# LITERACY AND THE COMMON LAW
## A Polytechnical Approach to the History of Writings of the Law

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This article proposes a 'polytechnical' approach to the history of writings of law, with specific attention to the written texts of the early common law. Such an approach is differentiated on the one hand from a philosophical anthropology — here associated with the work of Jack Goody — that imputes an inevitable 'rationalising' consequence to writing, both scribal and print. On the other hand, a polytechnical approach is differentiated also from a cultural historicism — here associated with the work of Peter Goodrich — that sets the history of law's writings into a dialectical and critical cast. The literate techniques of the English Jacobean lawyer Thomas Egerton are cited to illustrate why a polytechnical approach offers descriptive and historical advantages as a less normative approach to the history of legal writing systems.

> We must not be wise above what is written, or more precise than the lawyers of the age.[1]

## Approaches to Writings of the Law

In the first volume of *The Sources of Social Power*, Michael Mann itemises 28 'social inventions' that from pre-historical times to the seventeenth century 'have crucially increased power capacities'.[2] Among these inventions are written law codes, diffuse (or discursive) literacy and printing. This inclusion encourages exploration of the historical relations between literacy, both scribal and print, and the ordering, regularisation or 'codification' of law.

In this article, my specific concern is with approaches to the historical role of writing in the regularisation of the English common law. The scope is limited: to outline an approach to legal writings that rests neither on a philosophical anthropology treating human rationality as a unitary autonomous process of which rational attributes such as abstract thought are the necessary manifestation, nor on a cultural historicist mode of dialectical thinking about human development as the progressive resolution of opposing forces, the tensions between which are played out in the form of a dualistic cultural

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1 Maitland (1887)

2 Mann (1986), p 525.

history. These two lines of approach to the writing of the law — exemplified respectively in the work of Jack Goody[3] and Peter Goodrich[4] — are examined in the second and third sections.

In the fourth section, I present what I term a 'polytechnical' approach to the writing of the law. At issue are the variable relations of law and legal institutions to a cultural technology such as literacy, unevenly distributed across human populations and susceptible to a multiplicity of instrumental ends. There is no reason to anticipate that exploration of the cultural context of law implies either a reduction of law to one extra-legal determinant — be this divine will, humankind's social nature or the forces of the market — or a restoration of the legal enterprise to some moral foundation in a 'higher law' embodied in a history of culture. By way of material illustration for a polytechnical approach, I consider the writings of the early common law, together with a particular instance: the literate techniques employed by a Jacobean jurist, Thomas Egerton, later Lord Ellesmere and Chancellor under the Stuart king James VI and I. Egerton's work on legal texts is briefly presented in the fifth section.

## A Rationalist Anthropology of Writing and Law: Jack Goody

In effect, a polytechnical approach is already well and truly practised in existing legal historiography. Plucknett's *Early English Legal Literature*[5] and Abbott's *Law Reporting in England, 1485–1585*[6] examine aspects of legal writing and literate production that will be considered below. These historians do not approach their topics from a perspective that views writing as having inevitable consequences for law. Conversely, Goody's anthropological approach construes literacy precisely in an essential relation to an alleged human potential: the potential for rational abstract thought. This is to treat literacy as if it already contained within itself the seeds of all its consequences, whether a rationalisation of life in general or, more specifically, a definite historical and cultural process such as the ordering and regularisation of law.

My approach is more modest, but therefore not original. As well as respecting the established legal historiography, it also follows Natalie Zemon Davis's (1975) lesson that the history of literacy has no one inevitable direction, that people do not just read, and that access to literate culture does not necessarily transform lives for better or for worse.[7] Different 'milieux' — a key term for Davis — have given individuals and groups different practical reasons for acquiring or not acquiring literacy. Having acquired literacy, they have used it in different ways. In a given cultural milieu, literacy might enhance what could count as rationality and abstract thought, but it might equally well cement a belief in angels or establish a market in written

3 Goody (1986, 1987).

4 Goodrich (1986, 1987a, 1987b).

5 Plucknett (1958).

6 Abbott (1973).

7 See Davis (1975).

pornography. This is not to doubt that a technological and cultural factor such as the dissemination of printed law books was a key condition for the greater ordering of law. Rather, it is to suggest that ordering and regularisation were due to more circumstantial factors than some irresistible rationalising power intrinsic to writing and print.

To judge by his statement of intent in 'The Letter of the Law', Goody's project is comprehensive as far as law is concerned:

> to consider ... how far the concept of law itself is influenced by the presence of writing, then to go on to discuss its [writing's] relation to the logic (or rationality), the procedures, the institutions and the content of law.[8]

Goody's inquiry takes the form of a comparative cultural impact study of the effects of writing on law in a newly literate and an older literate society: the contemporary LoDagaa of Northern Ghana and Medieval Europe. For all the historical separation and geographical distance between these settings, these effects are approached as grounded in a general rational nature of man, taken to underlie the different contexts. Writing as information-storage thus 'enhances the potentialities of the human mind', whilst 'reading permits ... a greater degree of objectification which increases the analytical potential of the human mind'.[9] Conceptualised in these terms, the writing of the law can be connected up directly with this alleged potential for rationality and abstract thought: 'the creation of the legal text involves a formalisation (eg a numbering of the laws), a universalisation (eg an extension of their range by the elimination of particulars) and an ongoing rationalisation'.[10] Moreover, legal ordering can now be treated as a general effect of writing, and detached from the specific circumstances of different literate techniques and their variable historical distributions in different cultural contexts. In this way, despite recognising that English common law did not derive from Roman civil law, Goody can transcend the mere difference of jurisdictions in order to uncover a deeper process of literate 'codification' in both.[11] Even a specific category of legal text such as the written contract can thus be represented as a flow-on from the general developmental tendency or 'potential of the human mind' towards abstraction, a tendency of which the written contract becomes the paradigmatic manifestation:

> The importance of writing in the form of the contract, the elaboration of the notion [of contract] through a process of 'abstraction', through the

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8 Goody (1986), p 127.

9 Goody (1986), pp 136, 142.

10 Goody (1986), p 126.

11 See Goody (1986), p 130: 'there was the code based on the Roman model as distinct from the codification by statute of English law, both employing writing in the creation of a code, but in rather different ways'.

> making of 'an abstract' ... is clear and the case stands as a paradigm of the uses of literacy in social and intellectual development.[12]

For all its explanatory appeal, this bringing together of literacy and law on the ground of a human potential for abstraction and rational thinking leads to an evident ambivalence: on the one hand, law is represented as the effect of a general rationalising power of literacy; on the other, the law when written is taken as the particular cause, in its own right, of the rationalisation and objectification of social life, as the agency that displaces custom and oral memory.

In an earlier study on the consequences of literacy, co-authored with the literary historian Ian Watt, Goody embraced just such a general relation between the spread of literacy and the emergence of abstract rationality.[13] Goody is not alone, then, in holding to this strong anthropological approach. There is also the Jesuit scholar Walter Ong, who accords literacy the role of allowing a global human capacity for abstract thinking to be realised — albeit at the cost of withdrawing the literate individual from the immediacy of orality, dialogue and the communal 'lifeworld'.[14] We begin to see the moral — and perhaps the theological — dimension of this social anthropology. In subsequent work, Goody appeared to qualify his earlier position, now arguing that the effect of writing 'upon cultural systems was never everywhere the same. Rather it varies according to the social circumstances and the type of system employed for the visual representation of language.'[15] Indeed, there seems to be an explicit revision of the earlier approach:

> In any case, I do not have an overall theory that determines each particular hypothesis but simply a topic for enquiry, which seems to produce answers, perhaps partial, to intellectual questions. Watt and I considered calling our original article 'A Theory of Literacy', but rejected it in favour of 'consequences'. By 1968 I had preferred 'implications' for the first term and more recently 'writing' for the second.[16]

As if in direct disregard of his own disclaimer, just two pages earlier in this 1987 Preface to *The Interface between the Written and the Oral* Goody refers precisely to 'the inevitable consequence of literacy, its role as a reductive instrument'.[17] For the present article, it is not without relevance that

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12 Goody (1986), p 146.

13 Goody and Watt (1963). For a critical discussion of Goody's approach to literacy, see Street (1984), pp 44–65. For Street: 'The most influential presentation of the "strong" version of the "autonomous" model [of literacy] has probably been that of the social anthropologist, Jack Goody.' (p 44) According to Street, Goody's approach assumes 'inherent qualities of the written work'.

14 Ong (1982).

15 Goody (1987), p ix.

16 Goody (1987), p xvii.

17 Goody (1987), p xv.

in Goody's account the 'inevitable consequence' flows from a set of literate instruments — registration, mortgages, courts — that are legal in character, even if they are far from being 'inevitable' features of every human culture. Also significant is the fact that in *The Logic of Writing and the Organisation of Society* Goody's major source for evidence on the early common law is Clanchy's study of the transition from an oral form of memorisation to the keeping of written records.[18] Clanchy treats this transition in terms of an epochal shift from a state of orality to a state of literacy, from one mentality or collective consciousness to another. There is little sign here of Natalie Davis's capacity for discrimination between particular literate milieux.

In short, while welcoming Goody's formulation of notions such as 'technology of the intellect'[19] to describe literacy, both scribal and print, we might regret the social anthropologist's lack of attention to the specific agencies involved in the establishment of literate interests and the dissemination of literate capacities, not to mention the variability of literacy's effects. For the sake of argument, and notwithstanding Goody's 'retraction', I shall therefore refer to approaches 'in the style of Goody' as a generic tag for anthropological perspectives that attribute to writing an intrinsic rationalising power.

## A Cultural Dialectic of Writing and Law: Peter Goodrich

In 'Literacy and the Languages of the Early Common Law', Peter Goodrich offers an account of the discursive relations of the common law organised, as noted above, within a cultural-historicist frame and grounded in the notion of dialectical development. It is the classic approach of dialectical critique. At first sight, Goodrich avoids precisely the implication of a uniform 'consequence of literacy' that can mark a rationalist-anthropological approach in the style of Goody. In fact, in the case of the common law, writing produced anything but a law unified in its rational abstraction:

> Varied in its languages and frequently distrustful in its recourse to writing, the common law tradition is something of a limiting instance in the history of legal texts. Prone as it has been to recollecting a myth of spoken and accessible customary law and to berating the incursion of foreign scripts and alien law, the mixed character of English law is fertile ground, both in doctrine and practice, for the analysis of conflicting literacies and competing groups of literati.[20]

Such talk of linguistic variety and such excitement at conflicting literacies could have no place in the unifying approach to literacy as the pliant instrument of rationality and abstraction. Nor is this any loss, in Goodrich's estimation:

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18 See Clanchy (1979).

19 Goody (1986), p 167.

20 Goodrich (1987b), p 422.

> The writings of the common law tradition, in contrast to the civilian doctrine of *ratio scripta*, at least have the benefit of never having been uniformly presented as an unequivocal unity. Their history and reception was consistently one of conflict between different institutions of confinement and of opposed schools of interpretation. The languages of record were from the beginning politically charged while the production, storage, and utility of legal documentation was the object of continuing dispute.[21]

But this is only the pretext for a critique of a common law which, despite its energising conflicts, now falls under suspicion as itself an 'institution of confinement':

> There is, indeed, little evidence of legal writing being received as an unmitigated cultural good or as self-evidently rational, and it is in such a context that it seems more immediately appropriate to raise the questions not only of who wrote, but also of where such writings were located, by whom were they protected, and to what public did they speak?[22]

The questions could presage investigations of particular political and cultural circumstances. However, as things turn out, reconstruction of the contextual specifics of early common law writings is constrained by an organising historicism and its attendant image of an ideal cultural development.

Goodrich gives his game away by adopting as the standard of comparison for the common law tradition a mythic image of republican Rome where laws and other literary works are read to an assembled public 'neither exclusively Roman nor simply patrician' and where 'the life of the literary community as in any way an active institution was everywhere tied to its involvement in the form of both social and military policy'.[23] In a representation that would have pleased Marx, literary culture — and, with it, legal literacy — is here swept up into the material ground of social relations as law and community, state and society are reconciled in an exemplary unity of opposites. Yet the suspicion remains that this is more an aesthetic projection than a historical reconstruction. What Goodrich calls 'Rome' is simply another name for what Friedrich Schiller — at the end of the eighteenth century — called 'Greece'. In his *Letters on the Aesthetic Education of Man*, the German philosopher had already depicted the latter place as one where 'the senses and the mind had still no strictly separate individualities', unlike the 'modern' epoch, where this ideal harmonisation had been displaced by:

> an ingenious piece of machinery, in which out of the botching together of a vast number of lifeless parts, a collective mechanical life results.

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21 Goodrich (1987b), p 422.

22 Goodrich (1987b), p 422.

23 Goodrich (1987b), p 437.

> State and Church, law and customs, were now torn asunder; enjoyment was separated from labour, means from ends, effort from reward.[24]

Such terms, like those in Schiller's further characterisation of the modern age as one in which the 'lifeless letter takes the place of the living understanding', could perfectly well do duty for Goodrich's 'epoch' of the early common law.

Along with this Romantic vision and critique, Goodrich borrows from the literary theory of Mikhail Bakhtin the then widely talked-of notion of a 'dialogic imagination'.[25] This discursive entity is set in counter-position to a 'monologic' character imputed to the early common law (despite the latter's 'mixed character' and 'conflicting literacies'). The critical intention is now quite clear: to construct an exemplary contrast between the common law writings as an 'institution of confinement' and an ideal 'other' culture where:

> the written sign bore with it a more complex array of awe and play, of an exegesis but also a hedonism of discursive signification more closely allied to allegory and mask than to scholastic certainties or the grammarian's truth.[26]

With great constancy of critical purpose, Goodrich has continued since the 1980s to articulate an undiminished commitment to this aesthetic of play and pleasure. The continuity is clear in his recent eulogy of a rhetorical approach to law:

> A critical rhetoric of law, or in a more adventurous coinage a rhetoric that 'plays' the law, is precisely one that attends to 'the other scene' of legal communication and specifically to the plastic supports, medial relays, textual and visual effects of legal rule.[27]

The target remains the same: a univocal writing of law that has served to mask the written law's contingency as a sacral necessity, an icon inviting worship not critical inspection. Thus: 'The writing of law, whether in the form of an edict, a contract, a doom, or a code, turned the transitivity and ephemerality of speech into the intransitive, sepulchral, and sacred form of the written sign.'[28] In this account, the 'exorbitant status' accorded to law promulgated in written form becomes the pretext for the critic to manoeuvre legal institutions into his

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24 Schiller (1968), p 40. Schiller had previously characterised the modern age as that time when the 'governed cannot but receive with indifference the laws which are scarcely, if at all, directed to them as persons' (p 37).

25 Goodrich (1987b), pp 432, 436. Goodrich also sets himself under the sign of Derrida, although the dialectical critique demands that writing and speech be set in opposition — 'confinement in writing' as opposed to 'living concerns' (p 422) or 'bookish confinement' as opposed to 'a living discourse and a spoken truth'. This does not sit easily alongside Derrida's anti-logocentrism in *Of Grammatology*.

26 Goodrich (1987b), p 436.

27 Goodrich (2001b), p 424.

28 Goodrich (2001b), p 422.

sights as if they had the oppressive fixity of theologically revered dogmas.[29] Granted a dogmatics of law, the point nonetheless has to be made: historically speaking, Western law and religion have had quite different ends — the one pursuing peace and civil order in this life, the other salvation in the next. Many more have died for the cause of religion, many fewer for the cause of law.[30]

This important issue aside, the identification of legal writing systems as the core topic in the study of law's material history now provides the platform for a legal 'grammatology':

> The first lesson of legal grammatology is philological and historical. Grammatology attends to the *corpus iuris*, to the specific body or text of law, and examines it in the plenitude of its language and the complexity of its contexts or marks. The history of law is a history of writing — texts and other signs are all that remain. They are the law.[31]

But the story does not end here. Legal writing systems — the object of this specialist and scholarly grammatology — were and are never innocent of power play. In consequence, an ethically informed teaching should embody 'a recognition and responsibility for the part that lawyers play in the symbolic and real violence of law'.[32] Drawing now from Jacques Derrida rather than Bakhtin, and thus becoming more Talmudic than German-dialectical, Goodrich recommends not only the slow and infinitely patient decanting of the verbal texts that are law's history; he also more futuristically contemplates the scriptural transformation occasioned — as he sees it — by the 'videosphere'.[33] Today's new media mean 'a new law, a new mode of access to law, a new form of dissemination of law, and so necessarily a revision of the meaning of legality'.[34]

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29 See Goodrich (2001b), pp 423, 424: 'the dogmatic rhetoric of a truth or necessary logic of written law has borrowed significantly from theological dogmatics ... theology and jurisprudence should not be thought of as separate disciplines'.

30 See Saunders (1997).

31 Goodrich (2001a), p 2033.

32 Goodrich (2001a), p 2068.

33 The evidence of transformation is drawn from American media coverage of the Rodney King and OJ Simpson trials. The several 'trials of the century' thus 'raise first the simple need to acknowledge, at last, the advent of new forms of visibility and of the social presence of law ... The law has now become manifestly itinerant, but in a new sense — one in which its relays are as much the subject of media constraints, the genres of spectacle or viewing, as they are the obedient servants of the lawyer's message. Law as the interior narrative of an arcane professional understanding was now displaced by widely publicised dramas and by a vast network of commentary and relay sites. The law became instantaneous, and the public presence of law was taken out of the exclusive and solemn or learned hands of the lawyers and passed down, as with the Supreme Court judgment in *Bush v Gore*, to waiting reporters who would read and interpret it live on camera.' (Goodrich, 2001a, p. 2075, footnotes omitted)

34 Goodrich (2001a), p. 2078.

At all events, Goodrich in critical mode has been eager to score every possible point against the common lawyers and their writings. In his 1980s studies, the early common law is thus criticised not only for its formalism and linguistic closure, but also for an anti-popular alignment with royal power and church authorities:

> The royal law that became the early and curiously-named 'common' law was devised not by the express will of the people (*voluntas populi*) but by clerics employed by the crown and trained in canon and Roman law. Owing more to the Latin tradition and the role of the aristocracy than to vernacular traditions, the rapidly formalised writing of the early common law soon sedimented in ritual patterns, in verbose Latin statutes, Latin plea rolls, writs and formularies.[35]

The critique is extended beyond the hampering instance of law Latin to encompass all and every linguistic constraint. The lawyers drawing on Latinate literacy are identified with 'the grammarians who would translate the [Romans'] military subjection of the imperial territories into the requirements of a dominant discourse: the regularity and obedience demanded by fixed texts and invariant rules of spelling and syntax'[36] — as if there could be discourses without limits, without a measure of regularity or grammar, and at least some public authority.

Yet, dialectically speaking, if unitary closure was a failing, so too was its opposite: linguistic diversity. The common law writings are therefore also indicted as the mongrel product of a linguistic miscegenation involving Latin, French and English, resulting in a 'style [that] reflected all the pomposity and prolixity of a register which happily used synonyms drawn from three eras and communities of language where one could have served much better'.[37] Here the new alleged problem is a polydiscursivity that prevented any deployment for administrative purposes of twelfth and thirteenth century writings 'cross-cut by earlier traditions of symbolisation and reporting'.[38] The fourteenth and fifteenth century Year Book reports are likewise found deficient for being 'subject to no systematic tabulation or indexing'.[39] *Magna Carta* too is criticised, being 'treasured not as an administrative utility but as a benefit or concession, a magical relic belonging in a loose sense to the early museum, the sepulchral home in which the right of might was mysteriously transformed in the face of history, in legal title'.[40] Conversely, law Latin is denounced as a mode of writing 'geared to administrative and legal needs, a writing-system concerned with the profane requirements of organising and subjugating the

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35 Goodrich (1987b), p 431.

36 Goodrich (1987b), p 432.

37 Goodrich (1987b), p 435.

38 Goodrich (1987b), p 429. On the hybrid forms (and functions) of legal texts in this period, see Stock (1983), pp 34–87.

39 Goodrich (1987b), p 429.

40 Goodrich (1987b), p 439.

imperial territories'.[41] In other words, the early common law writings are depicted as, at one and the same time, insufficiently legal to be proper and authoritative law yet too legal to be properly dialogic and popular.

In relation to a legal field where literacy connoted literate competences in particular institutional offices, however, Goodrich is surely right to view such competences as 'too complex to be covered by a uniform concept of the ability to read and write, however such skills are defined'.[42] This is a crucial counter to overly unifying approaches in the style of Goody. On the other hand, the polemical imperative to tar all lawyers, then as now, with the same critical brush overrides recognition of the alterity of a medieval legal organisation that, at Goodrich's hands, is charged with the same shortcomings — formalism, doctrinalism, elitism, complicity with an oppressive establishment — that critical legal studies levels at law today. The Latinate literacy of the Anglo-Norman 'administrative' state becomes the target of that habitual critique directed at modern bureaucracy.[43] The early common law writings are thus said to have failed to realise a 'dialogic' potential, remaining instead the oppressive instrument of 'scholastics [who] increasingly reduced [it] to a set of technical rules, to authoritarian formal grammars of correct usage'.[44]

This is not the place to argue the case for correct usage, or even to ask what an absence of grammar would mean in practice. The important thing is to take seriously the varied elements of early common law literacy that Goodrich correctly signals. After all, while using a Latinate writing, the common lawyers nonetheless established a national territorial jurisdiction that a continental legal historian such as Raoul van Caenegem can find so distinctive in its long advance on developments in other European countries.[45] Other questions arise. If we accept Goodrich's equating of law Latin and law French as merely 'non-vernacular', how can we recognise the distinctiveness of a work such as *Britton*, the first book of the common law written not in Latin but in law French? It might be better to see law French as 'the vernacular of the courts',[46] and to note that *Britton* was for long a book in demand — indeed, one of the first law books to be put into print. If the Year Books had no

41 Goodrich (1987b), p 428.

42 Goodrich (1987b), p. 425.

43 One would want the critics of bureaucracy at least to note Max Weber's observation: 'Independent decision-making and imaginative organisational capabilities in matters of detail are usually also demanded of the bureaucrat, and very often expected even in large matters. The idea that the bureaucrat is absorbed in subaltern routine and that only the "director" performs the interesting, intellectually demanding tasks is a preconceived notion of the literati and only possible in a country that has no insight into the manner in which its affairs and the workings of its officialdom are conducted.' See Weber (1978), p 1404.

44 Goodrich (1987b), p 427.

45 Caenegem (1959), pp 358–59. Another continental historian of jurisprudence to make a similar comment is Stromholm (1985), p 182. On the 'juridical unification' of England as a state under the rule of law, see the French political philosopher, Blandine Kriegel (1995), pp 72–78.

46 The phrase is from Windeyer (1957), p 102.

systematic indexing or tabulation, was this not because these particular literate devices were as yet generally unavailable? Was there really, in twelfth and thirteenth century England, a *voluntas populi* organised in such a way that made 'the people' capable of discussing, let alone writing, practicable laws?

As for a 'vernacular' English legal writing, what could be written in 'English' at that time? What sort of literate apparatus — dictionaries, grammars, rhetorics, literary models and exempla, curricula and schooling — was needed for an English vernacular to emerge and be routinely used? In fact, where a lexical resource for vernacular literacies is concerned, it is only in the sixteenth century that 'crude and incomplete dictionaries [of English] begin to appear'.[47] These were in the form of glossaries of selected terms of interest. By 1565, there is Thomas Cooper's *Thesaurus Linguae Romanae et Britannicae*, itself in Latin, like other manuals for rhetorical inkhorns seeking to latinise English into an acceptable level of public eloquence. Robert Cawdrey's 1604 *A Table of Alphabetical English Words* is still essentially a glossary. For the 'first dictionary in anything like the proper sense of the word',[48] we have to wait for John Kersey's *Dictionarium Anglo-Britannicum, or A General English Dictionary* in 1708.[49]

If the early common law was being formalised in law Latin and law French, it was perhaps because even at the end of the fourteenth century, the East Midland dialect of English was still only 'an embryonic written standard'.[50] The development of an acknowledged written standard was contingent on the emergence, from the late 1300s, of a class of professional scribes working in secular scriptoria.[51] From around 1430, East Midland — a class dialect spoken in London by the merchant stratum — began to become the dominant non-Latin and non-French written form, being adopted in government and commercial documents. Yet as Leith stresses, the emergence of East Midland as a standard for writing in English did not imply linguistic homogeneity. A telling instance is that of Chaucer who, 'while [he] wrote in the east midland dialect as it was spoken in London ... was not yet writing in a *national* literary standard, since his contemporaries had their own local standards'.[52] Rather than an upsurge of a written vernacular sustained by a vivid popular speech, it was the development of printing and the book trade from the mid-1400s that contributed to establishing an a standard written English.

With regard to legal writing in England, there is also the factor of the common law's cultural setting. Legal literacy as a phenomenon of culture and a professional instrument was transmitted not in the theology-dominated

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47 Wrenn (1952), p 98.

48 Wrenn (1952), p 99.

49 Samuel Johnson's celebrated *Dictionary of the English Language* was completed in 1755. On the history of written English, see also Bolton (1972), pp 42–53, and Harris (1980).

50 Leith (1983), p 39.

51 Leith (1983), p 38.

52 Leith (1983), p 40.

universities, but in the London ambience of the Inns of Court.[53] Goodrich dismisses the latter with a derisive reference to 'the aristocratic parlour-game disputations of the Inns of Court'.[54] Yet, if they were centres only of such trivia, why did the legal formation of the common lawyers in the Inns of Court not succumb to Oxford and Cambridge theological scholasticism? We should at least entertain the possibility that the geographical separation of law from theology and speculative metaphysics might have had some advantages when it came to the training of lawyers for the courtroom, not clerics for the pulpit.

## Writings of the Early Common Law

For Goody, 'English Common Law was established in the thirteenth century by means of the determined application of writing to create a law common to the whole country, set above local customary differences'.[55] We could not ask for a clearer statement of the directive role of writing in the origins of the common law. However, Milsom's *Historical Foundations of the Common Law* proposes a history less unified by the writing factor and altogether less tidy:

> this [early common law] system was not devised as a national system of judicature. It was an accumulation of expedients, as more and more kinds of dispute were drawn first to a jurisdictional and then also to a geographical centre [London].[56]

Not only was the common law an 'accumulation of expedients'; in Milsom's account, it was also the 'by-product of an administrative triumph' — namely the progressive centralising of the English realm after the Conquest.[57] Plucknett too refers to the fact that, for most of its history, 'our law was a farrago of detailed instances which defied any scheme of arrangement'.[58] Nor was this untidiness a purely pre-literate state of things; the common law was being written, and it remained a farrago.

The celebrated book of the early common law, the late 1100s *Glanvill* or *Tractatus de legibus Angliae*, could sustain this description.[59] *Glanvill* is a register of writs. A writ, as is well known, was the official statement of a plaintiff's complaint, its object being to summon the defendant to appear

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53 Caenegem (1973), pp 88–89, refers to the Inns of Court as 'technical colleges where [the lawyers] learnt their craft like every medieval craftsman, in contact with practising masters, not in universities at the feet of scholars who were apt to lose themselves in controversy'. On the rhetorical elements of the curriculum in the Inns of Court, see Schoeck (1983).

54 Goodrich (1987b), p 435.

55 Goody (1986), p 130.

56 Milsom (1981), p 33. See also Caenegem (1959), p 349, referring to the various incidental circumstances and expediencies involved in the centralisation of jurisdictional powers in the royal courts.

57 Milsom (1981), p 11.

58 Plucknett (1958), p 19.

59 The text of *Glanvill* is translated in Hall (1965).

before the court at the place and on the date specified. From the time of Henry II, the clerks of the royal Chancery kept records of the writs issued. This was a system of precedents, not of judicial decisions but of the particular terms under which — and only under which — a form of action seeking redress for a given harm could be pursued by writ (*ubi remedium ibi ius*). Though based in written forms, regularisation of law in this style is circumstantial and piecemeal, in the sense that the standardising of certain writs left other wrongs without a corresponding remedy, no writ being appropriate to them. A component part of the Statute of Westminster (1285), *In consimili casu*, introduced a process for devising new writs to fit new expediencies, provided that the causes were in some way analogous to those covered by existing forms of action.

*Glanvill* records the writs that had multiplied as specific remedies were devised for specific harms. The *Tractatus* — which van Caenegem deems 'a great law book',[60] on account of its being a nation-wide survey compiled at a time when continental literature remained confined to merely regional customs or to the glossing of the texts of Roman and canon law — describes these forms of proceeding at common law, but without elaborating substantive principles for the accumulating mass of procedural detail. In the 'Prologue', *Glanvill* observes that this inscription of procedures of the writ procedures is 'not presumptuous to commit to writing, but rather very useful for most people and highly necessary to aid the memory'.[61] It is a finite administrative instrument whose end is practical. Yet certain material limits bear on the writing of the laws of England at the time:

> It is, however, utterly impossible for the laws and legal rules of the realm to be wholly reduced to writing in our time, both because of the ignorance of the scribes and because of the confused multiplicity of those same laws and rules.[62]

Such a statement conveys an acute impression of a common law writing inextricably caught up in historical circumstances. However, a century after *Glanvill* and at ten times the length, there is *Bracton* or the *De legibus et consuetudinibus Angliae*.[63] It is generally characterised as a Romano-canonist-inspired attempt to write a substantive survey of the laws of England, rather than a merely practical manual such as *Glanvill*. For Milsom, though, *Bracton* was the last attempt for some centuries to write a treatise of English law with this aim.[64] Van Caenegem, too, underscores the unrepresentative nature of *Bracton*, describing the book as 'an erratic block in the common law landscape'.[65] Yet, in at least one important respect, the treatise points towards the future ordering of English law around the written record of judicial

60 Caenegem (1959), p 358.

61 Hall (1965), p 3.

62 Hall (1965), p 3.

63 The text of *Bracton* is translated and edited by Thorne (1968–77).

64 Milsom (1981), p 41.

65 Caenegem (1973), p 91.

decisions and the emergence of the *stare decisis* doctrine. Whereas *Glanvill* cited just one decision of the courts, *Bracton* cites more than 500 cases selected from the Court Rolls. What is more, in *Bracton's Notebook* some 1500 cases are mentioned, many of which depict the disposition of common lawyers towards ordering matters on the basis of prior cases: '*omnes dixerunt quod nunquam viderunt tales casum*' (all said they had never seen such a case).[66]

The common law was being written, but not on the model of the systematic abstracting of principles as in *Bracton*. Instead, it was in the form of writings that responded to the finite, practical and non-philosophical — or anti-philosophical — interests of the common lawyers — men who thought of their law not as a system of general rules but as a repertoire of particular procedures required by the writ process. Van Caenegem indicates the historical contingency of what was a highly literate, yet unplanned and truly piecemeal ordering of law in writing:

> One by one the various pleas were admitted and by the time the ambition germinated to make [the writ process] a refuge for all, their procedures were already too well established to make away with them altogether and to replace them by a general unspecified access with uniform principles of pleading.[67]

Established practices were neither dislodged nor unified by some abstract force of literate rationality. Instead, they were protected by their technical specificity in a working apparatus where each action had its particular mode of summons, proof and treatment, reflecting 'the conceptions prevailing at that moment [of its recognition in the common law]' and varying 'according to the specific needs which had led to its creation'.[68]

Our historical attention should therefore focus on the administrative processes that involved writing the law as need arose, central among them being the registration of writs and the recording of decisions. It then becomes crucial to avoid projecting an anachronistic conceptual or material unity on to this literate regularisation of professional legal practices:

> As central justice became the normal thing, formularies began to appear. These have become compendiously known as the *Register of Writs*; but the definite article, implying that there were many copies of a single book having that as its title, misrepresents the original Latin. A lawyer, or a frequent litigant such as a religious house with great possessions, would have a *registrum*, a collection of forms. In the nature of the case the forms themselves would vary little. But there are also some recurring patterns of arrangement; and if we do wrong to think of 'a' book, we do right to think of a body of learning in constant professional use by clerks and lawyers, admitting of few doubts at any

66 Maitland (1887), p 242.

67 Caenegem (1959), pp 46–47.

68 Caenegem (1959), p 47.

> one time, and subject to traditions which may or may not reflect some physical album or file actually kept in the chancery, but probably do reflect, as it were, a juridical alphabet.[69]

The so-called 'Register' of writs was later printed as the *Novae Narrationes*.[70] The *Brevia Placitata*, a mid-thirteenth century formulary of writs and 'counts', was another such compendium.[71] Written in law French, it was probably used to instruct lawyers who were not Latinists, and who were not concerned with the cultural traditions to which Latin gave access.[72] Yet it was writings of this genre, not a systematic treatise in the style of *Bracton*, that proved the most influential in the English setting:

> *Brevia Placitata* and *Casus Placitorum* were already taking shape (if we can talk of shape in connection with such shapeless works); but was there a pessimist sufficiently despondent to foretell that the future of English law lay in those miserable little tracts?[73]

Indifferent to the possible despondency of high intellectuals, but attuned to meeting a practical need for ready access to effective forms of pleading in the courts, illustrative cases were gathered. This particular enterprise occasioned a certain literary ordering of the legal materials, but one that nonetheless remained strictly limited in scope:

> Real cases were collected. Not authoritative case like the [canon law] decretals, and not digested into a *corpus iuris* such as the canonists were building up, but just cases, almost any cases that turned up. Chance alone determined the contents of any particular collection and every vestige of a scientific approach to law disappeared.[74]

From these writings, and from the notebooks compiled by apprentice lawyers listening in the courts, emerged the Year Books, written in law French and published in a virtually complete series from 1289 to 1535. By late Tudor times, the Year Books had been displaced by the nominate reports of individual 'private' authors, judges and sergeants such as Dyer, Plowden and, of course, Coke.

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69 Milsom (1981), pp 37–38.

70 For a modern edition, see Shanks and Milsom (1963). As Windeyer (1957), p 53, observes, whilst *Glanvill* mentions some 40 writs, the *Register of Writs* achieved a length of 700 pages by the time printed editions appeared from 1531. This did not indicate a simple inflation in new writs, since the expansion was due largely to the subdivision of existing forms of action. Among the collections of writs published was the *Natura Brevium*. Fitzherbert's commentary and gloss took the title of *New Natura Brevium*, first printed in 1579.

71 See Turner and Plucknett (1951).

72 See Milsom (1981), pp 40–41.

73 Plucknett (1958), p 104.

74 Plucknett (1958), p 97.

Written in dialogue form (albeit not in the 'dialogic' mode as understood by Bahktin and Goodrich), the Year Book reports record the names of the lawyers, not the parties to the case. The writers do not rank cases according to their status as substantive law, nor — to us, most surprisingly — do they necessarily give the decisions of the court. The motive for their transcriptions was rather to capture the rhetorical cut and thrust of the speeches and the technical points of pleading. As a result, mere bundles of cases distinguished just by a date — the term and regnal year — were preferred to 'very choice selections of really important cases ... in which the cream of several years of reporting is presented in quite a small compass'.[75] Writing of this sort is far from constituting a systematic ordering of authoritative precedents illustrative of fundamental principles.[76]

The Year Book reports nonetheless demonstrate some interest in and respect for the relation of like cases (*semblables cas*) on the part of judges, as the translation of a 1454 report illustrates:

> And if we are to defer (*doner regard*) to the opinion of one or two Judges in opposition to so many judgments of various honourable Judges to the contrary, it will be strange, especially when we remember that the Judges who gave these decisions in ancient times were nearer to the making of the statute than we now are, and had more acquaintance with it (*notice dicel*).[77]

Having uttered this warning against heading in a new direction, the Bench could give specific advice as to how counsel might best proceed (but also with an eye to the pedagogical harm that might ensue from such a deviation):

> Sir, if this be now adjudged 'no plea', as you vainly contend, it will be a bad example (*mal ensample*) for the young apprentices who are keeping their terms; for they will never be willing to trust their books (*doner credence a leur livres*), if a judgment like this, which has been so many times laid down in their books, is now to be reversed (*ajuge le contrary*).[78]

Writing these reports of courtroom conduct might not serve to construct anything like a coherent or rational system of precedents, but it remains important to recognise that the early common law 'reporters' were participants in a definite organisation of professional interest. Thus:

> If they had been [looking for "authority" and substantive law, the reporters] would have cut short the debates, extracted the point of law,

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75 Plucknett (1958), pp 109–10.

76 The Year Books thus lacked standard referencing or format, having nothing of the modern organisation of headnote, statement of facts, argument of counsel and judgment.

77 Allen (1964), p 197.

78 Allen (1964), p 197.

> and concentrated upon the decision and the reasons for it ... The fact that they did not do so shows clearly that their minds were directed to other matters.[79]

These other matters were the pedagogical interests of those training in the specific techniques of legal rhetoric and procedural reasoning that were instituted in the *curia regis* and therefore inculcated in the educational programs of the Inns of Court. For the most part, legal historians now link Year Book report writing and dissemination to this training function.[80] For Abbott, however, the evidence that the Year Book era straddles the threshold between oral and written pleadings throws doubt upon the notion that these reports contributed nothing as sources of authority. In fact, once written pleadings were adopted (at the time of Edward IV), the Year Books aimed to emphasise more general issues of law alongside the rhetoric of Bar and Bench. Nonetheless, where teachers and taught were concerned, what mattered was to have a record and to gather a stock of what counted in the courts as effective pleading.

Provision of the stock, particularly in printed form, was a matter of commerce and the book trade. Again, while print permitted a much wider distribution of standard texts, it is not clear that the commercial interest of the printers was dependent on either a cultural logic of rationalisation or a critical dialectic of cultural development. Yet commercial calculation was a key factor in the ordering of legal materials into convenient forms. Noting that Fitzherbert's collection of abridged cases was selling well, the printer Richard Tottel:

> brought out a new edition with cross-references to his Year Books; then he reprinted many Year Books with cross-references to his Fitzherbert. No doubt he told the [legal] profession that a set of Tottels was indispensable. Everything conspires to suggest that for the first time since Edward II lawyers were beginning to take the Year Books seriously — thanks to the acumen of Tottel.[81]

Thus 'the later year books as they now exist are not the result of any organised production; the appearance of organisation is the achievement of the publishers and especially of Richard Tottell [*sic*]'.[82] Such were the contingencies that

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79 Plucknett (1958), p 102.

80 See, for example, Baker (1979, 1989). The particular role of the Year Books in early English legal education is linked to the training regimen that emerged in the Inns of Chancery by Simpson (1987). However, Ives (1975), p 149, argues that 'some comments in year books are probably educational in origin, but the majority seem to fit better the suggestion that they were made by lawyers in the course of their professional work. The year books were essentially for practitioners.'

81 Plucknett (1958), pp 112–13.

82 Ives (1975), p 143. Ives states his hypothesis as follows: 'that the reports in the later year books were initially collected by lawyers in a natural but haphazard part of their professional practice. They developed into the form we have now in this

made the history we are retracing. Nor was Tottel the only opportunistic, yet influential, book trade player on the legal scene, as shown by the example of the king's printer, Richard Pynson, and his successors:

> from the later fifteenth century the Yearbooks represented not so much an organised system of collecting cases as a prescribed style imposed by and for the printing trade in the person of Richard Pynson, the king's printer. It is all the more difficult, therefore, to ascribe the cessation of the Yearbooks flowing from the presses to a lack of interest among lawyers for fresh material. Inasmuch as they persisted in collecting recent cases, not only for their own but for the benefit of close colleagues, it is clear that they did so in order to inform themselves of recent interpretations of the law as pronounced by the judges in Westminster Hall. It appears that Pynson's successors simply found it too difficult or too expensive to collect and print up-to-date decisions in competition with the legal profession itself.[83]

The commercial distribution factor thus constituted one of several technical conditions for the ordering of legal materials. Good selling points, such as Tottel's standardising of pagination and convenient cross-referencing in his printed Year Books, must be taken into account. Hirsch generalises this point to argue that the artifacts of printing have never been separable from commercial calculation.[84] This might seem too commonplace an observation. However, it suggests we would do well to relate to their more local settings cultural developments that otherwise might seem to flow from an autonomous rationality or a dialectic of history.

## A Jacobean Lawyer's Literate Techniques

There is no denying the role of writing and printing as 'technologies of the intellect' that produced a range of cultural effects. The point is rather to recognise that these effects — which include the writings of the law — were themselves contingent on a further range of interests and circumstances. Such recognition underpins what I here term a 'polytechnical' approach — an approach that is willing to relate legal writing to more than one principle and to a variety of histories. Louis Knafla's study of Thomas Egerton, later Lord Ellesmere and Chancellor to James VI and I, is unconcerned with whether print literacy does or does not stand in some necessary relation to an alleged potential of the human mind for rational thought, or whether the writing of the early common law did or did not represent an instance of dialectical completion.[85] Knafla's Egerton is nonetheless a man of intense literate activity,

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same organic fashion as lawyers accumulated collections of the *erudition* of the courts. Texts became available for publication quite fortuitously and it is to the printing shop that we owe a good deal of the form we find characteristic of the species.' (p 146)

83 Abbott (1973), pp 59–60.

84 See Hirsch (1967).

85 Knafla (1977).

a polytechnic practitioner of the writing and rewriting of the laws. His literate enterprises extended from the compilation of the inevitable commonplace book to reworkings of the diverse legal sources — manuscript and print — available to him.

Egerton's written sources included Canute's laws, Norman customs and the oldest register of writs. In addition to *Bracton*, he had a Littleton (the *Tenures* was the first English law book to be printed), a Fitzherbert, Year Books and the 1556 edition of *Magna Carta cum aliis antiquis statutis*. Among his sixteenth century materials were a Dyer, a Plowden and Rastell's 1565 *Collection of All the Statutes*. All these texts would be profusely annotated in Egerton's concentrated scribal work on the printed editions. Certain lines of flow emerge in what was a purposive textual consolidation. From Fitzherbert, Egerton drew cases that he entered into his Littleton. At the same time, he annotated the Fitzherbert with materials drawn from the statute collections and the Year Books, and from Plowden. The Dyer he indexed for legal topics, signalling these by his system of referencing written at the head of the page; he also added what he judged still relevant from Littleton. The latter, with its many incorporations in particular from the annotated Fitzherbert, was effectively rewritten to become Egerton's first major comprehensive source for common law. Later, however, his rewritten Dyer acquired this status.

These literate techniques — Knafla itemises Egerton's modes of annotation, cross-referencing, abridging, classifying, indexing — were not unique to Egerton.[86] Centuries of scholasticism in the universities had laid down a whole repertoire of techniques for handling writing. Thus:

> Many methods applied in legal studies were the common methods of the early scholastic age: *distinctiones*, *definitiones*, *divisiones*, *quaestiones*, generalisation, classification, systematisation, all are the common intellectual tools of theologians, lawyers and others.[87]

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86 Stock (1983), pp 62–63 offers brief but suggestive comments on page layout techniques in scribal (pre-print) writing, including mention of the earliest alphabetically arranged reference work, the *Elementarium Doctrinae Erudimentum* of Papias, completed by 1053. Other techniques mentioned include indexing, running headlines, chapterisation and titling, cross-referencing and citation. On literate techniques in general, see Eisenstein (1984), pp 81–82.

87 Caenegem (1959), p 360. Account must be taken of the daunting work of the twelfth and thirteenth century glossators and commentators on the *Corpus Iuris*, for instance as recorded by Stromholm (1985), p 121: 'What the first three to five generations of European legal scholars actually did was to write commentaries on the *Corpus Iuris* texts, literally in the margin of these texts. ... A good illustration of the quantity of work thus performed is offered by a famous early manuscript in a library in Munich. On 416 pages, this manuscript contains not only the Justinian text but also between 30,000 and 40,000 items of commentary, ranging from very short notes to lengthy *exposés*. In some pages, the text is surrounded by close to 300 such notes. Another example, which conveys an idea of the amount of work performed by the glossators is the *arbor actionum* ('tree of actions') of the twelfth century law teacher Johannes Bassianus, who elaborated a table comprising — in

Unlike a Bologna glossator, of course, or an Oxford theologian, Egerton was no university scholastic bent on constructing an aesthetically pleasing grid of the legal universe for use in university disputations. Rather, Egerton's ends were practical and professional. Nonetheless, definite cultural circumstances bore on his literary ordering and reordering of his legal materials. These circumstances included the contemporary impact of continental humanistic jurisprudence and the imperative of statute reform. Knafla has explored the relations of humanism, *bonae literae* and the common law renaissance, drawing attention to Egerton's interests in history and classical sources in Aristotle, Cicero and Seneca, as well as his mentions of contemporary European figures such as Doneau and Bodin, together with 'the new methodology that led to the legal renaissance of Continental Europe in the sixteenth century'.[88] As to statute reform, Egerton himself wrote one of the first treatises on English statute law and the rules of statutory interpretation, here augmenting rather than adjusting the legal literature.[89] For Knafla, the treatise — described as a 'roughly hewn and precocious tract on the interpretation of statutes' — is 'perhaps the most important single document of [Egerton's] studies at the inns of court'.[90] Again, this is work that rests on an intensive literate activity:

> Egerton himself analysed and annotated profusely the statutes he studied in contemporary editions, abridged them into his commonplace book, and noted important ones in the flyleaves of his various legal texts.[91]

On this intensive written activity rested Egerton's call for review of statutes that he found 'obsolete', 'impossible', 'unprofitable', 'contrary', 'confused' or 'multiple'.

## Conclusion

Whether it is a matter of a particular literate technique deployed by an individual lawyer — such as Egerton's massive commonplace book, built up from 1570 to 1585, with 'more than five hundred topics listed in the table of

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two large handwritten pages — a network, or rather a kind of 'chessboard', with 180 boxes. Using a system of symbols of his own invention (based on the letters 'a'–'m', to which were added one to four dots in different positions and combinations), Johannes describes 169 different forms of action known to Roman law; modern scholars have made the computation that if the information thus pressed into the two pages were written out in full, the system of symbols would correspond to some two thousand sentences, many of them quite complicated.' On the glossators, see Stein (1999), pp 45–49.

88 Knafla (1977), p 40. On the importance of the historical dimension in the understanding of law, see Kelley (1970); also Kelley (1991), pp 66–94.

89 See Thorne (1942).

90 Knafla (1977), p 46.

91 Knafla (1977), pp 47–48.

contents' although its 396 folios were filled with only a quarter of these topics being pursued[92] — or a more generalised commercial practice in the early book trade, the point is not to deny the multiple effectivities of writing the law. To the contrary, we have recorded sufficient evidence to establish the importance of legal writing as a phenomenon of culture ... but a phenomenon to be described in its polytechnical particulars.

Conversely, in his 1963 study co-authored with Ian Watt, Jack Goody characterised alphabetical writing in terms of one of its effects, only then to regret that something more profound or even transformative had not occurred. Goody regretted that there was:

> a strong tendency for writing to be used as a help to memory rather than an autonomous and independent mode of communication; and under such conditions its influence tended towards the consolidation of the existing cultural tradition.[93]

To use writing as an *aide-mémoire* is here deemed to restrict an autonomous potential of the human mind to a merely technical or institutional purpose, thus failing to realise that deeper potential. It is a structure of argument similar to that of moral philosophers who pronounce their dissatisfaction with peaceful coexistence established as a *modus vivendi* by legal coercion rather than for the 'right' reason, namely because a transcendental moral principle has not been realised. For Goody, the implication is that — ideally — alphabetic literacy should impose no arbitrary technical limit upon a transparent communication of everything one thinks and has to say.[94] Something like this thesis would seem necessary for the style of anthropological argument that relates a deployment of literacy — scribal and then print — to the realisation of a universal potential for abstract thought and rationality.

For theses in the dialectical-critical style of Peter Goodrich, however, such rational abstraction signifies a partial failure, not the completing of a cultural development via a dialectic that will see the counterbalancing of technical reason by humanity's affective resources — at least until the pendulum has to swing back. Because the writing of the early common law was slave to such reason, that writing is criticised as monologue, not dialogue. It is 'exegesis', but not 'hedonism'.

A polytechnical approach to law and writing, as outlined in the present article, can stand alongside the different paths so clearly laid by Goody and Goodrich. It is satisfied with describing the various orderings and regularisations that have been set in place by the application of a repertoire of

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92 Knafla (1977), p 43.

93 Goody and Watt (1963), pp 316–17.

94 For all its plausibility, Goody's point should be confronted with Roy Harris's polemic against the treatment accorded by modern linguistics to the origins of alphabetic writing. Refusing writing the status of a natural representation of speech, Harris insists that linguists err in 'misconstruing a complex of pedagogically inculcated practices as evidence of a representational relation between writing and speech'. See Harris (1986), p 108.

literate techniques — scribal and print — to legal materials. A polytechnical approach might seem to stop short of the deeper claims that a Goody and a Goodrich make, in the anthropological and the critical modes respectively. But the evidence seems rather to suggest that the legal sector of Western literate culture, as constituted in the writings of the early common law, is too 'polytechnical' to be usefully treated as the consequence of one underlying process of the human mind, or usefully analysed in terms of a dialectical model of failed (or successful) culture.

## References

LW Abbott (1973) *Law Reporting in England, 1485–1585*, Athlone Press.

Carleton Kemp Allen (1964) *Law in the Making*, Clarendon Press.

John Hamilton Baker (1979) *An Introduction to English Legal History*, Butterworths.

John Hamilton Baker (1989) 'John Bryt's Reports (1410–1411) and the Year Books of Henry IV' 48 *Cambridge Law Journal* 98.

Whitney French Bolton (1972) *A Short History of Literary English*, Edward Arnold.

Raoul Charles van Caenegem (1959) *Royal Writs in England from the Conquest to Glanvill*, B Quaritch.

Raoul Charles van Caenegem (1973) *The Birth of the English Common Law*, Cambridge University Press.

MT Clanchy (1979) *From Memory to Written Record: England from 1066–1307*, Blackwell.

Natalie Zemon Davis (1975) 'Printing and the People' in *Society and Culture in Early Modern France. Eight Essays*, Stanford University Press.

Elizabeth Eisenstein (1984) *The Printing Press in Early Modern Europe*, Cambridge University Press.

Jack Goody (1986) 'The Letter of the Law' in *The Logic of Writing and the Organisation of Society*, Cambridge University Press.

Jack Goody (1987) *The Interface between the Written and the Oral*, Cambridge University Press.

Jack Goody and Ian Watt (1963) 'The Consequences of Literacy' 5 *Comparative Studies in Society and History* 304.

Peter Goodrich (1986) *Reading the Law. A Critical Introduction to Legal Method and Techniques*, Basil Blackwell.

Peter Goodrich (1987a) *Legal Discourse. Studies in Linguistics, Rhetoric and Legal Analysis*, Macmillan.

Peter Goodrich (1987b) 'Literacy and the Languages of the early Common Law' 14 *Journal of Law and Society* 422.

Peter Goodrich (2001a) 'Europe in America; Grammatology, Legal Studies, and the Politics of Transmission' 101 *Columbia Law Review* 2033.

Peter Goodrich (2001b) 'Law' in TO Sloane (ed) *Encyclopedia of Rhetoric*, Oxford University Press.

GDG Hall (ed) (1965) *The Treatise on the Laws and Customs of England Commonly Called Glanvill*, Nelson.

Roy Harris (1980) *The Language Makers*, Duckworth.

Rudolf Hirsch (1967) *Printing, Selling and Reading, 1450–1550*, Harrassowitz.

Eric William Ives (1975) 'The Origins of the Later Year Books' in D Jenkins (ed), *Legal History Studies 1972*, University of Wales Press.

Donald R Kelley (1970) 'The Rise of legal History in the Renaissance' 9 *History and Theory* 174.

Donald Kelley (1991) 'Law' in JH Burns and M Goldie (eds) *The Cambridge History of Political Thought*, Cambridge University Press.

Louis A Knafla (1977) *Law and Politics in Jacobean England. The Tracts of Lord Chancellor Ellesmere*, Cambridge University Press.

Blandine Kriegel (1995) *The State and the Rule of Law*, Princeton University Press.

D Leith (1983) *A Social History of English*, Routledge & Kegan Paul.

Frederik W Maitland (ed) (1887) *Bracton's Notebook: A Collection of the Cases Decided in the King's Courts During the Reign of Henry the Third, Annotated by a Lawyer of that Time, Seemingly by Henry of Bratton*, CJ Clay & Sons.

Michael Mann (1986) *The Sources of Social Power: Volume 1. A History of Power from the Beginning to AD 1760*, Cambridge University Press.

Stroud Francis Charles Milsom (1981) *Historical Foundations of the Common Law*, Butterworths.

Walter Ong (1982) *Orality and Literacy: the Technologizing of the Word*, Methuen.

Theodore Frank Thomas Plucknett (1958) *Early English Legal Literature*, Cambridge University Press.

David Saunders (1997) *Anti-lawyers. Religion and the Critics of Law and State*, Routledge.

Friedrick Schiller (1968) *On the Aesthetic Education of Man*, Clarendon Press.

Richard J Schoeck (1983) 'Lawyers and Rhetoric in Sixteenth-Century England' in JJ Murphy (ed), *Renaissance Eloquence. Studies in the Theory and Practice of Renaissance Rhetoric*, University of California Press.

Edward Shanks and Stroud Francis Charles Milsom (eds) (1963) *Novae Narrationes*, B Quaritch.

Alfred William Brian Simpson (1987) 'The Source and Function of the Later Year Books' in *Legal Theory and Legal History. Essays on the Common Law*, Hambledon Press.

Peter Stein (1999) *Roman Law in European History*, Cambridge University Press.

Brian Stock (1983) *The Implications of Literacy. Written Language and Models of Interpretation in the Eleventh and Twelfth Centuries*, Princeton University Press.

Brian Street (1984) *Literacy in Theory and Practice*, Cambridge University Press.

Stig Stromholm (1985) *A Short History of Legal Thinking in the West*, Norstedts.

Samuel E Thorne (ed) (1942) *A Discourse upon the Exposicion and Understandings of Statutes, with Sir Thomas Egerton's Additions*, Huntington Library Publications.

Samuel E Thorne (1968–77) *Bracton on the Laws and Customs of England*, 4 vols, Harvard University Press.

GJ Turner and Theodore Frank Thomas Plucknett (eds) (1951) *Brevia Placitata*, B Quaritch.

Max Weber (1978) *Economy and Society*, University of California Press.

William John Victor Windeyer (1957) *Lectures on Legal History*, Law Book Co.

Charles Leslie Wrenn (1952) *The English Language*, Methuen.