

## Medieval Origins of Modern Law Reporting

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## THE MEDIEVAL ORIGINS OF MODERN LAW REPORTING

*Frank Pegues\**

American lawyers and law students of today are indebted, perhaps unwittingly, to an unknown group of men who lived in the last decades of the thirteenth century. For it was some seven hundred years ago that the first law reports appeared for the use of Bench and Bar in what was then a rapidly developing system of English common law. Although the first reports were compiled exclusively for the training of the profession, they assumed an added and vital importance within two centuries when the common law itself took on the aspects of a system of case law, and law reports, in such a system, were and still are indispensable. As a result of this unique development, the shelves of law libraries, today in the mid-twentieth century, are filled with varieties of modern law reports—and with reports which are not so modern. These reports form the bulwark of the majestic structure which we call the Anglo-American legal system. I must say at the outset that I claim no originality for many of the remarks which follow. A host of fine scholars and lawyers have devoted many years of their lives to the examination and attempted solution of what has proved to be a very thorny historical problem. Having studied the subject for some time, I am convinced that the origin of law reporting is perhaps the most fascinating—and the most bedeviling—problem in Anglo-American legal history.

If we look to the latter part of the twelfth century, we may notice certain developments in the English judicial system which play an important part in the eventual appearance of law reports a hundred years later. For almost a century after the Norman Conquest the administration of justice in England remained essentially what it would be under any feudal system. The manorial courts attended to the justice of the unfree population; the county and hundred courts sufficed for the suits of the ordinary freeholders. The sub-infeudated vassals

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\* See Contributors' section, Masthead, p. 541, for biographical data.

could seek their legal remedies in the baronial courts of their overlords, and the barons and earls were tried by themselves in the king's court—the *curia regis*. Then, during the reign of Henry II (1154-1189), important innovations appeared in judicial administration, and these innovations were made by the king himself. In 1164, 1166, and 1176, Henry extended legal remedies, which had hitherto been granted to a select and favored few, to all freeholders in his kingdom. With the institution of the assizes of *novel disseisin*, *mort d'ancestor*, *utrum* and *darrein presentment*, the ordinary freeholder was able to recover, through the intervention of the king and of the sworn inquest, land of which he had been wrongfully dispossessed. There was no mention of ownership, for ownership was not considered. The new assizes played to the concept of possession; and possession was the dominant form of land tenure.<sup>1</sup>

These new legal remedies constituted an invasion of the jurisdiction of the local and church courts. A freeholder was quite willing to purchase from the king's chancery any one of these writs which pertained to his legal situation, for the justice administered in such cases was royal justice, backed by the power, prestige and objectivity of the king's high position. The English king, on his part, was ready and able to increase the number of writs, thereby augmenting the legal actions which fell under his judicial supervision. The sale of writs constituted for him a new and lucrative source of revenue. But he found, in the process, that he was obliged to expand the personnel of his judicial department. Thus it is during the last years of the twelfth century that we see clearly the appearance of a group of men who are called *justiciarii*. These judges will play the dominant role in English law for the next hundred years; their number will increase as royal writs and litigation increase.

While we can say that the English Bench is clearly in evidence before 1200, we cannot say the same for the Bar. In fact, the origins of the English common lawyer are rather obscure, and we do not yet possess a comprehensive history of the English legal profession. The term "legal profession" must be used in reference to the temporal legal profession as distinct from the legists and decretists. Oxford and Cambridge produced civilians and canonists in the twelfth and thirteenth

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<sup>1</sup> STEPHENSON AND MARCHAM, SOURCES OF ENGLISH CONSTITUTIONAL HISTORY 73-82 (1937), contains the documents which originated these assizes. The Constitutions of Clarendon, Art. 1 (1164), mentions the idea of *darrein presentment*; *id.* Art. 9 explains the assize *utrum*. The Assize of Northampton, Art. 4 (1176), contains the provisions of *mort d'ancestor*, and Art. 5, refers to *novel disseisin*.

centuries, and something is known of these men, of their courses of study in the law which had been taught a hundred years before at Bologna and had been brought by Italian lawyers to England.<sup>2</sup> But common law was not, and has never been, taught at Oxford or Cambridge, and the English common lawyer begins to emerge from the shadows only in the second half of the thirteenth century.

In the meantime we do see an abundance of *attornati* or attorneys.<sup>3</sup> But these men do not constitute a profession. Englishmen had, for a long time, been permitted to appoint persons to represent them in court, to attend to their litigation, and to administer their legal affairs. But they did not draw these attorneys from a trained profession, for there was no such profession. Rather did they appoint their brothers, uncles, stewards, bailiffs and the like to perform such tasks. For in the beginning, English freemen were presumed to know enough about the law of the land to plead their own cases and attend to their own legal affairs in person. If they were unable through the press of business or illness to appear in court, they were then permitted by the king to appoint someone in their stead. But let us grant once and for all that the English *attornatus* in 1180, in 1200, in 1240 ordinarily knew no more about the law than the person—usually his relative—whom he represented.

On the other hand, the English kings and, quite often, the more important members of the feudal nobility needed trained lawyers to represent them at the papal court, in the interminable litigation with the English church, and at the courts of the German and French kings and various other continental princes. But the law employed in these places was not English common law; it was canon and civil law. And for

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<sup>2</sup> See Richardson, *Oxford Law School under John*, 57 L.Q. REV. 319 (1941). Richardson discovered the pertinent material in a manuscript (No. 15) of the Walters Art Gallery in Baltimore. The manuscript, which is No. 68 in de Ricci, is a copy of the Gospels. Some blank leaves, following St. Matthew, were filled in by a scribe who was writing at Oxford about 1200. The short treatise deals with Roman law. See also MAITLAND AND MONTAGUE, *A SKETCH OF ENGLISH LEGAL HISTORY* 93 (Colby ed. 1915).

<sup>3</sup> COHEN, *A HISTORY OF THE ENGLISH BAR AND ATTORNATUS TO 1450* (1929) is confusing for it seems to mistake the early attorney for the later serjeant-at-law. Cohen's book is an industrious piece of work, but quite misleading and uncritical in many respects. As to the later serjeants-at-law employed by the king, I *SELECT CASES IN THE COURT OF KING'S BENCH* cix (Selden Soc. 1936) finds payments made to no man for representing the king in the courts before 1290. This job rested with one of the judges of the court. For examples of the use of attorneys see II *BRACTON'S NOTE BOOK* case 260. "Rogerus de Monte alto clamat versus Philippus de Orreby qui venit per attornatum et dicit . . .", and *id.* case 261, "Et comes venit per attornatum et dicit." Both cases are from Trinity term, 1227.

these cases lawyers trained in the canon and civil law were ready to be employed by anyone who so desired and who was able to employ them.<sup>4</sup> The tribunals of the church had known, for a long time, both the *procurator* who represented his client's person and attended to his cause, and the *advocatus* who pleaded on behalf of his client. In the secular legal profession of England the *attornatus*, through still untrained, approximated the ecclesiastical *procurator*, and the *advocatus* had for his secular counterpart the pleader or *narrator*. This last person is the man we are really seeking, for he becomes, at the end of the thirteenth century, the serjeant-at-law, and is therefore the direct ancestor of our present-day Anglo-American lawyer. But much happens in English law between 1180 and 1290, and, while still waiting for our serjeant-at-law to appear, we will profit from observing the interim development.

Only a few years after the new assizes had been instituted and the jurisdiction of royal justice enormously expanded, we find the first evidence of the influence of the innovations upon legal literature. Ranulf Glanvill, justiciar during the later years of Henry II, produced the first English law tract entitled *De Legibus et Consuetudinibus Regni Anglie*.<sup>5</sup> And eloquent testimony it is. Since the writ initiated and moved the assize, it soon came to be the key to the entire proceedings. Glanvill's law tract then is essentially a book of writs; and it is convincing evidence of the rapid increase, in less than twenty years, of legal remedies sponsored by the king. Seventy-six writs in his tract attest to the expansion of royal justice. The contents of Glanvill's book show that the English king was invading the sanctity of the county, baronial and even the manorial courts. And with this enormous and rapid spread of the king's legal jurisdiction, we must realize that, already in twelfth-century England, royal justice was becoming popular justice. But what group of men had the most urgent need for a knowledge of current writs? The answer is an easy one, for the judges who tried the cases—whether they sat at Westminster or traveled on eyre through the counties—would have to be best acquainted with the writs which initiated actions before them. More than this, the litigants would like to know which writs were current and how they could be used. But not all men who came into

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<sup>4</sup> See the instance of Edward I employing a famous Italian lawyer in CALENDAR OF PATENT ROLLS, 1281-1342, 364. The English king borrowed 200 marks from the merchants of Pistoia to pay "Sir Francis Accursi, professor of laws, for arrears of his yearly fee of 40 marks."

<sup>5</sup> The modern edition is by George E. Woodbine, *RANULF GLANVILL, DE LEGIBUS ET CONSUEUDINIBUS REGNI ANGLIE* (Woodbine ed. 1932).

court would be able to possess a copy of all the writs. So only those persons who used the king's courts most often, by virtue of their extensive land holdings, would have a great and practical need for a knowledge of writs. The judges would, first and last, need to know most about the writs for they were the persons ultimately responsible for telling the litigant that his writ was or was not valid for the suit which he proposed to bring and because it gave them authority to try the particular case.

During the early years of the thirteenth century, we find evidence of the importance of the writ from a different quarter. The *Curia Regis* rolls were the official court record of legal proceedings. The rolls are extant from the reign of Richard I and are full enough by 1215 to give us a quite clear picture of business in the English courts. We see the judges, the litigants and the prominence of the writs. From the year 1219, for instance, comes the record portraying the assize *utrum*; whether a contested piece of land lies in free alms or in lay fee. The defendant maintained that he ought not to answer to the writ because it stated that the plaintiff—the abbot of Holcham—asserted that the land in question was free alms belonging to a half of his church, and he did not hold the entire church. The court then decided that the defendant should go *sine die* and the abbot was amerced for bringing a faulty writ and pleading wrongly.<sup>6</sup> The court records which extend throughout the thirteenth century merely serve to reinforce this fact—that a litigant must be very careful to choose the right writ and, having chosen it, be able to plead it correctly in court before his adversary. I must not overplay the point. Enough has been said to show that English law and the judges, by 1215, bore the imprint of Henry II's legal innovations; and moreover that this imprint was to be felt strongly in the development of the legal profession and legal literature in the century which lay ahead.

Between 1215 and 1260 we have a great deal of information about the men who administered English law. The excellent series of rolls—patent, close, *curia regis*, *liberate* and others—deal with every facet of English government, and we are able to determine from them the names of the judges, their salaries, tenure of office, perambulations, land holdings, and many other facts. The justices are usually either lay nobles or clerics. The king probably chose the lay nobles because they were *ipso facto* acquainted with English law. They had their own

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<sup>6</sup> This case is contained in VIII CURIA REGIS ROLLS 68 (1938). It is reproduced word for word in II BRACTON'S NOTE BOOK Case 55.

manorial courts and quite often baronial courts. The clerics were probably selected to be judges because they presumably had some education and were literate. But where would they obtain the training necessary to qualify them to administer the increasingly complex common law? Students of this problem have known for quite a while that the justices—lay or cleric—had clerical assistants with them in court. The main duty of these clerical assistants was to write down in court the proceedings which occurred there. So they came to be responsible for the official court record—the Curia Regis rolls—which we have already mentioned. In doing this sort of work, they could not help but become acquainted with the administration of law. Through being present in court, they listened to all the litigation and read all the writs which came before their masters. In other words, they learned the law and its administration through the simple process of apprenticeship. They kept the court records in their possession and could study the cases outside of court. Then, some day after long years of apprenticeship, the king might recognize their long service and high ability by making them judges.

Several of these judges stand out from the records which tell us so much about them. Martin Pateshull served as the clerk of a famous lay judge, Simon Pateshull, between 1202 and 1218. Then Martin became a judge in 1218 and served until 1227. We have reason to believe that William Raleigh was Martin's clerk, and William began his career as a justice in 1227. A certain scholarly tradition tells us that Henry Bracton was William's clerk and was promoted to the Bench about 1245.<sup>7</sup> There is, in fact, a whole procession of thirteenth century judges who learned their trade by first apprenticing themselves in the capacity of clerical assistants to other judges.

Henry Bracton was by far the most illustrious of these justices. Coming to the Bench in 1245, he served as justice on eyre, judge of the Common Pleas at Westminster and perhaps as chief justice until his death which occurred about 1260. But Bracton is most noted for his monumental treatise on English law which he wrote during his career on the Bench. The generally accepted date for Bracton's *De Legibus et Consuetudinibus Anglie* is about 1258.<sup>8</sup> The first part of the treatise

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<sup>7</sup> I POLLOCK AND MAITLAND, HISTORY OF ENGLISH LAW 206 (1911); KANTOROWICZ, BRACONIAN PROBLEMS 20 (1941).

<sup>8</sup> The first modern edition of Bracton was that by Sir Travers Twiss in six volumes (Rolls Series, 1878-1883). This edition was a careless and faulty piece of work. See the comments of Paul Vinogradoff on this edition in 1 L.Q. REV. 190 (1885). A new edition was undertaken in 1915 by Woodbine, of which three volumes have been published by the Yale University Press.

is concerned with substantive law: the *De rerum divisione* and the *De acquirendo rerum dominis*. It is here that we find the influence of Roman law at work upon Bracton. When he speaks of the division of things and the acquiring of dominion over things, he is betraying the influence of the Italian canonists and civilians. But in the last three books—when he discusses pleas, essoins, defaults, warranty and exceptions—he is treating specifically of English common law. This last portion of the *De Legibus* set the tenor of later law tracts. I mention Bracton and his *De Legibus* because his work possesses two important aspects related to the problem of law reporting. One aspect consists of the manner in which the *De Legibus* was composed; the other is a matter of its influence on later law tracts.

Bracton probably had copies of some two thousand cases beside him when he wrote the *De Legibus*—cases which he himself had compiled from the plea rolls during his career as a clerk and justice. These cases make up *Bracton's Note Book*.<sup>9</sup> The cases contained in the *Note Book* come, for the most part, from the first twenty years of Henry III's reign, 1216-1236. Bracton had in his possession over a number of years the court rolls from the time of Simon and Martin Pateshull and William Raleigh. While holding these official court records in his possession, he made transcripts of many of the cases contained in the rolls for his private use. His "private use" proved to be the composition of the *De Legibus*. When he came to write his famous treatise, he used the cases in his *Note Book* to illustrate his discussion of English law.

One case in the *Note Book* treats of *quo warranto* proceedings.<sup>10</sup> Andrew Peveral was summoned to appear before the justices at Westminster to tell the king by what warrant he held the manor of Neketon which belonged to the royal demesne. Andrew did not come to court and the sheriff returned a *non fuit inventus*, after which the court ordered the manor to be seized and issued a second summons to Andrew to appear before the king at a later date. Bracton may have copied the case from the court rolls because it would later aid him in treating *quo warranto* and defaults in the *De Legibus*. Thus did he use his *Note*

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<sup>9</sup> There was a time when it was not clear what they should be called. Vinogradoff, who came to England in 1884 seeking materials for medieval history, came across MS. Additional 12,269 at the British Museum and identified it as BRACTON'S NOTE BOOK. See, *A Note Book of Bracton* in I COLLECTED PAPERS OF PAUL VINOGRADOFF (1928). Within three years Maitland had found nineteen manuscripts of the work and knew of twelve others. He edited and published the *Note Book* in three volumes in 1887. He dated the compilation as between 1240-1256.

<sup>10</sup> II BRACTON'S NOTE BOOK Case 268.



*Book* in composing his tract. Maitland found that, of five hundred cases cited in the *De Legibus*, two hundred came from the *Note Book*. Not until 1258 was the famous judge bidden to surrender the rolls which were in his possession; he had probably finished the main part of his text two or three years before that date. But the importance of Bracton's *Note Book* did not end with the completion of his treatise. Clerks and other men who aspired to the Bench copied and recopied the *Note Book* because, not having continuous access to the court records, they wanted samples of authentic cases for self-instruction. Some thirty-one manuscripts of the *Note Book* have survived. On the other hand, the *De Legibus* itself constituted an invaluable source of instruction for the future legal profession and so it, too, was copied. By 1260, therefore, would-be lawyers and judges, still lacking any law school in which they could prepare for the profession, had at their finger tips two valuable books with which they could instruct themselves in the principles of English law.<sup>11</sup>

Forty years separate the appearance of Bracton's treatise and the close of the century—a period which produced practically the entire corpus of literature on medieval English jurisprudence—with the exception of the law reports. It was also during this period that the English common lawyer appeared and, along with him, the law reports. As to legal literature, this forty-year expanse of time produced about a dozen law tracts which is mute evidence of a developing legal profession. But the work of Bracton continued to dominate the entire scene. On the one hand, attempts were made to abridge Bracton in his entirety; on the other, only portions of his work were revised and modified. The abridgments or epitomes of Bracton appeared, in point of time, later than the last-mentioned development, but the epitomes may, for convenience, be mentioned first.

The Latin treatise written about 1290 and called *Fleta* is little better than an ill-arranged abridgment of Bracton's *De Legibus*.<sup>12</sup> The book may conceivably get its name from the fact that the author was in-

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<sup>11</sup> On the subject of law schools, there is the familiar story of Henry III closing the law schools in London, but no one knows what sort of law schools they were. The information comes from a 1234 entry in the CLOSE ROLLS, 1234-37, 26. Sir Frederick Pollock would have liked to believe that the Inns of Court existed in the later years of Edward I, and he admitted that the training of secular lawyers could not come from the universities, for the law that concerned their scholars was the "Roman and cosmopolitan law of canonists and civilians, not the customs and statutes of this realm." See his article, *Origins of Inns*, 48 L.Q. REV. 164 (1932), and also Holdworth, *Legal Profession*, 24 L.Q. REV. 172 (1908).

<sup>12</sup> WINFIELD, CHIEF SOURCES OF ENGLISH LEGAL HISTORY 262 (1925).

carcerated in the Fleet prison and compiled it there. In subject matter *Fleta* does not use the same scheme of presentation which Bracton employed, but it is not difficult to discover the influence of Bracton all through the work. In many cases the author copied almost verbatim from the *De Legibus*. The other abridgment of Bracton's work is *Britton*. It was written about 1291-92 in French.<sup>13</sup> Whereas *Fleta* never enjoyed a very good reputation, *Britton* caught on quickly and acquired an enormous popularity. Twenty-six manuscripts were used by Nichols in the modern edition, and there were many manuscripts which he did not see. *Britton's* popularity was due to the use of the vernacular and to the sanction of the royal name, for it pretends to be nothing less than a statement of the entire common law of England as ordered by Edward I.<sup>14</sup>

*Fleta* and *Britton* were the two epitomes of Bracton's monumental work. Excluding the law reports, these two works close the forty-year period of literary production in medieval English law. But within that interval, law students or clerks, (we cannot be sure of the exact group) were working overtime in an effort to provide literature for training in their profession. These men did not particularly care for Bracton in his entirety; he was too cumbersome and over-burdened with irrelevant material. And where his treatise was relevant, there was still too much of it. Those who aspired to the legal profession were quite willing to take him a little at a time. So they attacked the problem in piece-meal fashion and this manner of approach produced over a dozen law tracts in less than thirty years. To examine and discuss each of these tracts would be a tedious and fairly useless undertaking. But I should like to show how these short treatises were obligated to Bracton's plan of work, and especially how they were produced for the instruction of the legal profession. Within the period under investigation will be found some examples of legal literature which closely approximate the law reports. And the law reports themselves were written to aid in the training of young lawyers.

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<sup>13</sup> BRITTON (F. M. Nichols ed. 1865) 2 vols. In I *id.* at 18, Nichols fixed the date of the treatise at 1291-92, because it refers to the Statute of *Quia emptores terrarum* as "une novele constituicion"—and yet it states that punishment for breaking prison is death, although a statute of 23 Edward I (1295) abolished that penalty.

<sup>14</sup> I BRITTON 1 (Nichols ed. 1865). A third abridgment of Bracton, which I did not mention in the text, was that compiled by Gilbert de Thornton about 1292. This epitome has never been published, but there is a manuscript of the work in the Harvard Law Library, MS. 77. Mr. Samuel Thorne of Yale has an edition in progress, using the Harvard MS. See Woodbine, *The Summa of Gilbert de Thornton*, 25 L.Q. Rev. 44 (1909).

Some time between 1258 and 1267 appeared a small work which has been named *Fet Asaver* and which, with the possible exception of Hengham's *Summae*, was more often copied than any other piece of legal literature in the thirteenth century.<sup>15</sup> It was written in French (Anglo-Norman) and its content is closely related to that part of Bracton which deals with the Writ of Right. The unknown author of the tract divided all pleas in the king's court into pleas of land or of trespass or of both. He then informs us that the plea of land (of Right) can be pleaded in four ways, and the remainder of the work is concerned with explaining each of these pleas. There can be no doubt that *Fet Asaver* was written for the purpose of instruction for, besides the nature of the material, the author uses the first person in giving examples, queries and answers—almost as if a teacher were instructing students.<sup>16</sup> *Fet Asaver* was one of the earliest attempts to reduce Bracton to a more readable and usable form. The *Judicium Essoniorum* which appeared between 1267-1275 discussed, in a brief and concise manner, Bracton's book on essoins.<sup>17</sup> And wherever essoins are concerned, defaults and warranties must also be considered. These topics were involved in the procedural law of the day and, as in *Fet Asaver*, the manner of presentation in the *Judicium* is that of a teacher instructing.<sup>18</sup>

The *Modus componendi brevia* and the *Exceptiones ad cassandum brevia* are considered to be two parts of the same work. Both were written shortly after 1285, but the *Modus* is in Latin while the *Exceptiones* is in French. The last subject of the *Modus* is exceptions; it is treated in so brief a form that only the merest outline is given. But the last sentence of the *Modus* tells us that since the pleading in court is done by the *narratores* in French, the treatment of exceptions must

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<sup>15</sup> FOUR THIRTEENTH CENTURY LAW TRACTS (Woodbine ed. 1910). This book, which was Woodbine's doctoral dissertation, contains the only edition of *Fet Asaver* and three other tracts which we shall have occasion to mention.

<sup>16</sup> *Id.* at 61. "Ore est asaver coment *ieo* peuisse sauver ma defaute si *ieo* fu desceu par le visconte ou par les balliffs, ki paraventure a tort unt testmoygne e endosse le bref ke est retournee, ke *ieo* fu somons sicom le bref voet en sey." See also 62: "A ceo respoygne *ieo* ke *ieo* ne purrey nule defaute fere kar *ieo* ne fu pas somons." The italics are mine.

<sup>17</sup> *Id.* at 27. Woodbine decided on this date because the *Judicium* contains statements which would cease to be true after 1275. He found that it must have been written between the Statute of Marlborough and the Statute of Westminster II. See also WINFIELD, CHIEF SOURCES OF ENGLISH LEGAL HISTORY 273 (1925).

<sup>18</sup> Woodbine, *op. cit. supra* note 15, at 116: "Ad primum capitulum sic respondeo"; 129: "Quartum capitulum de iuratoribus, qualiter distringi debeant. Ad quod sic respondeo . . ."; "Quintum capitulum. Quibus modis et quibus placitis denegari debeat visus terrae. Ad quod sic respondeo. . ."

therefore be written in French. Woodbine felt that this was sufficient evidence to show that the *Exceptiones*—written in French—is really the second part of the *Modus*. More than this, the statement gives us evidence of *narratores* or pleaders in the king's courts about 1285. And as we have noticed above, the *narrator* is the direct predecessor of the serjeant-at-law or the common lawyer.<sup>19</sup>

In 1269 Ralph de Hengham was made a justice of the Common Pleas and, during the early years of Edward I, he seems to have been steadily reappointed to the Bench. He was disgraced in Edward's judicial purge of 1289-1290, but soon returned to his duties and was, as late as 1309, Chief Justice. Shortly after becoming a judge, he wrote the *Summa Magna*. This work was based on Bracton and is closely related to *Fet Asaver*. The first chapter may have come from a Register of Writs. Woodbine felt that the second chapter is a restatement of the first four chapters of Glanvill. In the latter part of the tract are discussed essoins and exceptions with the appropriate amount of space allotted to defaults and warranty. The *Summa Parva*, which Hengham wrote soon after 1285, takes up essoins in more detail and ends with a discussion of dowry, *brevia assisarum* and exceptions.<sup>20</sup>

Thus far we have noted no attempts at law reporting in the legal literature of the thirteenth century. The cases in Bracton's *Note Book* were taken from the official court roll, and he used many of them in his *De Legibus*. The various tracts after Bracton were written in a simple style and straightforward manner. They had for their common origin and inspiration those portions of Bracton which treated procedural law. Moreover, it is hoped, the evidence collected above has not only proved this common derivation from Bracton, but has established quite firmly the proposition that all the literature which we have examined had as its prime purpose the instruction and education of the men who entered, or hoped to enter, the legal profession. The authors of the tracts fulfilled this purpose by making their handiwork brief and concise, and by couching their themes in practical, easily-understood language. The summary given above has covered the most important pieces of legal literature produced in thirteenth-century England—with

<sup>19</sup> Woodbine, *op. cit. supra* note 15, at 43: "Quia consuetudo regni Angliae talis est, quod placita coram insticiariis per narratores in romanis verbis, et non in latinis, pronunciat; idcirco huius modi exceptiones lingus romana in scriptis rediguntur". See also Pollock, *Woodbine's Four Thirteenth Century Law Tracts*, 25 L.Q. REV. 311 (1910).

<sup>20</sup> The standard edition of Hengham is DUNHAM, RADULPHI DE HENGHAM SUMMAE (1932). *Id.* at 65 et seq., agreed with Woodbine that Hengham relied heavily on Bracton and *Fet Asaver*. Woodbine, *op. cit. supra* note 15, at 16 said that "*Hengham Magna*, and not Britton of *Fleta*, was the earliest *Summa* to develop out of the *De Legibus*."

the exception of the law reports and two recently published tracts. These two tracts will, I think, show us the way to the law reports.

Several years ago I ran across a manuscript law tract in the Harvard Law Library which appeared extremely interesting. Shortly afterwards, Professor W. H. Dunham of Yale identified it for me as a copy of the *Casus Placitorum*, and informed me that he had just completed editing it and the edition, being published by the Selden Society, is due to appear this year.<sup>21</sup> The tract dates roughly from 1260, and is a collection of short notes on points of law and especially on writs. For instance, "If a defendant in a plea of land make attorney, it is not necessary for the demandant to be essoined against the attorney but against the principal," or "The writ which is called *nuper obiit* does not run beyond fourteen years." The startling characteristic of the *Casus* is the following sort of statement: "In a writ of right close, no essoin of *mal de lit* runs before the grand assize or battle has been waged. But it may run afterwards according to Sir Roger Thurkelby and Henry of Bath."<sup>22</sup> Who were the two men mentioned in this passage? Both Roger Thurkelby and Henry of Bath were judges whose judicial careers extend from about 1238 to 1260.<sup>23</sup> The author of the *Casus* was reinforcing his statements on the common law by associating the names of prominent English justices with the opinions expressed in his work. But how would the writer of the tract know that Thurkelby or Bath had voiced an opinion on certain points of law? The author could have been the clerk of Thurkelby and Bath and therefore remembered their opinions. Or he could have taken the opinions from the official court rolls of these two judges. Bracton had relayed the opinions of judges to the legal profession when he wrote the *De Legibus*.<sup>24</sup> But where Bracton wrote in Latin, the *Casus* is in French and seems to be strictly intended as a sort of instruction manual for an embryo legal profession.

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<sup>21</sup> The manuscript of the *Casus Placitorum* with which I am acquainted is that contained in Dunn MS. 33, Harvard Law Library.

<sup>22</sup> These quotations are translated from Dunn MS. 33.

<sup>23</sup> See II FOSS, LIVES OF THE JUDGES OF ENGLAND 224 (1848) for Henry of Bath, and also CLOSE ROLLS, 1237-1242, 351, 352; CLOSE ROLLS, 1256-1259, 485 which contains one of the last entries on Bath as a judge in 1259. He was paid £20 in 1241 for serving as Justice in the eyre of Oxfordshire, and 50 marks in 1245 for the eyre of Norfolk.

<sup>24</sup> Bracton cites the decisions of judges like Pateshull and Raleigh time after time. I DE LEGIBUS 218 (Twiss ed. 1883): ". . . as of the last eyre of M. de Pateshull in York." and VI *id.* at 297: ". . . as in the eyre of W. de Raleigh in Warwickshire (ut in itinere W. de Raleigh, in comitatu Warr)." Bracton actually refers to the court record of Pateshull's decision in I *id.* at 516: "Ut de itinere Martini de Pateshull in comitatu Hereford anno regni regis Henrici quinto in fine rotuli."

The second law tract in the tradition of the *Casus* is the *Brevia Placitata* which has recently been published by the Selden Society.<sup>25</sup> The date usually ascribed to it ranges from 1260 to 1270. It begins, as *Fet Asaver* began, by enumerating the four kinds of pleas of land. Then follows the most interesting part of the *Brevia*. We are given, in French, the name of a writ: "This is the writ of trespass," or "Hear now of the writ of mesne and of its nature." The names of the litigants, the judges and the year of the case are often given next, followed by an abbreviated copy of the writ. Then, in rather full detail, is given the claims of the plaintiff and, after that, the defense. The judgment rendered in the case is usually given at the end. When this process is completed, the tract takes us to another writ and another case—a case, seemingly authentic, being used to illustrate each writ.<sup>26</sup>

The *Brevia Placitata* thus goes further than the *Casus*, because it explains how a writ works by citing a case and discussing that case in detail. The author of the *Brevia* apparently took his illustrative cases from the court record or plea rolls, for the cited cases follow the style of the officially recorded cases. But the writer of the tract sometimes lapses into the first person, which gives us the impression that the *Brevia* was compiled strictly for the instruction of the legal profession. Both the *Casus* and the *Brevia* appear to be crude but worthy predecessors of the law reports. The outstanding characteristics of these two tracts are their reference to judges by name and their citing of cases and opinions to reinforce and substantiate their explanation and illustration of writs. But while we have the names of judges and litigants in these two tracts, we do not find the names of persons who can be called lawyers. The litigants in the *Brevia* do their own pleading; we see no serjeants-at-law pleading for them.<sup>27</sup>

Next to Bracton's work, the law reports constitute the most magnificent literary monument of medieval English jurisprudence. From the little we know of their origins—for the evidence is extremely scanty

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<sup>25</sup> The *BREVIA PLACITATA* was in the process of being published over a period of fifty years. For the unusual story behind the published edition, see the preface to *BREVIA PLACITATA* (Turner, ed. 1951). Additional comment may be found in *MANTLAND, COURT BARON* 11 (1891); *WINFIELD, op. cit. supra* note 17, at 270.

<sup>26</sup> These examples are taken from the *Brevia* in *Dunn MS. 33*, Harvard Law Library.

<sup>27</sup> The pleading for the plaintiff in one case runs as follows: "Gundred who is here tells you that Thomas Musegrave who is there, on the morrow next before the feast of Saint Michael . . . came together with other unknown men and led his company to the gate of this same Gundred in Stirkland, and broke down the gate, and with the aforesaid men did cause to break down . . . and did take of the goods of this same Gundred, forty oxen at twenty marks. . . ." But there is no evidence of a lawyer pleading for either the defendant or the plaintiff.

and enigmatic—they probably underwent a gradual evolution from the early years of Edward I's reign (1272-1307) to their full-fledged appearance in 1292. We have a few fragmentary reports from 1285.<sup>28</sup> When they appear in their completed form in 1292, they betray the existence of the English common lawyer. It is beside the point to attend to the origins of the English Bar at this moment. We must simply accept the fact that lawyer and law report appear simultaneously in England. But we must also grant that the lawyer, like the law report, had probably evolved over a period of some fifteen years before his formal appearance in 1292. This new man of law is the direct ancestor of the modern Anglo-American lawyer. He is paid by litigants to argue their cases in court. Since his profession is a recognized and profitable one, he must have adequate training. The early serjeant-at-law undoubtedly used Bracton and the many tracts which we have mentioned, and he probably found the *Brevia Placitata* to be especially valuable since entire cases were transcribed in that tract. In fact, this new man of law must really study law cases, for only in such literature will he discover how to conduct himself and his arguments in court—in short, how he can make of himself a successful lawyer.

The existence of this profession thus called into being the law reports. For while we may see some trace of the *Casus* and the *Brevia* in the law reports, we must admit that they constitute an entirely new kind of legal literature. How were they formed? Someone (we will come to this problem later) in 1286, 1290 and 1292 was taking notes in court during the actual progress of a case. He wrote down the name of the action or writ which was brought in the suit. He next gave in dramatic form the names of the judges and their comments on the proceedings; of the lawyers and their successive arguments on behalf of their respective clients. This was precisely the sort of literature which was most valuable to the law student and lawyer; it was the type of literature which was henceforth used by them.<sup>29</sup>

<sup>28</sup> BOLLAND, A MANUAL OF YEAR BOOK STUDIES 42 (1925). See also Y.B. 20 Edward III, pt. 2, p. lix (Rolls Ser. 1911).

<sup>29</sup> The form which the law reports had acquired by 1292 was also the form which they kept for over two hundred years. The following example, taken from Horwood's edition of Y.B. 20-21 Edward I, p. 50 (Rolls Ser. 1866), is a case heard in 1292. Berewyke is the judge. Louther and Howard are the two lawyers arguing the case, which is an action based on the writ of entry.

*Louther*: We are not now pleading to the entry; we are not on that point: what we now tell you is in support of our voucher.

*Berewyke*: Answer if such a judgment was given or not . . . you shall answer to that, notwithstanding all that have yet said.

The law reports in their earliest form were usually bound together according to the court term which they represented. During the fourteenth century there came a time when the reports of all four terms of the legal year were bound together in one manuscript volume and were called Year Books.<sup>30</sup> This is the name by which the medieval English law reports are known today; it is the name which hereafter will be applied them. The fourteenth and fifteenth centuries did not produce much in the way of law tracts. But the Year Books continued to grow in size and popularity. This majestic series of reports runs from 1292 to about 1535. At that time Dyer and Plowden began their series of modern reports published under their own names. I will not attempt to deal with the work of Dyer and Plowden and the significance of their reports, for Professor Plucknett treated that subject in an admirable fashion some ten years ago.<sup>31</sup> Rather do I wish to follow the fortunes of the Year Books, even after their surcease about 1535.

It is generally believed that the manuscript Year Books were copied and recopied before printing came into England; an incredibly large number of the manuscript volumes have survived to our day. There was undoubtedly a considerable demand for them; the judges must have had them, and the serjeants-at-law and the law students certainly depended largely upon them for the legal education of the day.<sup>32</sup> It is not definitely known what effect the introduction of printing into England had on the copying of manuscript Year Books. At any rate, the printed editions of Year Books began only seven or eight years after printing began in England.<sup>33</sup> Caxton apparently printed none.

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*Howard*: Even if it were as they said (which we do not admit), yet would not the voucher stand: for although they have been seised, yet that was after the tort done to our predecessor: so they can not aid themselves by that.

*Louthier*: We will aver it by the record; judgment if our voucher be not good.

*Berewyke*: As before.

*Howard*: We will imparl, etc.

*Louthier*: First of all admit that such a judgment was given; let us be agreed on that

*Howard*: We will neither admit nor deny it. Why should we admit or deny transactions between strangers?

[This sort of literature was immensely valuable to law students who wished to learn how to plead in court.]

<sup>30</sup> BOLLAND, *MANUAL* 46 (1925).

<sup>31</sup> Plucknett, *The Genesis of Coke's Reports*, 27 *CORNELL L.Q.* 190 (1942).

<sup>32</sup> See Pike, *The Manuscripts of the Year Books and the Corresponding Records*, 12 *THE GREEN BAG* 535 (1900) for the presumed value of the law reports to the medieval English lawyers.

<sup>33</sup> The story of the old printed editions of the Year Books was very ably recorded by Soule, *Year Book Bibliography*, 14 *HARV. L. REV.* 557 (1901). The voluminous notes accumulated by Soule for this article now reside in a file box on a shelf beside a manu-



About 1481, William Machlinia printed the Year Books of the later years of Henry VI. If recognition for printing the first Year Book goes to Machlinia, then to Richard Pynson belongs the distinction of having been the first systematic publisher of Year Books. His period of activity covered roughly the last decade of the fifteenth and the first three decades of the sixteenth century. Fifty editions bear his name.

These years also saw the appearance of the abridgments which are compilations and digests of Year Books and, sometimes, of material not included in the Year Books.<sup>34</sup> In the abridgments, the cases are arranged under topical headings instead of, as in the Year Books, following chronologically the proceedings of the term in which they were taken. Pynson, about 1490, printed the first abridgment as compiled by Nicholas Statham, Baron of the Exchequer in Edward III's reign. Two other men, Anthony Fitzherbert and Robert Brooke produced abridgments after Statham. Richard Tottell was the preeminent publisher of Year Books in the sixteenth century. During his career in Year Book printing, Tottell issued about 225 known editions of separate years or groups of years. After his death, Year Book printing underwent a decline for almost a century. In 1678-1680 appeared the standard black letter edition of the Year Books, and after this edition Year Book publication ceased for almost two hundred years.

Why did the study of these medieval law reports decline at this time? This question has proved as controversial as most other questions relating to the Year Books. The manuscript Year Books ceased to appear in Henry VIII's reign. The men who had been responsible for them probably felt that there were reports enough. But it soon became apparent that the professors and practitioners of a growing system of law, developed by the means of decided cases, could not dispense with such records; so Dyer and Plowden began the long list of modern reports. Even with this development, the Year Books continued to be

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script Year Book in the Congressional Law Library. A glance at his notes will show that he was concerned exclusively with the printed editions of the Year Books. His article has long been the standard authority on Year Book bibliography, and Bolland, when speaking of the old editions of Year Books, used Soule as his guide. In 1918, W. H. Maxwell provided a supplement to Soule's article in 11 L. LIB. J. 46 (1918).

<sup>34</sup> See Winfield, *Abridgments of the Year Books*, 37 HARV. L. REV. 214 (1923), for a very able and interesting discussion of the three Year Book abridgements and the story behind them. II HOLDSWORTH, A HISTORY OF ENGLISH LAW 458 et seq. (1909) has supplementary material to Winfield's article. In 1932, John D. Cowley edited for the Selden Society the rather elaborate BIBLIOGRAPHY OF ABRIDGEMENTS, DIGESTS, DICTIONARIES AND INDEXES OF ENGLISH LAW TO THE YEAR 1800 (1932). This volume is profusely illustrated with plate reproductions of manuscripts. A very valuable part of a rather lengthy introduction treats of the abridgements of Year Books.

printed and used after 1535. The decade of 1550-1560 saw the most flourishing activity in Year Book publication.

One reason for their decline was the language (Anglo-Norman) and type in which they were printed. Many of the lawyers could extract no pleasure and little profit from them, for the language in which they were written was becoming unfamiliar in the late seventeenth century. Besides, with the exception of a few experts, the later generations had lost the art of reading with any ease the old Gothic print, drastically abbreviated, that was used in these old books.<sup>35</sup> Although English lawyers after 1680 may have found the Year Books useless as practical aids in their profession, this fact did not detract from the value of the medieval law reports as sources for English legal and constitutional history. With the rise of the German and English schools of historians in the nineteenth century, and with the increased interest and investigation in English constitutional and legal history, the Year Books came into their own. English scholars who wished to reconstruct the history of English common law, found a useful tool within the dusty covers of the Year Books. The modern edition of the medieval law reports began in 1860, and between that date and 1911, A. J. Horwood and L. O. Pike edited nineteen volumes for the Master of the Rolls. The Selden Society in 1903 under the editorship of Maitland took up the task of publishing the Year Books.<sup>36</sup> It will probably be quite a while before we have a complete modern edition of the medieval Year Books, but the Selden Society even now is continuing the job under the editorship of Professor Plucknett.

At the present moment, we possess about fifty volumes of the medieval reports in the modern edition which began in 1860. But the startling fact is that we do not yet know who wrote the first law reports—or any of the medieval reports. The men who jotted down the notes in

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<sup>35</sup> See Winfield, *supra* note 34, at 24, and BOLLAND, *MANUAL* 3 (1925). For other possible reasons for the decline of Year Book study, see Holdsworth, *The Year Books*, 22 L.Q. REV. 266, 271 (1906) and H. D. Hazeltine in the preface to BOLLAND, *MANUAL*, 13 (1925).

<sup>36</sup> As the modern edition of the Year Books proceeded, the search for manuscripts became widespread. One containing scattered reports of the reigns of Edward II and Edward III was discovered in the Bibliotheque Nationale about 1895. This manuscript formerly belonged to Louis XV who had purchased it from Colbert's collection after the latter's death. See Twemlow, *Notes on a Manuscript of Year Books*, 98 ENGL. H. REV. 13 (1898). The greatest number of manuscript Year Books were found, of course, in England—in private libraries, university libraries, libraries of the Inns of Court, and the British Museum. In the United States, the Harvard Law Library has a magnificent collection of manuscript Year Books, and there is at least one in the Library of Congress and a fragment in the Huntingdon Library.

the Court of Common Pleas at Westminster or the men who copied or compiled the reports between 1292 and 1535 simply did not think it necessary to attach their names to their work or to give us, in any manner, evidence of who they were. For a long time scholars believed the myth which Edmund Plowden and Francis Bacon created. Plowden, who studied law in the reign of Henry VIII, stated in the preface to his reports that formerly the English kings had paid certain learned men for drawing up and producing reports of law cases in the king's courts. Bacon in 1614 more or less repeated Plowden's assertion and the myth that official reporters paid by the king created the Year Books passed down to the twentieth century.<sup>37</sup>

Maitland attacked the problem in 1903 and effectively demolished the myth of official authorship.<sup>38</sup> But Maitland did not, unfortunately, say all that he wished to say on the matter. He felt that the earliest reports were the work of law students who attended court and took down notes of the legal debates for their own personal use. In other words, the first reports were actually law students' notebooks.<sup>39</sup> William Holdsworth, writing a few years later, gave his consent to Maitland's destruction of the traditional theory and reiterated that the reports were intended for the instruction of the legal profession.<sup>40</sup> But Holdsworth

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<sup>37</sup> For Plowden's remarks, see the prologue to his *COMMENTARIES OR REPORTS*. Francis Bacon, Lord Chancellor of England, in suggesting reforms in the law, addressed himself to James I in 1614 in the following manner: "But to give perfection to this work his Majesty may be pleased to restore the ancient use of Reporters, which in former times were persons of great learning, which did attend the Courts at Westminster, and did carefully and faithfully receive the Rules and Judicial Resolutions given in the King's Courts, and had stipends of the Crown for the same; which worthy institution by neglect of time hath been discontinued." XII *SPEDDING, WORKS OF FRANCIS BACON* 86 (1864). I *BL. COMM.* \* 71: "The reports are extant in a regular series from the reign of King Edward II inclusive; and from his time to that of Henry VIII were taken by prothonotaries, or chief scribes of the court, at the expense of the Crown, and published annually, whence they are known under the denomination of Year Books." An eighteenth century historian of English Law gave credence to the same theory. See II *HISTORY OF ENGLISH LAW* 357 (2d ed. 1787). Neither were the French historians of English law immune to this myth. See III *GLASSON, HISTOIRE DU DROIT ET DES INSTITUTIONS POLITIQUES, CIVILES ET JUDICIAIRE DE L'ANGLETERRE* 32 et seq. (1882). "Je veux parler des reports judiciaires, confies a cette époque et jusqu'a la fin du regne de Henri VIII, a des fonctionnaires speciaux charges de les rediger." II *FRANQUEVILLE, LE SYSTEME JUDICIAIRE DE LA GRANDE BRETAGNE* 23 (1893). "On publiait alors des documents officiels, nommes year books, qui, chaque annee, faisaient connaitre les causes dignes d'interet."

<sup>38</sup> For Maitland's thesis, see his excellent introduction to *Y.B. 1-2 Edward II* (Sel. Soc. 1903).

<sup>39</sup> *Id.* at 10: "Why then were these books made? The answer we take to be: because young men wished to learn the law and to become accomplished pleaders. These young men, to our way of thinking, are the begetters of the law reports."

<sup>40</sup> II *HOLDSWORTH, HISTORY OF ENGLISH LAW* 457 (1927).

expressed an idea that was eventually to create in the minds of the following Year Book scholars strong opposition to one of Maitland's contentions. Maitland had said that the Year Books, or at least the earliest of them, were students' notebooks. Holdsworth discovered, in the reports of Henry VI and Edward IV—in the fifteenth century—cases cited and distinguished in the same way as they are cited and distinguished in modern times.<sup>41</sup>

In 1911, L. O. Pike also opposed Maitland's "note-book" theory, and tried to reconcile the statements of Plowden and Bacon to the facts. He felt that officers of the court or clerks of the court may have jotted down in their spare time notes on the cases. In fact they needed these notes to compile the official court record, and once outside court, they might expand their hastily-written notes into law reports to be sold to the legal profession. Pike's theory was generally discredited by later writers on the subject,<sup>42</sup> and W. C. Bolland in particular built up a theory which said that the serjeants-at-law who continuously needed new reports would pay the apprentices to take notes. Eventually, capital entered the picture and *scriptoria* or writing rooms were financed, staffed with professional scribes, who would make numerous copies of the reports supplied to them by the apprentices.<sup>44</sup> While Bolland's

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<sup>41</sup> In opposition to Maitland's ideas, G. J. Turner in his introduction to Y.B. 4 Edward II, p. 18 (Sel. Soc. 1914), argued that the wise student would soon find that he could learn more by reading good notes made by practiced reporters than by writing bad notes himself. PLUCKNETT, *STATUTES AND THEIR INTERPRETATION IN THE FIRST HALF OF THE FOURTEENTH CENTURY* 5 (1922) felt indisposed to believe the Year Books were the work of mere beginners because they show too much command of technique. See BOLLAND, *MANUAL* 49 (1925), for the final argument against Maitland on this point.

<sup>42</sup> The details of Pike's argument may be found in the introduction to his edition of Y.B. 12-13 Edward III, pt. 2.

<sup>43</sup> Holdsworth also roundly denounced Pike's explanation in *Mr. Pike's Latest Year Book*, 27 L.Q. REV. 278 (1911). Frederick Pollock already had laid the ground for rejection of Pike's views in 1903. See Pollock, *English Law Reporting*, 19 L.Q. REV. 412 (1903). "It is more than doubtful whether the Year Books were the work of official reporters. Internal evidence is distinctly unfavorable to the tradition, for it looks like a professional tradition which Bacon and Plowden accepted. Bacon would be a better witness if he had not used the story to support a scheme of his own for official reporting; and Coke's enormous credulity makes his repetition of it worthless."

<sup>44</sup> BOLLAND, *MANUAL passim*. Bolland may justly be called the editor par excellence of the Year Books. He began work in this field comparatively late in life. He was fifty-five when in 1909, on the death of L. W. Vernon Harcourt, he took over the work of editing for the Selden Society the report of the Eyre of Dent held in the years 1313-14. See Holdsworth, *The Late W. C. Bolland and the Future of Year Book Study*, 44 L.Q. REV. 22 (1928). From that time until his death in 1928, a fairly steady stream of Year Books issued forth under his editorship. He published the only full length studies of the law reports in English—including the one cited above in this note and an earlier one, *The Year Books* (1921).

idea is quite feasible, it also appears a little too elaborate. Professor Plucknett in 1932 called our attention to the fact that the serjeants-at-law hold the center of the stage in the law reports, and perhaps we should pay closer attention to them in our attempts to discover the authorship of the Year Books.<sup>45</sup>

The problem is still unsolved at the present time, although scholarly comment on the matter continues to be published.<sup>46</sup> The problem really deserves its reputation of being the most difficult in Anglo-American legal history. After all, we have hundreds of manuscript copies of the Year Books ranging over a period of two and a half centuries. And yet not one of these manuscripts will tell us who its author was. Moreover, the magnificent series of governmental records, chronicles and private letters which come to us from medieval England give us no hint of the identity of the men who originated and compiled the Year Books. However ignorant we are at the present moment of the solution to the problem, we should, in the meantime, accept the medieval law reports as a glorious and majestic memorial to the humble resolve of Englishmen who, in an age far removed from ours, were doggedly determined to learn the law of their land to the end that they might partake in the administration and practice of that law. We may discover some day just who were the men who first began reporting law cases in thirteenth century England; and having discovered who they were we may pay homage and render our thanks to them.

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<sup>45</sup> Plucknett, *The Place of the Legal Profession in the History of English Law*, 48 L.Q. REV. 336 (1932). See also Bolland, 43 L.Q. REV. 61 (1927). Two other scholars also had a great deal to say about the origins of the law reports. G. J. Turner, in the introduction to Y.B. 4 Edward II, pt. 1, formulated what is known as the "pamphlet" theory. According to this theory, the original reports circulated as pamphlets, each containing the cases of a single term or a few terms at most. Therefore, the manuscripts as we know them, each containing a long series of reports, were not written by reporters. They were compiled and copies from the pamphlets by professional scribes. Sir Paul Vinogradoff in 1921, before Turner had completely constructed his theory, supported him as far as he had gone. In fact, Vinogradoff considered the matter closed to the satisfaction of all when he wrote, in Y.B. 6 Edward II, pt. 1 (Sel. Soc. 1921), "It may be regarded as established that the so-called Year Books consist of official reports based on notes made in court by apprentices who followed the proceedings, and that their reports of pleadings were variously combined in groups generally according to terms."

<sup>46</sup> See the recent article by R. V. Rogers, *Law Reporting and the Multiplication of Law Reports in the Fourteenth Century*, 66 ENG. H. REV. 481 (1951).