies a person as a public or private teacher of classical literature, of the chair of *humanitas* or *umanita*.”⁶⁵

Campana added, however, that the word can also refer (in a broader sense) to a student in the same field.⁶⁶ Campana’s thrust (consistent with Kristeller’s) is that the word, far from its elevated associations with the

⁶⁰ *id.*, pp. 354-356.

⁶¹ *id.*, pp. 363-366 (quote at 366). See also Gray, H.H., “Renaissance Humanism: The Pursuit of Eloquence”, in Kristeller, and Wiener, *op. cit.*, pp. 199-216.

⁶² Fox’s rather constricted definition is not followed here, in favour of a less restrained and more emergent interpretation: Fox, A. and Guy, J., *Reassessing The Henrician Age: Humanism Politics and Reform 1500-1550*, Oxford, Blackwell, 1986, especially Chapters 1 and 2, *passim*.

⁶³ Campana, A., “The Origin of the Word Humanist”, *Journal of the Warburg and Courtauld Institutes*, 9 (1946) 60-73 at 61-66. Campana details nine documents using the Latin *humanitas* (and its derivatives) from 1512, and their relation with *umanesimo*. The etymology has been retraced, without significant modification, more recently in Guistiniani, V.R., “Homo, humanus, and the meaning of ‘humanism’”, *Journal of the History of Ideas*, 46 (1985) 167-195 at 168-171. Further on Italian origins: Randall, J.H., “The Development of Scientific Method in the School of Padua”, in Kristeller and Wiener, *op. cit.*, pp. 217-251.

⁶⁴ Campana, *op. cit.*, pp. 67-68.

⁶⁵ *id.*, p. 66.

⁶⁶ *id.*, p. 66.

appeal to classical *humanitas*, has “humbler” origins - as a descriptive term for a chair or tutorial programme in the syllabus of the university. The diffusion of the word across Europe was apparently quite prolonged: reaching Germany in 1515, France in 1539 and England in 1589.⁶⁷ The phenomenon emerges as something of an indeterminate cultural and intellectual realignment amongst scholars, with, perhaps, some special significance for the study of law.⁶⁸ Kisch acknowledges that the reception of classical learning and Roman law was underway well before the advent of humanism, and that the latter therefore had little impact upon the law, perhaps only excepting that “humanism” did at least promote an intellectual culture which enriched legal research.⁶⁹ He states:

“No harmful effect on the progressive development of the dogmatics of law is to be attributed to humanistic jurisprudence...This intellectual movement of the sixteenth century had a lasting influence on and value for the historical development of law, of legal theory and jurisprudence, of legal ideas and their use in the practical application of the law.”⁷⁰

Nevertheless the name “humanism” has been associated with a current of activity beginning in Italy in the fifteenth century whose objectives are represented as the reform of letters, art, thought and manners. The new method was not immediately applied to the study of the law, but came to the law via the other “new” sciences. Law was thus gradually drawn into an emerging and general intellectual movement as a discrete but nonetheless connected province.⁷¹ Among the first legal humanists, in Italy, were Lorenzo Valla (who died in 1457), his student Pomponius Leto (1428-1498), and Angelo Politian (1454-1496). Superior textual analyses and interpretations of Roman law fragments, and their attempts at synthetic reconstructions of legal histories, unquestionably separated these writers from their Glossator precursors. Their successor, Andrew Alciat (1492-1552), transplanted the new method to France where he lived from 1518.⁷² In France the humanist method thrived during the sixteenth century. The great French humanist jurists Budé (died 1540), Cujas (1522-1590), Doneau (born 1527), Baudouin (1520-1573) Hotman (1524-1590) and Bodin (born

⁶⁷ Campana, *op. cit.*, pp. 69-71 and Guistiniani, *op. cit.*, pp. 171-174. Cf. Hyma, A., “The Continental Origins of English Humanism”, *Huntington Library Quarterly*, 1 (1940) 1-25.

⁶⁸ Campana, *op. cit.*, p. 69.

⁶⁹ Kisch, G., “Humanistic Jurisprudence”, *Studies in the Renaissance*, 8 (1961) 71-87 at 73-75. See also Gilmore, M.P., “The Jurisprudence of Humanism”, *Traditio*, 17 (1961) 493-501, and in relation to the antecedent history of Reception: Rose, J., “The Legal Profession In Medieval England: A History Of Regulation”, *Syracuse Law Review*, 48 (1998) 1-137 at 34-41.

⁷⁰ Kisch, *op. cit.*, pp. 85-86.

⁷¹ *The Continental Legal History Series*, vol. 1, *A General Survey*, London, 1912, p. 148 and Shaller, T.K., “English Law and the Renaissance: The Common Law and Humanism in the Sixteenth Century”, (unpublished doctoral dissertation, Harvard University, 1979), pp. 48-65.

⁷² *The Continental Legal History Series*, vol. 1, *A General Survey*, London, 1912, pp. 150-151.

1530) utterly transformed the study of law by their insistence on the direct examination of primary sources and the application of a critical scrutiny towards legal history.⁷³

Budé's application of the new science to mediaeval history resulted in widening the scope and deepening the perspective of historical inquiry as well as improving historical method.⁷⁴ His influence was significant. More contentious is Kelley's claim that Budé's work on the history of French institutions and his restitution of the *Digest*:

"Were fully recognised by later generations of historians and jurists, as was his view that, whatever aid might be derived from classical scholarship, modern society had to be interpreted in its own terms".⁷⁵

With Budé, Cujas' eminence was not only in his sequel to Budé's *Annotations*, entitled *Observations and Emendations*, and in his other legal texts, but also in the influence he exerted upon the next generation of scholars:

"These men, lawyers by training but historians by method, classicists by taste but medievalists by persuasion, formed a kind of unofficial society of antiquaries devoted to the reconstruction of French culture and institutions in the critical spirit of philology. Although a number of traditional motives may be found in their work, their true point of departure was not formal historiography but legal humanism."⁷⁶

Kelley concludes:

"The relativism in Budé's point of view represents another important step in the rise of historicism... In short, they were, within the limits of the original

⁷³ *id.*, pp. 252-259, Hallam, H., *Introduction To The Literature Of Europe*, second ed., London, Murray, 1843, generally at vol. 1 pp 402-405 and specifically, in vol. 2, re: Hotman at 35-37 and 74-75; Bodin at 51-69 and Cujas at 70-73, Levy, F.J., *Tudor Historical Thought*, San Marino (California), Huntington Library Publications, 1967, generally at pp. 33-42 and specifically re: Bodin at 166, 206 and 243-253; Budé at 54 and 124; Cujas and Hotman at 166, and Stevens, L.C., "The Contributions Of French Jurists To The Humanism Of The Renaissance", *Studies In The Renaissance*, 1 (1954), p. 92 ff. See also Pocock, J.G.A., *The Ancient Constitution And The Feudal Law*, 2nd ed., Cambridge, Cambridge University Press, 1987, pp. 1-29 and 70-79, Kelley, D.R., *Foundations Of Modern Historical Scholarship: Language, Law And History In The French Renaissance*, New York, Columbia University Press, 1970, Reynolds, B., *Proponents of Limited Monarchy in Sixteenth Century France: François Hotman and Jean Bodin*, New York, Columbia University Press, 1931, Gilbert, N. W., *Renaissance Concepts of Method*, New York, Columbia University Press, 1960, pp. 93-98, Kelley, D.R., "Historia Integra: Francois Baudouin's Conception of History", *Journal of the History of Ideas*, 25 (1964) 35-57 at 54-57, Rodgers, C.P., "Humanism, History And The Common Law", *Journal Of Legal History*, 6 (1985) 129-156, at 130-133, Ferguson, "Humanist Views of the Renaissance", pp. 3-4 and Woolf, D.R., "Erudition and the Idea of History in Renaissance England", *Renaissance Quarterly*, 40 (1987) 11-48 at 15-17.

⁷⁴ Grafton, *op. cit.*, p. 136 ff.

⁷⁵ Kelley, D.R., "Guillaume Bude And The First Historical School Of Law", (1967) 72 *American Historical Review*, 807 at 825. See also Kelley, D.R., "Legal Humanism and the Sense of History", *Studies in the Renaissance*, 13 (1966) 184-199.

⁷⁶ Kelley, "Guillaume Bude And The First Historical School Of Law", pp. 832-833.

definition, historicists. They accepted the principle of individuality in the sense that, in nominalist fashion, they regarded language not only as a reflection of a particular culture but also as a copy of reality in terms of that culture. If they believed in a supra-historical world, they left it to the philosophers. They accepted the principle of development in the sense that they acknowledged—indeed tried to chart—the temporal changes to which every society was subject, especially in language and customs; for such (in the phrase of Cicero made famous by Montaigne) was the human condition. Finally, they accepted the principle of relativism in that they insisted upon the uniqueness, without denying the comparability, of individual cultures. Ultimately, it is the work of these men, alumni of the first historical school of law, that justifies the conclusion that legal humanism was one of the major steps in the rise of historicism.⁷⁷

The primary objective of this 'French method' was to *humanise* the study of law by associating it with the 'good letters' and 'good arts' of grammar, dialectic, rhetoric, history, poetry and philosophy, and above all with a reference to the idea of a "classical" tradition. Consequently the fundamental function of legal humanism was to re-establish Roman law as the foundation of the European cultural lineage. To a large degree this involved the task of cleansing Roman law of the feudal appendages which it had accumulated over the centuries.⁷⁸

In France humanism, first as a method of inquiry, gained a solid foothold and eventually institutional recognition in the universities and a professional partnership with legal practitioners. While this humanist perspective came to form greater and greater parts of university syllabi, efforts were also made to incorporate and contextualise more traditional perspectives and modes of education.⁷⁹ Incorporating the practical perspective directed many French legal humanists towards the indigenous elements of the law of France, a topic which particularly interested Bodin.⁸⁰

There was, by the late sixteenth century, a rich tradition of continental

⁷⁷ *id.*, at 834.

⁷⁸ Kelley, "Legal Humanism and the Sense of History", pp. 186-189. Cf. Bush, *op. cit.*, pp. 39-68.

⁷⁹ "Cela parait un mystère. On a dit : Comment ces gens connaissent-ils les coutumes ? Comment vont-ils aborder le droit coutumier ? Ils vont devenir d'effroyables pédants et vont déformer le droit coutumier. Or l'humanisme juridique français des juristes praticiens est essentiellement un humanisme qui a amené à se représenter le droit coutumier comme un ensemble, à y chercher des règles générales, à construire un système de droit coutumier susceptible de servir de base à une interprétation juridique pour laquelle tous les principes du droit romain peuvent être valablement utilisés, sans arriver pour cela à déformer le droit coutumier. Voilà la notion que je crois essentielle à bien comprendre pour cet humanisme juridique français et c'est en cela qu'il se distingue des autres humanismes juridiques." : Reulos, M., "L'importance des praticiens dans l'humanisme juridique", *Pedagogues et Juristes*, 119-133 at 120-126, quote at 121.

⁸⁰ Some modern German scholars have challenged this approach, however Kisch goes to considerable trouble to defend legal humanism from their charge that humanism, in its rediscovery of Antiquity, necessarily entailed a certain *Weldfremdheit*. Kisch, with Reulos, emphasises the practical elements of the European humanists' works. Kisch, *op. cit.*, pp. 75-87.

legal humanism for English scholars and lawyers to draw upon. The advent of printing obviously assisted its dissemination. Jean Bodin was probably one of the most influential of the continental writers on English politics and intellectual life during the latter sixteenth century. Bodin's principal and seminal work *Republique* was published 1576; its predecessor - *Methodus ad facilius historiarum cognitionem* having been published ten years earlier.⁸¹ According to Brown, Bodin was so dissatisfied with the ahistorical study of law in France, focussed as it was on Rome, that he set out to explore his own *ius gentium*, which meant combining law and history.⁸² Although Brown's claim was that Bodin's historical theorising had almost no influence on or interest to English scholars,⁸³ Bodin's historical analysis of various states, ancient and contemporary, and their laws pertaining to government, was in fact highly regarded by at least some English lawyers.⁸⁴

Against all of this, most English lawyers had quite fixed ideas about their own practices. For the most part, the jurists of England resisted the adoption of the new, humanist methods. Much of this resistance was due to the necessary reverence of practitioners for the established traditions of the courts. Entrenched methods had, for centuries, enabled lawyers to gain a social and economic ascendancy which ill-disposed them towards any really thoroughgoing change in outlook.⁸⁵ So the French experience was not repeated to any significant degree. On the other hand, a few English thinkers were far from insensible to the current of humanism. Figures like Cheke, Colet, Elyot, Latimer, Linacre and, of course, Sir Thomas Moore, had associations and acceptance with the most "humanist" of circles across the entire continent.⁸⁶ William Camden corresponded with

⁸¹ Bodin, Jean, *Method For The Easy Comprehension Of History*, tr. Reynolds, B., New York, Columbia University Press, 1945. See also Smith, C.I., "Jean Bodin and Comparative Law", *Journal of the History of Ideas*, 25 (1964) 417-422 at 417-418, Franklin, J.H., *Jean Bodin And The Sixteenth-Century Revolution In The Methodology Of Law And History*, New York, Columbia University Press, 1963, Reynolds, B. "Shifting Currents in Historical Criticism", in Kristeller, and Wiener, *op. cit.*, pp. 115-136 and Reynolds, *Proponents of Limited Monarchy in Sixteenth Century France*.

⁸² Brown, J.L., *The Methodus Ad Facilem Historiarum Cogitionem of Jean Bodin: A Critical Study*, Washington D.C., The Catholic University of America Press, 1939, pp. 29-45.

⁸³ *id.*, pp. 174-177.

⁸⁴ Cf. Dean, L.F., "Bodin's *Methodus* in England Before 1625", *Modern Philology*, 39 (1942) 160-166, Smith, *op. cit.*, pp. 419-422 and Levy, F.J., *Tudor Historical Thought*, San Marino (California), Huntington Library Publications, 1967, p. 247. See also *The Tanistry* (1608) Davis 28, Terrill, R.J., "The Application Of The Comparative Method By English Civilians: The Case Of William Fulbecke And Thomas Ridley", *The Journal Of Legal History*, 2 (1981) 169 and Schoeck, R.J., "Sir Thomas More: Humanist And Lawyer", (1964-5) 34 *University Of Toronto Quarterly*, 1.

⁸⁵ The Continental Legal History Series, vol. 1, A General Survey, London, 1912, p. 151.

⁸⁶ Bush, *op. cit.*, particularly chapter 3, "English Humanism", pp. 69-100, Caspari, F., *Humanism and the Social Order in Tudor England*, Chicago, University of Chicago Press, 1954, especially chapter 1, "The Social and Intellectual Foundations of English Humanism", pp. 1-27 and Hudson, H.H., "John Leland's List of Early English Humanists", *Huntington Library Quarterly*, 2 (1938) 301-304. Cf. Hyma, *loc. cit.* Contra: Phillimore, J.S., "Blessed Thomas More and the Arrest of Humanism in England", *Dublin Review*, 153 (1913) 1-26.

Gentili, Gruter, Isaac Casaubon, Peiresc, Hotman and de Thou on matters of mutual scholarly interest. Camden unquestionably introduced others, particularly Cotton and Spelman, to his European connections.⁸⁷

Legal Education in England

The native outlook of the English legal community had its foundations in the common law doctrine based education provided at the Inns of Court.⁸⁸ The impact of the method of humanism and the technology of printing on education in England generally⁸⁹ - and on legal education in particular - was still, however, significant. England was unique in training its lawyers outside of the universities, thus the Inns became in practice, if not in name, integrated academies - or at the very least institutions focussed upon the broader study of what we would now call aspects of the humanities and social sciences, as well as providing training in practical disciplines such as surveying.⁹⁰ Henry VIII might have considered formally establishing the Inns as a university, although any such plan was never realised.⁹¹ Under Elizabeth, two other unrealised educational plans, for the education of (aristocratic) wards, proposed by the Lord Keeper Sir Nicolas Bacon and Sir Humphrey Gilbert, contained serious and compulsory elements of legal education.⁹² As well as the law, students at the Inns read widely in literature and drama. Schoeck has remarked:

“During the sixteenth century the education of many of the common lawyers was not so strictly and severely professional as it had been in the Middle Ages. During this century the custom of starting one’s career at the universities

⁸⁷ Van Norden, L., “Peiresc and the English Scholars”, *Huntington Library Quarterly*, 12 (1948-1949) 369-389. See also Parry, G., *The Trophies of Time: English Antiquarians of the Seventeenth Century*, Oxford, Oxford University Press, 1995, p. 26 and Feingold, *op. cit.*, pp. 83, 100-101, 131 and 133-134.

⁸⁸ As Maitland commented, and as Baker has explained, “law schools make tough law”: Maitland, F.W., *English Law And The Renaissance*, Cambridge, Cambridge University Press, 1901, pp. 25-28 and Baker, J.H., “The Inns Of Court And Legal Doctrine” in Charles-Edwards, T.M., Owen, M.E. and Walters, D.B., ed’s, *Lawyers And Laymen*, Cardiff, University Of Wales Press, 1986, pp. 274-286 at 274-275 and Baker, J.H., “English Law And The Renaissance”, *Cambridge Law Journal*, 44 (1985) 46-61, *passim*. For an unusual comparison of the Inns of Court with their mediaeval Islamic counterparts see: Makdisi, G., “The Guilds of Law in Medieval Legal History”, *Cleveland State Law Review*, 34 (1985-1986) 3-18.

⁸⁹ Wright, *op. cit.*, pp. 43-80.

⁹⁰ Caspari, *op. cit.*, pp. 142-143. See also Schnapp, A., *The Discovery of the Past: The Origins of Archaeology*, London, British Museum Press, 1996, p. 154 and Piggott, S., *Ruins in a Landscape, Essays in Antiquarianism*, Edinburgh, Edinburgh University Press, 1976, p.111.

⁹¹ Bland, D.S., “Henry VIII’s Royal Commission On The Inns Of Court”, *Journal of the Society of Public Teachers of Law*, 10 (1968) 178-194 at 180-181.

⁹² Conway Davies, J., “Elizabethan Plans and Proposals for Education”, *Durham Research Review*, 2 (1954) 1-8.

became more widespread, and Holdsworth has indicated at least one instance in which a student kept his terms in London, at an Inn, while he was at the university; such students would of course, have had the traditional rhetorical training in the universities. And in large part because of the less technical and more humanistic education, lawyers of the later sixteenth and seventeenth centuries are more often men of wider learning and deeper cultural interests.⁹³

By the mid sixteenth century, the Inns were at the centre of English literary activity, with the most important literary offshoot of the Inns being tragic drama.⁹⁴ The Inns were also profoundly influenced by the general increase in more purely "scientific" interest which marked the period. The inspiration of Bacon, in particular, touched the legal community acutely.⁹⁵ Nevertheless the focus of the Inns, despite the varied activities which can be associated with the institution, was primarily legal education.⁹⁶

The broadening of the scope of legal education which has been described corresponded with what had been perceived as a decline in more strictly legal professional standards of education.⁹⁷ Proof of this degeneration is submitted by Holdsworth in two sets of Judges' Orders, of 1557 and 1591, which attempted to introduce greater rigour to the readings offered at the Inns.⁹⁸ There is some degree of dispute as to whether this "decline" was long and gradual⁹⁹ or short and rapid.¹⁰⁰ It is agreed, however,

⁹³ Schoeck, R.J., "Rhetoric And Law In Sixteenth Century England", (1953) 50 *Studies In Philology*, 110 at 123-124. See also Finkelppearl, P.J., *John Marston Of The Middle Temple*, Cambridge (Massachusetts), Harvard University Press, 1969, pp. 3-18.

⁹⁴ Schoeck, *op. cit.*, pp. 110-111, Bland, D.S., "Rhetoric and the Law Student in Sixteenth Century England", *Studies in Philology*, 54 (1957) 498 at 507-508, O'Sullivan, R., "Edmund Plowden: Apprentice Of The Middle Temple", *Connecticut Bar Journal*, 28 (1954) 307-328 at 310-311 and 315ff and Green, A.W., *The Inns Of Court And Early English Drama*, New Haven, Yale University Press, 1931, pp. 8-21. See also Prest, *The Inns of Court under Elizabeth I and the Early Stuarts: 1590-1640*, pp. 137-143, Cunningham, J.P., *Dancing in the Inns of Court*, London, Jordan and Sons, 1965, and Finkelppearl, *op. cit.*, pp. 32-44.

⁹⁵ Stearns, R.P., "The Scientific Spirit in England in Early Modern Times", *Isis*, 34 (1943) 293-300, *passim*, Shapiro, B., "Law And Science In Seventeenth Century England", *Stanford Law Review*, 21 (1969) 712, Kocher, P.H., "Francis Bacon On The Science Of Jurisprudence", *Journal of the History Of Ideas*, 18 (1957) 3-26 and Turberville, *op. cit.*, p. 295.

⁹⁶ See Aikenhead, I.D., "Students of the Common Law 1590-1650: Lives and Ideas at the Inns of Court", *University of Toronto Law Journal*, 27 (1977) 243-256. Aikenhead states, with some justification, that this role is downplayed by historians of the profession in favour of the cultural and social operations: see, for example *id.*, p.245 n. 7 and the criticism of Prest.

⁹⁷ Holdsworth, W. S., "The Disappearance of the Educational System of the Inns of Court", *University of Pennsylvania Law Review*, 69 (1920-1921) 201-222, Hammer, C.I., "Bolts And Chapel Moots At Lincoln's Inn In The Sixteenth Century", *Journal of the Society of Public Teachers of Law*, 11 new ser. (1970-71) 24-28 and Chroust, A.-H., "The Beginning, Flourishing and Decline of the Inns of Court: The Consolidation of the English Legal Profession After 1400", *Vanderbilt Law Review*, 10 (1956) 79-123 at 116-119.

⁹⁸ Holdsworth, *op. cit.*, pp. 201-202. More generally see Baker, J.H., "The Education of Common Lawyers: 1250-1650", *Vortraege zur Justizforschung*, 1 (1992) 1-17 at 11-14.

⁹⁹ Charlton, K., "Liberal Education and the Inns of Court in the Sixteenth Century", *British Journal of Educational Studies*, 9 (1960) 25-38 at 29-38.

¹⁰⁰ Prest, W.R., "The Learning Exercises At The Inns Of Court 1590-1640", *Journal of the Society of Public Teachers of Law*, 9 (1967) 301-313 and Prest, W.R., "Legal Education Of The Gentry At The Inns Of Court, 1560-1640", *Past And Present*, 38 (1967) 20-39.

that by the time of the Civil War, the system of the Inns was so weakened that it expired amid the tumult. Certainly, during the latter sixteenth century there was a marked decline in mootings and aural exercises at the Inns. This deterioration was contemporaneous with the advent of printing.¹⁰¹

Terrill argues that the decline in practical standards at the Inns corresponded with the introduction of humanist textbook programmes for the study of law.¹⁰² The idea of the “method book” (text book), which became common in the study of law, was copied from the method books of the humanists for their princely patrons. From there, the method book became widespread throughout all disciplines of learning.¹⁰³ So far as this new method of learning was applied to the study of law in England, the first attempt at condensing the law to a text can be found in Thomas Wilson’s *The Arte Of Rhetorique* (1553). A second attempt was made by William Fulbecke in his *A Direction Or Preparation To The Study Of Lawe* (1600). Dodderidge’s *The English Lawyer*, probably written during the 1620s, was published posthumously in 1631.¹⁰⁴

During the sixteenth century, there was also a decline in the ‘chronicle’ (the traditional form of historical writing), and a corresponding emergence of the new form of ‘politic history’ along with the rise of antiquaries’ treatises. According to Woolf this is normally attributed to the rise of humanism, but he contends it also had much to do with printing, publication trends, and prices. As such, Woolf explains that the functions of the chronicle (information, news, history and entertainment) dissolved into and were expressed (after printing) by a number of new genres: almanacs; newsbooks (and ultimately newspapers); treatises and histories; and drama, prose and verse. The chronicle became a remnant, a resource for writing but not something read or written for its own value.¹⁰⁵ For the lawyer it was replaced by the cheaper and more easily used ‘method book’ and the detailed and focussed treatise.

At the same time, however, there is broad agreement that attendance at the Inns and the Universities increased, a phenomenon ostensibly due to the rise of middle class economic prosperity and social aspirations.¹⁰⁶

¹⁰¹ Terrill, R.J., “Humanism And Rhetoric In Legal Education: The Contribution Of Sir John Dodderidge (1555-1628)”, *The Journal Of Legal History*, 2 (1981) 30, Prest, “The Learning Exercises At The Inns Of Court 1590-1640”, pp. 310-313 and Holdsworth, *op. cit.*, p. 203. See also Ross, *op. cit.* and Hoeflich, M.H., “Legal History and the History of the Book”, *University of Kansas Law Review*, 46 (1998) 415-431.

¹⁰² Terrill, “Humanism And Rhetoric In Legal Education: The Contribution Of Sir John Dodderidge (1555-1628)”, pp. 30 at 34.

¹⁰³ *id.*, p. 31.

¹⁰⁴ Its second half, “Methodus studenti”, was earlier published in 1629 under the title *The Lawyer’s Light*. See *id.*, pp. 34-39, Prest, *The Inns of Court under Elizabeth I and the Early Stuarts: 1590-1640*, pp. 143-149 and Shaller, *op. cit.*, pp. 145-207.

¹⁰⁵ Woolf, “Genre into Artifact”, *passim*.

¹⁰⁶ Prest, *The Inns of Court under Elizabeth I and the Early Stuarts: 1590-1640*, pp. 6 and 242-245, Terrill, “Humanism And Rhetoric In Legal Education: The Contribution Of Sir John Dodderidge (1555-1628)”, pp. 30-31 and 34 and Levy, *Tudor Historical Thought*, pp. 47-50. See also Sharpe, J.A., *Early Modern England: A Social History 1550-1760*, p. 256 ff.

Comprehensive analysis has been devoted to this issue by Stone who contends that there was an explosion in higher education between 1560 and 1640. He sets out to demonstrate this hypothesis, cautiously, with the use of statistics:

"The statistical evidence...is far from complete, and what there is needs interpretation and qualification. If the historian of a pre-nineteenth-century society seriously wants to pluck at the skirts of truth, he is obliged to use common sense and arguments of probability to apply correctives and supply lacunae. Since the problems are quantitative, the evidence must of necessity be set out in numerical terms, but it should never be forgotten that the graphs and tables represent approximations and best guesses rather than hard statistical facts."¹⁰⁷

Stone's statistical and demographic conclusion is that of an English population of about 5.2 million, some 1240 yearly entrants into higher education (at the Universities or the Inns) represents 2.48% of the male age group in the 1630s. The figure demonstrates a massive increase on previous generations notwithstanding the overall population increase.¹⁰⁸ The numerous reasons identified by Stone for the expansion of education include: the demand for secular administrators and professionals created by declericalisation; a change in attitude towards seeing children less as property and more as individuals; the influence of humanist educators; a bourgeois cultural "apeing" of the gentry (for want of any of their own patterns of social behaviour); the impetus of the property boom and growth in trade and industry; Puritan zeal for spread of knowledge; "Baconian" reformism and the utilisation of education as a tool of social control.¹⁰⁹ In assessing the gravity of this growth one must, Stone suggests, strive to detect which social groups took advantage of the exceptional educational opportunities. The obvious answer is the gentry. However, Stone notes that compounded upon prosaic methodological difficulties in defining the status-category of "gentleman" is the clearly increasing number of the bourgeoisie who styled themselves gentlemen.¹¹⁰ Nevertheless, Stone submits that the expansion was so widespread as to reach most categories of the population (if not most of the population numerically):

"The argument about what class was profiting from the growth in higher education is thus a largely meaningless one. So great was the boom - much

¹⁰⁷ Stone, "The Educational Revolution In England, 1560-1640", p. 41.

¹⁰⁸ *id.*, pp. 54-57.

¹⁰⁹ *id.*, pp. 69-73.

¹¹⁰ "...Indeed the more successful merchants of London and the major ports were acquiring coats of arms and even knighthoods. Moreover, since after 1603 entry to an Inn of Court was theoretically confined to the sons of gentlemen, there was here a special incentive to misrepresentation of status.": *id.*, pp. 57-58. Note also in Cotton MS *Faustina* E.V. "A project touching a petition to be exhibited unto her majesty for the erecting of her library and an Academy" clause 1.2 states "for the better information of all Noblemen and gentlemen".

greater than has hitherto been recognised - that all classes above a certain level took their part. Landed nobility and gentry, professional classes, urban bourgeoisie, urban artisans, all poured into the Universities, along with substantial numbers from tenant and copyhold families in the villages. Everyone was included except the very poor (who probably embraced the majority of the population). Educational opportunities for them were confined to the bottom rung of the ladder by the usual factors: lack of strong motivation, and the need to make an early contribution to the family budget."¹¹¹

Before Stone's investigation of the educational upswing, Hexter had already shown that the aristocracy itself had only recently become part of the educated community, but had rapidly infiltrated the system. Until the sixteenth century, the education of the aristocracy had remained unchanged for centuries: it was deliberately anti-intellectual (or, in their terms, anti-clerkish), and was focussed mainly on music, hunting, warfare and fashion. Beginning sometime in Henry VIII's reign, the aristocracy began to educate their sons at grammar schools, the universities and the Inns. By the end of the sixteenth century, the aristocratic habit was to give their sons the very 'clerkish' or 'bookish' education - which at the start of the century they had for generations disdained. The reason, argued Hexter, was so as to better serve their prince and the commonwealth: to re-invent themselves (by education), and thus to maintain the importance of the class in governance - in fact rising to the challenge of the emergent bourgeoisie.¹¹² In particular:

There are two clichés concerning this era so much a part of our historical tradition that to cast doubt on them smacks of heresy. One of those clichés concerns the rising middle class climbing to power over the prostrate body of the degenerate nobles. The other tells us how royal absolutism transformed some feudal lords into feeble court butterflies and left the rest to grumble and rot in the country, secluded from any role in government. These two clichés are by no means irreconcilable with one another; on the contrary, they are usually served up well-blended in the same dish.... Yet how prostrate is a social group that, facing the challenge of new times, rises to meet it by engaging in an altogether new kind of activity - that of acquiring a kind of learning hitherto almost monopolised by clerics? The nobles who went chasing education with the ardour we have noted, can they be the same men as the nobles who, we are told, sat about in a somnolent stupor while brisk businessmen were snatching the seat of power out from under them? On the contrary is not their quest for learning a mark of the flexibility of Renaissance aristocrats, who, having lost the influence over the course of affairs that their bands of stout fellows had afforded them, were seeking, in a measure successfully, to exercise power in a changed world through new channels? ...A description of the relationship between the aristocracy and the new monarchs that seeks to do justice to the actual complexity of the situation is a delicate and difficult business, but even

¹¹¹ Stone, "The Educational Revolution In England, 1560-1640", p. 68.

¹¹² Hexter, J.H., "The Education of the Aristocracy in the Renaissance", *Journal of Modern History*, 22 (1950) 1-20.

this little study should have sufficed to show how inadequate to cope with it are banalities about Renaissance despots and a monstrous nobility, half court insect, half bucolic vegetable. Doubtless the nobility had its full share of such insectivora and flora, as what grouping of the sons of men does not; but the kind of education that Renaissance aristocrats were seeking and to some extent getting did not have as its object the multiplication of rural fainéants or courtly sycophants.¹¹³

For Weisinger this phenomenon, of itself, can be interpreted as one of the signs of "Renaissance".¹¹⁴

To a very large extent, therefore, it was at the Universities, and, especially, the Inns of Court where the intellectual activity of English humanism and the English "Renaissance" met with its concomitant social, economic and technological phenomena. The educational boom was linked through the technology of printing to both the experience and effects of rudimentary capitalism and the new spread of ideas. The existence of a specialist university in the Inns placed legal thought in a special position of connectivity in this context.

Conclusion

The resolution to this broad ranging contextualisation of late sixteenth and early seventeenth century English legal history starts with Maitland's idea of "Renaissance". In his classic Rede Lecture entitled "English Law and the Renaissance" of 1901 Maitland asked:

"How was it and why was it that in an age when old creeds of many kinds were crumbling and all knowledge was being transfigured, in an age which had revolted against its predecessor and was fully conscious of the revolt, one body of doctrine [the law] remained so intact...?"¹¹⁵

Maitland's admittedly tentative answer to this question was that in England, a national character, a "genius of a people", was embodied within the reports of indigenous law (starting with the Year Books) and a school of national law (collectively, the Inns) in a way which isolated but also protected England from the full effects of European humanism.¹¹⁶ However, having reached this point, the latter part of the Rede Lecture Maitland's "Renaissance" is revealed as quaint and parochial: "We were having a little Renaissance of our own".¹¹⁷

¹¹³ *id.*, pp.18-19. Cf. Caspari, *op. cit.*, pp. 132-156.

¹¹⁴ Weisinger, H., "Ideas of History during the Renaissance", in Kristeller and Wiener, *op. cit.* pp. 68-69.

¹¹⁵ Maitland, *English Law And The Renaissance*, pp. 4-5.

¹¹⁶ *id.*, p. 21 ff.

¹¹⁷ *id.*, p. 27.

Baker sees the underlying value of Maitland's monograph in its drawing scholarly attention away from an "internal changes in the common law" approach to legal history, and towards a wider, social context.¹¹⁸ Arguing along this line, Baker stresses the intellectual, as well as the social and economic, elements of legal change. His principal example is legislation: the *Statutes of Uses and Wills*:

"The thinking behind the legislation was part of a much broader movement, rooted in the rise of feoffments to uses in the previous century and the manifold legal problems which this occasioned."¹¹⁹

He gives other examples, the break with Rome and the development of contract and tort, to bolster his stance.¹²⁰ However Baker also recognises an equally viable approach through prosopography, which links with his intellectual scheme agreeably.¹²¹ In so doing, Baker returns to Maitland, and the idea that the Renaissance is a special period for English legal thinking, as indeed for all thinking in England and in Europe.¹²² For our purposes, the most interesting phenomenon discerned by Baker is a great similarity in the increasing "sophistication" of legal doctrine in both England and on the continent, albeit sourced from different foundations. Under the heading "*Doctrine In England*" the interpreter also emphasises the great importance of legal thought, outside the judgments of the courts, to be found in legal treatises and exercises stemming from the Inns. He compares them with the writings of the European jurists. The major difference noted is that in England *all* the lecturers were also practitioners.¹²³ In conclusion Baker says:

"England was sailing with the jurisprudential tide, not against it; and the tough law of the Inns of Court, however impervious to Roman influence, was indeed susceptible to new ways of thinking about the legal process and the jurisprudence of the courts."¹²⁴

Another important result of the period for historical and legal thought is identified by Ferguson: the birth of contextualism. It is manifest, in Ferguson's view, in a proclivity for "Renaissance" thinkers:

"...To look to history not solely for the universal and unchanging values it was supposed to teach by example, but also for a temporal perspective that would explain the relation the present bore to a past different from it yet related

¹¹⁸ Baker, "English Law And The Renaissance", p. 46.

¹¹⁹ *id.*, p. 47.

¹²⁰ *id.*, pp. 48-49.

¹²¹ *id.*, pp. 49-50.

¹²² *id.*, p. 50.

¹²³ *id.*, pp. 51-53.

¹²⁴ *id.*, p. 61.

to it in an ongoing process."¹²⁵

According to Ferguson, the intellectual temperament of "Renaissance" England was not genuinely favourable to any thoroughgoing and methodical appraisal of sanctified mythologies. Relativism also easily lent itself to a sceptical outlook on a present marked by rapid change. Characteristically "English" humanism led study towards matters of immediate topical and national interest. The appeal of Bodin's work was obvious. English scholarship, totally in line with the common law approach, can thus be characterised to a very large degree as a pragmatic response to the world of affairs.¹²⁶ On the other hand, the politics of the time were, as Pocock has demonstrated, bound up with ideologies which made certain historical claims.¹²⁷ The emergence of historical method had made a new kind of evidence available for political actors to utilise, and as the location of political conflict was often the courts increasingly some legal practitioners needed to be informed by detailed historical research. The English legal scholar was foremost a serious-minded gentleman-lawyer who was absorbed in the serviceable past: a past which could be demonstrated to be germane to the present, and recoverable through the study of subjects such as the emergence of institutions and laws.¹²⁸ But, in this sense, it is difficult to ignore Kelley's understanding of Maitland's "Renaissance":

"Maitland's observation was not only a lament about the state of historical studies, it was an indictment of one aspect of the whole common law tradition. The scholarly insularity he noted was not simply a reflection of the "splendid isolation" of the nineteenth century or the shrinking empire of the twentieth, it was an enduring feature, a conditioned reflex if not a national trait, of English scholarship. Though associated most often with Victorian Whiggery, this attitude obviously has deeper roots. It figured perhaps most conspicuously in times of crisis, notably during the wars against France at the end of the eighteenth century and during the constitutional conflicts of the seventeenth century."¹²⁹

There is much to be said for this longer-term perspective, especially in that its provision of an alternative view to incipient Whig *success*, namely incipient Whig *inadequacy*, acts as a useful corrective to teleology. In this light, the criticisms of Brooks and Sharpe, challenging Kelley's interpretation, basically as being overly gloomy, are interesting. They note that the so-called "Elizabethan" Society of Antiquaries represented a kind of zenith in scholarship, and particularly stress that in the 1590s Camden

¹²⁵ Ferguson, A.B., *Utter Antiquity: Perceptions Of Prehistory In Renaissance England*, Durham, Duke University Press, 1993, p 5. See also Schiffman, Z.S., "Renaissance Historicism Reconsidered", *History and Theory*, 24 (1985) 170-182 at 173 ff.

¹²⁶ Ferguson, *Utter Antiquity*, p 10.

¹²⁷ Pocock, *op. cit.* See also Fussner, *op. cit.*, pp. 49-53.

¹²⁸ Kendrick, T.D. *British Antiquity*, London, Methuen 1950, p. 114.

¹²⁹ Kelley, "History, English Law And The Renaissance", p. 25.

introduced other members of the Society to Europe. So, for Brooks and Sharpe, whilst the results of the Society's efforts were marked by nationalistic conceit, and certainly the past was regularly invoked in order to solve the problems of the present, the English legal scholars were, generally, also ready to admit that many "English" customs were in fact not "ancient" at all, but had actually been introduced by the Normans. It was thus only later that serious political division really "narrowed scholarship".¹³⁰ It would appear therefore, perhaps not surprisingly, that the English legal renaissance was limited both by its Englishness and its legality.

Paradoxically, the very fact that it is possible to either attribute so much significance to an English legal renaissance, or otherwise to denounce it as a false impression of contemporary and subsequent historiography, tends to suggest that the answers to the questions of whether or not the period under investigation can be considered a "renaissance", and whether the idea of "Renaissance" or the practice of periodisation are at all useful, should be tentative yeses. By positioning oneself in this way, it is then possible to gain an understanding of the impact of measurable socio-economic changes and the emerging method of humanism and to see how they related to the study and practice of law in England. This is, of course, is the internal logic of the discourse. It is therefore probably best to conclude by saying that the period was one of inherent change in terms of intellectual perspectives in the law as well as in other disciplines. But beyond that it is not really possible, or indeed helpful, to seek out any definitive truth upon which the facade can be mounted. This is the starting point realised by Rodgers:

"The legal Renaissance was an open-ended movement of ideas, rooted in medieval scholasticism, and on the other hand pointing the way to the Scientific Revolution of the late seventeenth and eighteenth centuries."¹³¹

¹³⁰ Brooks, C. and Sharpe, K., "Debate; History, English Law And The Renaissance", *Past And Present*, 72 (1976) 133-142 at 138 and 142.

¹³¹ Rodgers, *op. cit.*, p. 129.